IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 800 of 1999 (O&M)
Date of decision : 28.09.2017

Krishan Kumar

...Appellant

versus

Ran Singh and others

...Respondent

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. Sahil Singh Chauhan, Advocate for the appellants.

Mr. Vinod Chaudhari, Advocate for respondent No.3.

RAJIV NARAIN RAINA, J. (ORAL)

1. Taking an overall view of the 90% permanent injury suffered in the motor accident resulting in medical amputation of the right upper arm above the claimant's elbow and other bodily injuries caused in the accident in September 1994, the compensation awarded by the Motor Accident Claims Tribunal, Hisar announced on 02.09.1998 is far too conservative, meager and unfair an amount to be affirmed in appeal even in the year the award was made. The Tribunal has awarded no more than ₹ 1, 72, 000/- with 12% interest from the date of the petition till the actual payment.

2. No disability certificate is actually required to understand the predicament and the lifelong trauma and everyday suffering the claimant-appellant has to face and live with.

3. The Insurance Company disputes the disability assessment of the claimant at 90%, while the appellant urges that it should be

sustained as assessed by the learned Tribunal. The Tribunal is a quasi judicial authority in the position of a court of fact and is presumed to have seen the injured in Court proceedings many times over before recording the degree of disability at 90% and in this conclusion I have no doubt on the vision of the Tribunal. There is evidence that after injury sustained the claimant initially resisted amputation not prepared to lose his limb but succumbed to medical advice and the regular amputation followed on 15.09.1994 with no option left with the attending medical doctors. Amputation is proved by the discharge certificate EX. P-3.

4. The accident occurred when the injured was driving a jeep and met with an accident with the offending truck insured with the respondent insurance company driven rashly and negligently. Contributory negligence has been ruled out by the Tribunal on the evidence and finding is affirmed. The ingredients of award of compensation are fully satisfied in this appeal when the offending driver held a valid driving licence and the vehicle was insured, but, the question is: by how much should the compensation be enhanced when a clear case is ex facie made out looking to the gravity of the loss of limb.

5. There is no gainsaying that no monetary compensation is enough for the loss of right upper arm irrespective of the nature of work, age, calling or avocation that sufferer was employed in at the time of accident or might do in the future with many avenues shut. The

loss is visible to the world and the social and physical consequences are incapable of evaluation in terms of money.

6. Considering the totality of facts and circumstances, In my considered view, a consolidated sum of ₹ 10 lakhs deserves to be paid to the injured for the agony, loss of an effective and caring right arm; loss of enjoyment of life; loss of earning capacity and loss of future prospects; the permanent psychiatric shock and scars inflicted on the mind and the rest of the body in relation to the world and carrying out normal chores; to be singled out as differently-abled and labelled forever as a documented physically handicapped person, to use the word in mentioned in forms, rules and regulations and in addition thereto loss of sensation and all diminishing life of the finer things that make for a normal life; loss of attraction by the opposite sex; loss of self esteem; right of self defence and to preserve oneself from danger and to depend on help of others for life in some form or the other. When all this is accounted for and listed on a sheet, it together makes for imponderable loss difficult to imagine or equate albeit in terms of money, the only succour in the hands of Court which should comprise a survival package deal for the victim. Compensation must therefore be adequate, realistic and reasonable to the magnitude of the loss and considering these myriad factors I am inclined to think the appellant deserves to be awarded a sum of at least ₹ 10 lakhs as a one-time payment. Accordingly, the appellant is held entitled to ₹ 10 lakhs less the amount already paid in terms of the award. In case any amount

remains to be paid from the original amount awarded that shall be paid with 12% interest which is the rate awarded.

7. However, on the balance amount of enhanced compensation awarded by this order, being a substantial sum of money, then in the circumstances this Court feels that the ends of justice will be met if no interest is made to run on this balance amount from any anterior period and the same converted from a conventional award to lump sum by way of a one-time payment commensurate with the extent of 90% permanent injury for no reason other than for attempting to strike a just and fair balance between the rights of the injured to adequate compensation and the Insurance Company not burdened more than what appears unfair from its standpoint.

8. Lets us put it in another way, say by remodeling the compensation method from lump sum to the conventional method. Suppose this Court were to enhance compensation ₹ 1, 72, 000/- with 12% interest from the date of the petition till the actual payment to ₹ 5 lakhs, which appears a modest increase, to carry the minimum rate of interest @ 6% per annum simple (provided by Section 34 of the Code of Civil Procedure, 1908) from the date of filing appeal (by denying interest from the date of the claim application filed under Section 166 of the Motor Vehicles Act, 1988) then from 1999 till the present (passage of 18 years and odd) the amount of enhanced principal compensation with interest will bring approximately ₹10,57,500 to the appellant which is almost equal to the lump sum method adopted. Both

roads to assess compensation lead to Rome but remains a choice to be judiciously exercised tempered with acceptable limits of discretion. Then why not take the one less travelled by and award a rounded off ₹10 lakhs as compensation sans interest in the interest of justice.

9. As a result of the foregoing discussion, the appeal is partly allowed against the insurance company. Recovery rights have not been pressed against the owner/driver. The impugned award is accordingly modified by enhancing the compensation to a fixed sum of ₹10 lakhs. The modified compensation be deposited by the insurer in the Tribunal within 6 weeks from the date of receipt of the certified copy of the order, to be disbursed to the appellant without delay by the Tribunal; given the crippling injury was suffered about 23 years ago with the present appeal pending since 1999. The amount, if any, deposited for entertaining the appeal be returned to the Tribunal to be paid to the appellant and treated as litigation expenses.

(RAJIV NARAIN RAINA)
JUDGE

September 28, 2017
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Whether speaking/reasoned : Yes
Whether reportable : No