IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.251 of 2001
Date of Decision-11.08.2017

Satpal ... Appellant

Versus

Parveen Kumar ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Kotla, Advocate for the appellant.

Mr. Ravinder Arora, Advocate for the respondent.

***

RAJ MOHAN SINGH, J.

[1]. Appellant has preferred this appeal against the award dated 26.07.2000 passed by Motor Accident Claims Tribunal, Fatehabad (for short 'The Tribunal'), wherein an amount of Rs.3,90,889/- was awarded to the appellant for the injuries suffered by him in a vehicular accident.

[2]. The appellant was employed with Tohana Navyug Transport Cooperative Society for driving its bus on a monthly salary of Rs.3500/-. On 24.09.1998, when he was driving the bus on Tohana Barwala road, the accident in question took place with another bus, which came from the direction of village Prithla.

[3]. The Tribunal while assessing the amount found that the accident took place on account of rash and negligent driving of driver of the offending vehicle. The Tribunal has found that the appellant had received fracture in his right leg. Appellant was shifted

to Civil Hospital, Tohana, where he remain admitted for about one month and thereafter, he was taken to Arora Orthopedic Hospital, Hisar, where his treatment continued for 45 days and he spent huge amount towards his treatment. He was operated. There was a shortening of leg, thereby, rendering him unfit for driving heavy vehicle. His marriage prospects were also hampered and thereafter, he could not get any employment as a driver either in public or private Sector.

[4]. Dr. J.S. Bhatia (PW 1) corroborated the injuries suffered by the appellant when he along with Dr. Suresh Kumar and Dr. S.K. Dogra, Civil Surgeon examined the appellant on 01.09.1999. They found him permanently disabled to the tune of 20% for the right lower limb on account of shortening of the right lower limb by one inch. The weakness of the limb was also noticed i.e. restrictions in moments of the right knee and right ankle. The disability was proved by disability certificate Ex.PA issued by the doctors. Dr. Vijay Grover (PW2) found shortening of leg. Both bones of right leg were fractured. Appellant remain admitted in Civil Hospital, Tohana from 24.09.1998 to 15.10.1998. Thereafter, he remain admitted in the hospital of Dr. Ashok Arora (PW6) from 04.03.1999 to 18.03.1999 with diagnosis of five months old fracture in both bones of the right leg. Appellant was operated on 05.03.1999. Interlocking nailing was done in his right leg and he was discharged on 18.03.1999. He was also treated on account of post operational complications.

[5]. On medical evidence, the Tribunal granted an amount of Rs.50,000/- towards pain and sufferings. An amount of Rs.16,889/- was granted for the expenditure incurred by the appellant towards treatment, special diet and transportation. An amount of Rs.3,24,000/- was assessed towards loss of earning capacity as a result of permanent disability to the right lower limb. In this way, the total amount of Rs.3,90,889/- was calculated towards compensation payable to the appellant along with interest.

[6]. Learned counsel for the appellant submitted that in view of law laid down by Hon'ble Apex Court in ***Govind Yadav Vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817, K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312, S. Manickam VS. Metropolitan Transport Corporation Ltd., 2013(3) RCR (Civil) 696, G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another, 2013(3) RCR (Civil) 934, Rekha Jain Vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996, Neerupam Mohan Mathur Vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422, Yadava Kumar Vs. The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** in case of permanent disability, the compensation towards permanent disability as well as loss of earning capacity on account of said permanent disability have to be assessed independently. The determination of compensation for loss of earning capacity on

the basis of multiplier method was held to be proper by the Hon'ble Apex Court. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be considered with some objective standards. There cannot be a flight in fancy. The award should correspondent to reasonableness and should be in consonance with conventional sum. The endeavor should be to award just compensation keeping in view the sufferings of the injured person.

[7]. Learned counsel further submitted that the vocation of driver on account of permanent disability had come to an end and the disability, even if, assessed to be 20%, has rendered disability to the tune of 100% so far as work of the appellant was concerned.

[8]. Learned counsel by referring to law laid down in ***Neerupam Mohan Mathur's case (supra)*** submitted that in case of permanent disability, the compensation towards non-pecuniary damages has to be awarded and in such situation, the amount should be assessed towards pain and sufferings, loss of amenities in life, loss of expectations in life, loss of marriage prospects and loss of future enjoyment in life. A distinction has to be drawn between the damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be given for atonement of the injury caused to the person and in order to put back the injured as far as possible in the same manner, as if

injury has not taken place. Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

[9]. In view of ratio laid down by the Hon'ble Apex Court in ***Neerupam Mohan Mathur's case (supra),*** an amount of Rs.1 lac can be assessed towards pain, suffering and trauma faced by the injured. An amount of Rs.15,000/- towards attendant of the appellant and an amount of Rs.15,000/- towards transportation can be assessed. An amount of Rs.20,000/- can be assessed towards special diet keeping in view the duration of treatment and hospitalization of the appellant in different hospitals. The Tribunal has assessed a consolidated amount of Rs.3,24,000/- towards loss of earning capacity of the appellant as a result of permanent disability to the right lower limb. This head has to be re-assessed while computing total compensation payable to the appellant. Since the appellant had suffered 20% permanent disability and his income was pleaded to be Rs.3500/- per month, therefore, loss of income on account of 20% permanent disability would come out to be Rs.700/- per month (3500 X 20%=700) and Rs.8400/- per year (700X12=8400). Keeping in view the age of the injured, a multiplier of 18 can be applied in view of ratio laid down in ***Smt. Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77***. In this way, an amount of Rs.1,51,200/- (8400X18=1,51,200) would come out for future loss of income on account of 20% permanent disability

of the injured. In view of aforesaid precedents, compensation towards permanent disability has to be paid independently while assessing Rs.2000/- per percentage of permanent disability. Keeping in view, permanent disability of the appellant to the tune of 20%, an amount of Rs.40,000/- (2000X20=40,000) can be assessed under the head of permanent disability of the body. In this way, an amount of Rs.1,51,200/- towards loss of future income and an amount of Rs.40,000/- towards loss of body on account of permanent disability can be assessed. An amount of Rs.2,00,000/- can be added towards loss of marriage prospects, loss of amenities in life and loss of expectancy in life. In this way, total compensation would come out to be Rs.5,41,200/- (1,50,000 + 1,51,200 + 40,000 + 2,00,000 =5,41,200).

[10]. In view of aforesaid determination, following calculations can be made on comparative data:-

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in appeal	Difference
1.	Pain and suffering	50,000/-	1,00,000/-	50,000/-
2.	Attendant, transportation and special diet	16,889/-	50,000/-	33,111/- (Rounded of to Rs.33,100/-)
3.	Future loss of earning capacity, permanent disability of the body, loss of amenities, loss of	3,24,000/-	3,91,200/-	67,200/-

	marriage prospects and loss of expectancy in life			
4	Total compensation	3,90,889/-	5,41,200/-	1,50,311/- Rounded of to Rs.1,50,300/-

[11]. The enhanced amount of Rs.1,50,300/- shall carry interest @ 7.5% from the date of filing of the claim petition till final realization of the amount.

(RAJ MOHAN SINGH)
JUDGE

11.08.2017
Prince

Whether reasoned/speaking **Yes/No**

Whether Reportable **Yes/No**