

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 807 of 2001 (O&M)

Date of Decision: 12.10.2017

Harbhajan

.....Appellant

Versus

Prem Pal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sudhir Aggarwal, Advocate
for the appellant.
Mr. Suvir Dewan, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 14.2.2000 passed by the Motor Accidents Claims Tribunal, Gurgaon, (for short 'the Tribunal').

This was burnt case and has been reconstructed from the salvaged record and copies supplied by counsels subject to all just exceptions.

The brief facts necessary for adjudication of the present appeal are as under:

On 19.6.1997 Harbhajan Singh, aged 16 years, was going alongwith his uncle on a scooter bearing registration No.DIU-4669. They were struck by a bus bearing registration No.HR-29-F-9071 (for short 'the offending vehicle') which was being driven in rash and negligent manner. Harbhajan Singh suffered injuries. He was taken to General Hospital, Sohna and from there he was shifted to K.C. Gupta Nursing Home and then to Lok Narain Hospital, Delhi. FIR No.329 dated 19.6.1997 was registered at P.S. Sohna.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed.

The Tribunal awarded a sum of ₹ 1,03,278/- alongwith interest at the rate of 12% per annum.

Aggrieved of the said award, the present appeal has been filed for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper book and record.

There is no dispute on the facts of the case by either of the parties. It is accepted by both the parties that there is 70% permanent disability qua limb which is not likely to improve.

Learned counsel for the appellant has argued that the Tribunal while assessing the compensation has not taken into consideration various heads under which, in case of non-fatal injuries, the compensation should be awarded. He further contended that the amount awarded under conventional heads is on the lower side.

Learned counsel for respondent No.3 defended the award and argued that he was just 16 years old boy and was not earning anything. More over nothing has been brought on record to show that his working efficiency has been effected. He further contends that the amount already awarded needs no enhancement.

The contention of learned counsel for the appellant deserves acceptance.

Hon'ble the Apex Court in ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another***, 2013(12)SCC 455, held as under:

"It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains), which the injured would have made had he not been injured, comprising:
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

A perusal of the above decisions shows that in case of personal injury pecuniary damages (special damages) should be given under various heads. It was further held that non-pecuniary damages should also be

compensated.

In the present case, the Tribunal while awarding the compensation amount has not considered that a young boy has been crippled, as his right leg has virtually been rendered useless. This is evident that there is 70% permanent disability. The boy was in his foundation years and his entire future has been devastated by the said accident. In such situation, it would be very difficult to assess the loss in monetary terms. The approach adopted by the Tribunal while awarding the compensation is very orthodox. The Tribunal has not considered that accident resulted not only in injury but his future prospects, his loss of status in the society, his marriage prospects, all have been effected. It would not be improper to state that his future plans have been derailed. The Tribunal while awarding compensation for pain and sufferings has to consider the trauma, the consequence of the injuries and the mental agony. The loss of earning is quantified at ₹ 15000/- per annum taking help from Schedule II of the Act. The medical expenses awarded is also only with regard to the actual bills produced by the appellant. The fact is that he had to undergo two surgeries because of the injuries and even the future treatment in such type of cases cannot be ruled out.

Hon'ble the Apex Court in **Raj Kumar Versus Ajay Kumar and another** 2011 (1) SCC 343, has dealt with assessment of loss of future earning by giving examples. Following the said examples, the disability of 70% of the limb is taken as 35% of the whole body. The appellant was a minor at that time and taking help of the Schedule-II of the Act, as non earning income per annum and applying the multiplier method.

$$15000 \times 35\% = 5250/-$$

Applying the multiplier of 18 (5250 x 18 = 94500)

Learned counsel for the respondent No.3 also pointed out that it had come on record that free treatment was provided by the Doctor. Even if further treatment was there, overhead expenses and certain medical requirements would have arisen which are not provided in such free treatment. While dealing with the transportation part, the Tribunal has not appreciated that with such injury, the transportation is not only required during the period of treatment but it is required thereafter also. The injury suffered is such that an attendant is required not only during the period of treatment but thereafter also. Without one leg the appellant will not be able to had a normal life. Even the marriage prospects would be badly effected.

Keeping in view the facts of the case and the reasoning given above, the amounts awarded by the Tribunal are enhanced and heads for compensation not considered by the Tribunal are awarded as per the Table given below:

<i>Sr. No.</i>	<i>Description</i>	<i>Amount earlier awarded by the Tribunal</i>	<i>Amount now awarded</i>
1	Pain and suffering	₹ 25,000/-	₹ 1,00,000/-
2	Medical expenses	₹ 8778/-	₹ 50,000/-
3	Transportation charges	₹ 19,500/-	₹ 35000/-
4	Attendant	Not awarded	₹ 25,000/-
5	Special diet	Not awarded	₹ 20,000/-
6	Compensation for disability and loss of future prospects	₹ 50,000/-	₹ 94,500/-
7	Loss of marriage prospects	Not awarded	₹ 1,00,000/-
8	Loss of amenities of life	Not awarded	₹ 1,00,000/-
	Total:	₹ 1,03,278/-	₹ 5,24,500/-

The award dated 14.2.2000 is modified to the extent that amount of ₹ 1,03,278/- awarded by the Tribunal is enhanced to ₹ 5,24,500/-. The claimant shall be entitled to enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the claim amount.

The appeal is partly allowed in the aforesaid terms.

12.10.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No