

Sr. No. 203

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No. 1571 of 2004(O&M)
Decided on: 09.08.2017**

Sangeeta Ohri

.....Appellant

versus

**Himachal Pradesh Road Transport Corporation and others
.....Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. Ashwani Arora, Advocate
for the appellant.**

**Mr. Ravinder Arora, Advocate
for respondents.**

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the injured claimant challenging the award dated 6.01.2004 passed by the Motor Accidents Claims Tribunal, Chandigarh(for short, 'the Tribunal') whereby she was awarded an amount of ₹2,59,600/- only on account of the accident in question.

The brief facts as mentioned in the petition are that on 7.10.1999 at about 7:00 pm the claimant/appellant was going from Punjab University, Chandigarh to Sector 22, Chandigarh on her moped. She was driving the moped at a very slow speed and on the correct side. When she took a turn on left hand side towards the bus stand for going to the petrol pump at Sector 17, the offending bus bearing Registration No. HP-12-4058 came from behind and struck against her moped. As a result of this accident, she suffered injuries. It was claimed that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. It was claimed that she was a student studying in the college. It was further claimed by her

that she suffered disability in the accident resulting into decrease in functioning of the lower limb. Therefore, the claim petition was filed.

Respondent Nos. 1 and 2 filed their joint written statement in which they claimed that accident had taken place because of fault of the claimant because she was driving the moped without caring for the traffic rules. Respondent No. 3 remained ex parte and it did not turn up despite service.

Parties led their respective evidence.

After appreciating the evidence, the Tribunal awarded an amount of ₹60,000/- on account of Pain and Suffering. ₹12,000/- was awarded for Special Diet. Another amount of ₹96,600/- was awarded on account of Medicines and taking treatment as reflected in the cash memo/receipts placed on record of the case. Still another amount of ₹16,000/- was awarded on account of pecuniary loss by assessing the notional income of the claimant to be ₹2,000/- per month, on the ground that she remained hospitalised and her work suffered for eight months. On account of disability which was recorded as 17% and treating the age of the claimant to be 23 years she was awarded a consolidated sum of ₹ 75,000/- on account of permanent disability. As a result, a total of ₹2,59,600/- was awarded by the Tribunal.

While arguing the case, learned counsel for the appellant/claimant has pointed out that during the hearing of the case, the claimant/appellant had moved an application for additional evidence and also vide order dated 21.08.2014, this Court had observed that picture regarding the disability of the claimant was not clear from the Disability Certificate. Therefore, this Court had ordered the PGIMER, Chandigarh to

assess the disability of the claimant. Thereafter, the disability was re-assessed and the certificate dated 23.01.2015 was issued by PGIMER, Chandigarh assessing the disability of the claimant to be 33%. When an objection was raised that this Disability Certificate has not been proved as per the requirement of the law, this Court vide order dated 27.11.2015 sent the matter to the Tribunal for the purpose of sending a report regarding the Disability Certificate after giving the parties opportunity to lead the evidence on this point. Now the report has come from the Motor Accidents Claims Tribunal which is on the record of the case. In this report it has been held that the Disability Certificate Ex:PW-5/1 stands proved by the doctors and the disability of the claimant has been found to be 33%. Therefore, the submission of learned counsel for the appellant that the disability of the injured-claimant has to be taken at 33%.

The next argument of learned counsel for the appellant is that the amount on account of Pain and Suffering is too less. It is his submission that it has been proved on record that the appellant was hospitalised for a long duration of two months at one time and for seven days at another time. Therefore, she had to incur expenses on medicines and follow up treatment, as well as, had to suffer immense pain and suffering. Therefore, his submission is that the amount on account of Pain and Suffering and Medical expenses deserves to be enhanced.

The next contention of learned counsel for the appellant is that the multiplier method should be applied in this case as has been done by the Hon'ble Supreme Court in the case of *V.Mekala versus M.Melathi and anohter; Civil Appeal No. 4880 of 2014* decided on 25.04.2014. It is his further submission that the income of the claimant has also to be assessed at

₹10,000/- per month and not at ₹2,000/- per month as has been done by the Tribunal.

Learned counsel appearing for the respondent has vehemently opposed the arguments of learned counsel for the appellant and has submitted that the amount of compensation has rightly been determined by the Tribunal. It is his further submission that no enhancement in the amount is called for.

After hearing learned counsel for the parties and perusing the records, this Court is of the view that the Award passed by the Tribunal deserves to be modified by increasing the amount of compensation. The first ground for enhancement of the compensation is that the disability of the claimant; which was earlier assessed to be 17% only; has now been found to be 33%. Therefore, the amount of ₹75,000/- which was awarded by the Tribunal for Disability and Marriage Prospects has to be proportionately increased. Hence, an amount of ₹1.5 lakh is awarded on account of Disability and Marriage Prospects by modifying the finding of the Tribunal. *Secondly*, since the claimant has undergone an ordeal of several operations and long hospitalisation on account of the injuries, therefore, the amount awarded on account of pain and suffering as well as on account of medicines is insufficient. In case of such a long hospitalisation and repeated operations, it is not only the expenses which the injured incurs in the hospital during the hospitalisation which are required to be reimbursed by the Tribunal. There has to be a long follow up treatment for such a serious injury. Therefore, the claimant has to be sufficiently compensated on account of follow up treatment as well. Although the claimant may not be able to prove the bills for the follow up treatment, however, it is a common

knowledge that any person of ordinary prudence would be able to guess the proportionate expenses for a follow up treatment with reference to the injury sustained by the injured person. Therefore, the amount awarded on account of Pain and Suffering is enhanced to ₹1 lakh and the amount awarded on account of Medicines is enhanced to ₹1,10,000/-. The assessment of the Tribunal regarding Special diet and Transportation also deserves to be modified. Only an amount of ₹12,000/- have been awarded by the Tribunal jointly for special diet and transportation. For such a long treatment and repeated hospitalisation and operations this amount is grossly inadequate. Therefore, this amount is also enhanced to ₹20,000/-.

So far as the loss of income is concerned, the Tribunal has awarded an amount of ₹16,000/- by treating the monthly income of the injured to be ₹2,000/- and the loss spreading to 8 months. Learned counsel for the appellant has submitted that in this case, the multiplier method should be applied as has been done by the Hon'ble Supreme Court in the case of *V.Mekala* (supra) and the income of the claimants should be assessed to be ₹10,000/- per month as notional income and on the basis of that income, the claimant should be compensated.

While agreeing with the counsel for the appellant qua the approximate notional income, this Court finds it not worth acceptance that the multiplier method of assessment for loss of income should be applied in this case. In the above said judgment of the Hon'ble Supreme Court, the accident is of the year 2005 whereas in the present case, the accident is of the year 1999. Therefore, taking a cue from the judgment of the Hon'ble Supreme Court the notional income of the injured claimant is taken to be ₹7,000/-. Accordingly, she is granted an amount of ₹56,000/-(7000 x 8) on

account of Loss of Income. However, it won't be appropriate to apply the multiplier method of assessing the loss of income in the present case. The judgment of the Hon'ble Supreme Court mentioned above is distinguishable on the facts of the case. In that case, the disability was assessed to be 74% which would substantially affect the earning capacity of a person in absolute terms; whereas in the present case the disability has been assessed to be 33% now, whereas it was assessed to be 17% originally. In the present case, for the disability the claimant is being separately compensated by awarding a separate amount. Therefore, the multiplier method is not being resorted to in the present case.

In view of the above, the present appellant is awarded the amount of compensation as given below:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Amount(₹)</i>
1	Disability and Marriage Prospects	1,50,000/-
2	Loss of Income	56,000/-
3	Medicines and Treatment	1,10,000/-
4	Special Diet and Transportation	20,000/-
5	Pain and Suffering	1,00,000/-
	<i>Total</i>	4,36,000/-

However, the interest awarded by the Tribunal is retained as such.

Therefore, the appeal is allowed by modifying the Award of the Motor Accidents Claim Tribunal in the above said terms.

9th August, 2017
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned Yes

Whether Reportable Yes