

FAO No. 674 of 2003 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 674 of 2003 (O&M)

Date of Decision:01.08.2017

Surjit Kaur

.....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. M.S. Joshi, Advocate
for the appellant.

None for respondents No. 1 to 3.

Mr. Suvir Dewan, Advocate
for respondent No.4.

AVNEESH JHINGAN, J.

This is an appeal against the award dated 8.10.2002, passed by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal').

2. The bare facts necessary for adjudication of the issue involved in the present appeal are that on 29.6.1999 the claimant Surjit Kaur wife of Puran Chand was travelling in Haryana Roadways Bus bearing Registration No.HR-45-3404 from Karnal to Dera Bassi. The bus was being driven by Kulwant Singh. At about 12:30 p.m. when the bus reached Dera Bassi bus stop, the claimant was getting down from the bus from the front door. The driver negligently suddenly started the bus. As a result of the negligent driving there was jerk because of which left leg of the claimant was crushed under the rear wheels of the bus. She was got admitted in the Government Medical College and Hospital, Sector 32, Chandigarh. Her left leg was

amputated. Thereafter she remained admitted in General Hospital, Sector

16, Chandigarh for six days.

3. The claim petition was moved under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). After considering the evidence produced on record, the Tribunal held that the accident was due to rash and negligent driving of Kulwant Singh, driver, as a result of which the claimant suffered injuries. It was proved on record that she had suffered 40% permanent disability because of amputation of the left leg below knee joint (certificate Ex.A2). The age of the claimant at the time of accident was 40 years. She was a housewife and was stated to be earning ₹ 3,000/- per month by Tailoring and Embroidery. The Tribunal awarded the compensation to the tune of ₹ 90,000/- as detailed below:

<i>Sr.No.</i>	<i>Compensation for</i>	<i>Amount</i>
1	Pain & Suffering	₹20,000/-
2	Pre-and Post operation Expenses	₹ 20,000/-
3	Special Diet	₹ 5,000/-
4	Conveyance charges	₹ 5,000/-
5	Payment of attendant	₹ 5,000/-
6	Medical Expenses	₹ 5,000/-
7	Loss of social status	₹ 10,000/-
8	Permanent disability 40%	₹ 20,000/-
	Total:	₹ 90,000/-

It is this award of the Tribunal, which has been challenged by the appellant before this Court seeking further enhancement of compensation.

4. Learned counsel for the appellant has argued that for 40% permanent disability, ₹ 20,000/- granted by the Tribunal is very less. He further argued that only a sum of ₹ 10,000/- has been granted under the heading of “loss of social status”, whereas the claimant has lost her left leg.

Learned counsel further argued that the claimant is entitled for enhancement

of compensation for “pain and suffering”.

5. On the other hand, learned counsel for respondent No.4 has opposed the enhancement of compensation submitting that the claimant has not been able to establish that she was earning ₹ 3,000/- per month. No proof with regard to her income has been produced. Learned counsel further argued that the claimant is a house wife and no evidence has been produced to prove that she is not able to perform her day to day work. It has been further argued that no evidence has been brought on record to show that amputation of a leg has effected the efficiency of the claimant to perform her day to day activities.

6. After hearing learned counsel for the parties and perusing the record it is evident that the Tribunal while passing the award has not taken into consideration the fact that the claimant will have to suffer for rest of her life and would never be able to lead a normal life, though the Tribunal had recorded that no evidence was adduced in support of claimant's earning ₹ 3000/- per month.

7. The Hon'ble Apex Court in Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others, 2015 (4) SCC 237, has held as under:

"Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not

work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

8. The Hon'ble Apex Court in number of cases has enhanced the compensation where permanent disability was 40% or more. In the present case, the Tribunal has awarded a meager amount of ₹ 20,000/- for permanent disability of 40%. The Hon'ble Apex Court in its decision in Arvind Kumar Mishra Versus New India Assurance Co. Ltd. and another 2010 (10)SCC 254 has held as under:

"We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases – and that is now recognised mode as to the proper measure of compensation – is taking an appropriate multiplier of an appropriate multiplicand."

Divisional Manager, National Insurance Co. Ltd. and another 2010(10)

SCC 341 as held as under:

"17. While assessing compensation in accident cases, the High Court or the Tribunal must take a reasonably compassionate view of things. It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The nature of injuries which he admittedly suffered, and about which the evidence of PW-2 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and a consequential loss of income is the nature outcome.

18. It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is obviously true that determination of just compensation cannot be equated to a bonanza. At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field. Both The Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable (See *Mrs. Helen C. Rebello and others v. Maharashtra State Road Transport Corpn. and another*, 1998 (4) RCR (Civi) 177).

19. This Court also held that in the determination of the quantum of compensation, the Court must be liberal and not niggardly in as much as in a free country law must value life and limb on a generous scale (See *Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another*, (1992) 2 SCC 567).

20. The High Court and the Tribunal must realise that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation."

10. The Hon'ble Apex Court in Raj Kumar Versus Ajay Kumar and anothers 2011 (1) SCC 343, has held as under:

“(i) All injuries (or permanent *disabilities* arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent *disability* with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent *disability* (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent *disability*).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent *disability* can give evidence only in regard to the extent of permanent *disability*. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent *disability* may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

14. The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration A.— The injured, a workman, was aged 30 years and earning ₹ 3000/- per month at the time of accident. As per doctor's evidence, the permanent *disability* of the limb as a consequence of the injury was 60% and the consequential permanent *disability* to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows

(a)	Annual income before the accident	₹ 36,000/-
(b)	Loss of future earning per annum (15% of the prior annual income)	₹ 5400/-
(c)	Multiplier applicable with reference to age	17
(d)	Loss of future earnings: (5400 × 17)	₹ 91,800/-

Illustration B.— The injured was a driver aged 30 years, earning ₹ 3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

(a)	Annual income prior to the accident	₹ 36,000/-
(b)	Loss of future earning per annum (75% of the prior annual income)	₹ 27,000/-
(c)	Multiplier applicable with reference to age	17
(d)	Loss of future earnings: (27,000 × 17)	₹ 4,59,000/-

Illustration C.— The injured was aged 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent

disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

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|-----|---|--------------|
| (a) | Minimum annual income he would have got if had been employed as an engineer | ₹ 60,000/- |
| (b) | Loss of future earning per annum (70% of the expected annual income) | ₹ 42,000/- |
| (c) | Multiplier applicable (25 years) | 18 |
| (d) | Loss of future earnings: (42,000 × 18) | ₹ 7,56,000/- |

[Note.— The figures adopted in Illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in *Arvind Kumar Mishra (supra)*].

11. The Hon'ble Apex Court in *Sanjay Kumar Versus Ashok Kumar and another* 2014 (5) SCC 330 has held as under:

"12. Now, we will assess the compensation awarded under the other heads. With respect to medical expenses, attendant charges and conveyance charges, as well as possible future medical costs, we will award a total sum of ₹ 75,000/- as he has suffered permanent disability due to amputation of his right leg. The appellant will need assistance in order to travel and move around, and regular check-ups and will most likely use a crutch to walk, all of which will incur expenses. On the point of loss of marriage prospects, we feel that it is a major loss, keeping in mind the young age of the appellant and the High Court has gravely erred in not awarding adequate compensation separately under this head and instead clubbed it under "loss of future enjoyment of life" and "pain and suffering". We thereby award ₹ 75,000/- towards loss of marriage prospects. Further, as per the case of *Govind Yadav v. New India Insurance Co. Ltd.*

[(2011) (4) R.C.R. (Civil) 817; 2011(5) Recent Apex Judgments 594; (2011) 10 SCC 683, wherein the appellant suffered amputation of the leg, this Court awarded a sum of ₹ 1,50,000/- towards “pain and suffering” caused due to amputation of the leg. Therefore, towards “mental agony and pain and suffering”, we award a sum of ₹ 1,50,000/- as the appellant has suffered tremendously due to the accident in terms of the pain and suffering involved in the amputation. Loss of a limb causes a profusion of distress and the appellant has to deal with the same for the rest of his life. We feel it is justified to award the aforesaid amount under this head as he might have to deal with discrimination and stigma in society due to the fact that he is an amputee.

15. Further, it is necessary to award an amount under the head of “loss of amenities” also as the appellant will definitely deal with loss of future amenities as he has lost a leg due to the accident. The injury has permanently disabled the appellant, thereby reducing his enjoyment of life and the full pursuit of all the activities he engaged in prior to the accident. We thereby award a sum of ₹ 1,00,000/- towards “loss of amenities”. Along with the compensation under conventional heads, the appellant is also entitled to cost of litigation as per the legal principle laid down in *Balram Prasad v. Kunal Saha* 2013(4) R.C.R. (Civil) 946; 2013(6) Recent Apex Judgments (R.A.J.) 165; (2013) 13 SCALE 1. Therefore, under this head, we find it just and proper to award ₹ 25,000 towards cost of litigation."

12. Keeping in view the facts of the case and the law laid down by the Hon'ble Apex Court, the fact is that the claimant is a house wife and as per objection of the respondents, she was not able to give proof

of her earning to the extent of ₹ 3,000/- per month. The Hon'ble Apex Court in Jitendera Khimshankar Trivedi's case (supra) has held that the service of a house wife is 24 x 7 x 365. She is not there to work by the clock. The services rendered by the home maker cannot be monetized. The age of the claimant at the time of the accident was around 40 years. Though the Hon'ble Apex Court has held that the services of a house wife cannot be monetized, yet in the claim petition the claimant herself had claimed that she was earning ₹ 3,000/- per month. Therefore, the monthly income of the claimant is taken as ₹ 3,000/-. Considering her age at the time of the accident, multiplier of 15 is applied. 40% permanent disability is certified. So, applying the multiplier of 15, the amount of compensation comes to $1200 \times 15 \times 12 = ₹ 2,16,000/-$. In my opinion, ₹ 10,000/- awarded for loss of social status and ₹ 20,000/- awarded for pain and suffering is on the lower side, the same is enhanced from ₹ 30,000/- to ₹ 1,00,000/-. The claimant had to undergo mental agony, the quality of her life had to suffer and she would not be able to perform her day to day activities in a normal manner. Apart from that, she has to lead rest of her life without one leg.

13. Accordingly, the appeal is partly allowed. The compensation of ₹ 90,000/- awarded by the Tribunal under various heads is enhanced to ₹ 3,16,000/-. The award is modified to this extent. The appellant shall also be entitled to interest at the rate of 9% per annum.

01.08.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No