IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3687 of 2005
Decided on: 19.12.2017

Rattan Singh **.....Appellant**

versus

Subhash Chand and Ors. **.....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. B.K. Bagri, Advocate
for the appellant.

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

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RAJBIR SEHRAWAT, JUDGE (ORAL)

This is the appeal filed by the injured-Rattan Singh, challenging the order passed by Motor Accident Claims Tribunal (in short 'MACT), Rewari on account of insufficiency of compensation awarded to him.

Brief facts of the case are that on 23.12.2002, the claimant along with one Chittarmal was going to Jhajjar to attend the Namkaran Ceremony of a son of the daughter of Ram Avtar in a Tata 407 bearing registration No.RJ-02/5188. When their vehicle reached the revenue estate of village Dawana above the crossing of the canal of Rewari Bolni Road, then a utility vehicle bearing registration No.HR-47/8546 driven by respondent No.1 (in the claim petition) at a very high speed without observing traffic rules and rashly and negligently, came from Rewari side and struck against their vehicle. Resultatnly, the appellant herein and his co-passenger suffered injury. The petitioner suffered fractured in the right arm. It was claimed that the accident took place solely due to the negligence of the driver of the offending vehicle bearing registration No. HR-47/8546.

Hence, the compensation of Rs. 5 lacs along with interest was claimed. In the claim petition, it was claimed that he was doing agriculture work and was supplying milk to the Cooperative Society of the village and was earning additional Rs.5000/- per month from supply of the milk. The claimant claimed himself to be of the age of 23 years.

On notice, the claim petition was resisted by respondents No.1 and 2. It was pleaded that no accident had taken place with the vehicle of respondent No.1. The age and income of the claimant was also denied. It was further pleaded that if there is some liability arising from this accident, then the vehicle is duly insured and it would be the Insurance Company of the vehicle, which would be liable to make the payment of the compensation.

The Insurance Company of the offending vehicle, respondent No.3 in the claim petition, also filed separate written statement resisting the claim petition. Besides taking routine preliminary objections, the Insurance Company pleaded that the claim petition has been filed with ulterior motive in collusion with respondents No.1 and 2. It was further averred that respondent No.1 was not holding a valid and effective driving license at the time of accident. Still further, the factum of the accident was denied. The age and income of the claimant was also denied by the Insurance Company. Other averments of the claimant in the claim petition were also denied by the Insurance Company.

Parties led their evidence.

After hearing the parties, the Tribunal awarded an amount of Rs.2,41,800/-, as compensation to the claimant.

To arrive at this amount, the Tribunal had recorded that it is awarding the amount on various accounts reproduced herein below:

a)	On the account of actual medical expenses.	10,800.00
b)	On account of disability 70%	70,000.00
c)	Pain and suffering	1,40,000.00
d)	On account of special diet	5,000.00
e)	On account of attendant	3,000.00
f)	On account of conveyance	3,000.00
g)	On account of loss of income	10,000.00
	Total	**2,41,800.00**

The counsel for the appellant has submitted that the claimant has not been compensated for loss of future income, loss of amenities and loss of life expectancy. It is submitted by the counsel that the income of the deceased has been proved at Rs.5000/- per month by examining the PW-6, who was Secretary of the Cooperative Society, where the claimant was supplying milk. The counsel further submits that since the claimant suffered 70% disability and his right arm was amputated and he was of 23 years of age, therefore, the compensation on account of loss of income should be awarded by applying the multiplier formula. As per the judgement of Hon'ble Supreme Court in **Sarla Verma & Ors. vs. Delhi Transport Corp. & Anr. 2009 (6) SCC 121.,** the multiplier of 18 is required to be applied in this case. Accordingly, the enhancement of the compensation is prayed for.

On the other hand, learned counsel for Insurance Company has submitted that no enhancement of compensation is called for in this case. It is his submission that the income of the injured has not been proved, as per the requirement of law. Still further, it is submitted by the counsel that since his disability is only 70%, therefore, the multiplier formula is not required to be applied in this case. The disability of the claimant is not a functional disability, therefore, no enhancement of compensation on account of future loss of income is required in this case.

Having heard the learned counsel for the parties, and perusing the record with their able assistance, this Court is of the considered opinion that the argument raised by the counsel for the appellant deserves to be sustained. Admittedly, the claimant has suffered 70% permanent disability on account of amputation of his right forearm. Although, this may not lead to 100% functional disability, still, since the amputation is of the right forearm, which is mostly used for any functioning in normal routine, therefore, the functional disability of the injured has to be taken at the level of 70% as per the permanent disability of the injured.

Although, the income of the injured may not have been proved strictly by producing the entire record regarding the sale of milk by him to the cooperative society, yet even if he is taken to be an ordinary labourer and some addition is made on account of his dairy business; where he has been proved to be engaged in; by examining PW6, then also his monthly income cannot be taken less than Rs.3000/-at the time of accident. Keeping in view the functional disability of 70%, the loss of income to the claimant comes to Rs.2100/- per month. As has been done by the Hon'ble Supreme Court in case of ***Raj Kumar Vs. Ajay Kumar, 2011 (2) RCR (Civil) 101*** and ***Rekha Jain Vs. National Insurance Co., 2013 (3) RCR (Civil) 996,*** the multiplier formula is required to be applied in this case. As per the age of injured multiplier of 18 is to be applied in this case. Accordingly, the loss of future income to the injured comes to be Rs.4,53,600/- (2100x12x18). Accordingly, he is held entitled to this amount on account of loss of future income.

Beside this, it is evident that the claimant has not been compensated on account of loss of amenities and loss of life expectancy. Keeping in view the fact that his right forearm has been amputated, the claimant is required to be compensated on these heads also. This Court considers it appropriate to award an amount of Rs. 50,000/- on account of loss of amenities and loss of life expectancy. Accordingly, the claimant is held entitled to this amount as well. This Court does not find any reason to disturb the other findings and the amount awarded by the Tribunal on account of other heads.

In view of the above, the claimant is held entitled to a total of Rs.7,45,400/- as compensation as per the details given below:

Sr.No.			**Amount (Rs.)**
1.	Loss of future income	-	4,53,600/-
2.	Loss of amenities and loss of life expectancy	-	50,000/-
3.	Medical Expenses	-	10,800/-
4.	On account of disability 70%	-	70,000/-
5.	Pain and suffering	-	1,40,000/-
6.	On account of special diet	-	5,000/-
7.	On account of attendant	-	3,000/-
8.	On account of conveyance	-	3,000/-
9.	On account of loss of income	-	10,000/-
	Total	**-**	**7,45,400/-**

The interest on this amount is retained at the same rate, as was awarded by the Tribunal.

No other argument is raised.

In view of the above, the appeal is allowed. The award passed by the Tribunal is modified in the above said terms.

19th December , 2017 **[RAJBIR SEHRAWAT]**
Manju **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No