

202

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

FAO No.446 of 2007

Date of Decision: 20.09.2017

Gobind Singh @ Gobind Singh Khanna

.....Appellant

Vs

Pappu and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Kashika Kaur, Advocate for
Mr. Gaurav Chopra, Advocate
for the appellant.

Mr. Sunil Chahal, Advocate for
Mr. Vineet Chaudhary, Advocate
for respondent No.2.

Mr. D.K. Dogra, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. This is an appeal filed by the injured appellant for enhancement of the compensation awarded vide award dated 18.09.2006 passed by the Motor Accident Claims Tribunal/Fast Track Court, Ambala, (hereinafter referred to as 'the Tribunal').

[2]. Brief facts are that on 09.03.2004, the appellant/claimant was going from Patiala Chowk side to Hari Palace side on his bicycle on the correct left hand side of the

road on *kachha* berm. At about 2.00 p.m., when he reached near Heera Motor on G.T. Road, Ambala City, the offending vehicle i.e. Maruti Car came in a rash and negligent manner from behind and hit against the bicycle of the claimant by going towards extreme left side of the road berm. The claimant suffered multiple grievous injuries including fracture of left ankle, fracture of four ribs, injuries on forehead and injuries on face. Internal and external injuries resulted in clotting of blood. The claimant was removed to hospital from where he was referred to the PGI, Chandigarh. He remained in ICU for 18 days. He was put on ventilator also. He was taken to trauma ward and then in private room of the PGI, Chandigarh.

[3]. It was asserted by the claimant that he spent an amount of Rs.2 Lakhs on his treatment and transportation etc. He claimed that he was enjoying good health prior to the accident. He was retired from the MES and thereafter he was working as Manager in Khanna Palace at the salary of Rs.3,000/- per month, besides having pension from the MES. On account of the accident, claimant suffered acute pain and sufferings, mental torture, permanent disability and loss of enjoyment of life. His life has become crippled on account of 100% permanent disability and he had to employ a full time attendant.

[4]. The claim petition was contested by the respondents on all counts.

[5]. The Tribunal while deciding the issue No.1 came to the conclusion that the accident in question took place due to rash and negligent driving of the offending vehicle by respondent No.1. Under issue No.2, the Tribunal found that injuries were suffered by the claimant in the accident. The claimant suffered permanent disability to the extent of 100%. The injuries were proved by Dr. R.C. Jindal, Orthopaedic Surgeon, Civil Hospital, Ambala City as PW-2. The witness assessed the permanent disability to be 100% due to '*quadriparesis*'. Claimant was advised referral to be treated by Neurologist or Neurosurgeon, PGI, Chandigarh to correlate the disability with injuries. The disability certificate Ex.P-117 was proved on record. The disability mentioned in the certificate was due to paralysis, cause of which may be dependent upon many factors responsible including head injury.

[6]. It was further noticed that Dr. Sandeep Mohinder, Neurosurgery Department, PGI Chandigarh also appeared as PW-4 and testified that the injured was 65 years of age. The witness testified that the patient was in coma and was admitted for severe head injury. The patient underwent CT Scan of head and there was bleeding inside the brain. The claimant was put

on life support for breathing and was in a very bad stage. Cutting of trachea was required to maintain breathing. The claimant was having chest injury which was shown in the X-ray report of the chest. Patient remained admitted from 09.03.2004 to 03.05.2004. At the time of discharge also the patient remained unconscious and in deep coma. The witness also deposed that the claimant required attendant to feed him and to manage his other routine affairs. The witness proved the discharge slip Ex.P-118 as well as the documents Ex.P-1 to Ex.P-115, which were related to treatment and medicines prescribed for the patient.

[7]. It was also noticed by the Tribunal that the patient also attended OPD as follow up action on 27.05.2004, 06.07.2004, 28.09.2004, 14.12.2004 and 05.02.2005 and physiotherapy was done. The head injury infecting brain was not found cured. On 05.02.2005, the claimant was again advised admission in PGI for Hematology opinion before conducting surgery. Physiotherapy was one of the treatment which requires prolonged therapy on the injured.

[8]. On the basis of injuries on the person of the injured, the Tribunal assessed loss of future earning of the claimant between Rs.1500 to Rs.2000/- per month as he was in the affairs of management of Marriage Palace owned by his son.

The loss of income per month was multiplied by a factor of 5 as per provision contained in Second Schedule of the Motor Vehicles Act. For 100% permanent disability the claimant was held entitled to a compensation of Rs.1,00,000/- towards loss of earning. An amount of Rs.90,000/- was awarded towards liquid diet. Since Surinder Kumar was employed as attendant @ Rs.2500/- per month and thereafter his salary was increased to Rs.3,000/- per month, the Tribunal awarded Rs.2,000/- per month towards attendant charges and assessed an amount of Rs.56,000/- towards past expenses and an amount of Rs.1,20,000/- was assessed for five years for prospective expenses on account of medical attendant. Under the head of medical expenses, the Tribunal awarded an amount of Rs.78,000/-. An amount of Rs.9,000/- was awarded towards transportation charges and Rs.20,000/- was awarded towards pain and sufferings.

[9]. In view of above, an amount of Rs.4,70,000/- as compensation was awarded to the claimant by the Tribunal, though the computation as per different heads comes out to be Rs.4,73,000/-. The said amount of compensation was ordered to carry interest @ 7½% per annum from the date of the institution of the claim petition till final realization of the amount.

[10]. I have heard learned counsel for the parties.

[11]. In view of law laid down 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** and **Yadava Kumar vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,** the permanent disability of the injured in terms of loss of earning capacity has to be considered and for such determination of loss of earning capacity has to be considered on the basis of multiplier method which was held to be proper. Some hypothetical considerations are also required to be made on some guess work based on sympathy, but ultimate determination has to be done with objective standards. There cannot be any flight in fancy. The award of compensation should correspond to the reasonableness and should be in consonance with conventional sum to commensurate the sufferance of the injured person.

[12]. The compensation towards permanent disability for the injuries and loss of future earning capacity on account of permanent disability has to be assessed separately. Permanent disability contributing to loss of income in future has to be assessed with reference to age and longevity of the injured. In order to arrive at exact loss of towards future earning of the injured, the age of the injured and monthly income of the injured are to be assessed.

[13]. In the instant case, as per medical evidence on record, the claimant has suffered 100% permanently disability. Even the claimant/injured remained in coma when he was firstly discharged from the PGI, Chandigarh. Number of operations were conducted on his person and he has become 100% disabled. In view of the aforecited precedents, an amount of Rs.2,000/- per percent of permanent disability has to be assessed towards heading of permanent disability. In this way as against the 100% permanent disability, an amount of Rs.2,00,000/- would be just and appropriate to meet out this head.

[14]. Secondly, loss of future income on account of permanent disability has to be separately assessed by multiplier method. Though learned counsel for the appellant tried to emphasize that the monthly income of the injured should have

been assessed on the basis of minimum wages fixed by the Government i.e. @ Rs.3500/- per month. I have considered the said argument. Since the injured was 65 years of age at the time of accident, therefore, the minimum wage prescribed for a worker cannot be applied to a person of 65 years of age. At the most he could be treated to be enjoying a managerial/job of looking after the affairs of his son in running the Marriage Palace and for that income of the claimant can be safely considered to be Rs.2,000/- per month. Factum of his monthly income has come on record which has been assessed to be Rs.2,000/- per month by the Tribunal. The loss of future income due to permanent disability to the extent of 100% would come to Rs.2,000/- per month. Since the injured was 65 years of age at the time of accident and was hale and healthy before the accident, therefore, future loss of income on account of 100% permanent disability can be assessed for a period of five years keeping in view the health of the injured before the accident and age expectancy in India. Therefore, loss of future income on account of permanent disability to the tune of 100% would come out to be Rs.1,20,000/- (2000 x 12 x 5). In this way, the total amount under the permanent disability and loss of future income on account of permanent disability would come to Rs.3,20,000/- (2,00,000 + 1,20,000).

[15]. The Tribunal has granted an amount of Rs.90,000/- towards special diet. Keeping in view the nature of injuries and 100% permanent disability suffered by the claimant, the aforesaid amount needs to be enhanced with regard to the day to day expenses for a specialized diet given to the injured and to be given to the injured in future. In my considered opinion, an amount of Rs.100/- per day i.e. Rs.3000/- per month would suffice to meet the requirement of special diet to the injured/claimant. In this way, an amount of Rs.1,80,000/- (3000 x 12 x 5) can be assessed towards special diet.

[16]. The Tribunal has assessed an amount of Rs.56,000/- towards past attendant charges for 28 months and further a sum of Rs.1,20,000/- was assessed for five years on account of prospective expenses for attendant charges. As per statement of Surinder Kumar, medical attendant employed by the family of the injured, for attending charges a salary of Rs.2500/- per month was paid upto December 2004 and thereafter the salary was increased to Rs.3000/- per month. The Tribunal assessed the salary to be Rs.2000/- per month. Since the factum of salary has come to fore in the statement of witness itself, therefore, the salary to the tune of Rs.3000/- ought to have been accepted by the Tribunal towards salary of the attendant. Therefore, salary of medical attendant is assessed as Rs.3,000/- In this way for past

attendant charges for 28 months on the basis of salary of the medical attendant to be Rs.3000/- would come to Rs.84,000/- (3000 x 28) and for prospective expenses for five years on account of medical attendant charges would come to Rs.1,80,000/- (3000 x 12 x 5).

[17]. The Tribunal has awarded lumpsum amount of Rs.78,000/- towards medical expenses. Keeping in view the nature of injuries and the period during which the injured remained hospitalized and thereafter follow up treatment in number of OPDs, I deem it appropriate to appreciate the hidden medical expenses also while computing the total amount of Rs.1,00,000/- towards medical expenses incurred by the claimant/injured for his treatment at different stages.

[18]. The Tribunal has awarded only a meager amount of Rs.9,000/- towards transportation charges which in my considered opinion is totally on lower side, therefore, the same is increased to Rs.20,000/- under the head of transportation charges.

[19]. The Tribunal has awarded an amount of Rs.20,000/- towards pain and sufferings. The injured/claimant suffered multiple injuries due to the accident and has underwent rigor of clinical confinement. In my considered view, an amount of

Rs.20,000/- for pain and suffering cannot be treated to be just and appropriate. An amount of Rs.1,00,000/- would suffice to meet the requirement under this head.

[20]. In view of aforesaid re-assessment, a comparative chart can be prepared in the following manner:-

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in Appeal	Difference
1	Permanent disability & Loss of future income on account of 100%permanent disability	Rs.1,00,000/-	Rs.3,20,000/- (2,00,000 + 1,20,000)	Rs.2,20,000/-
2	Special Diet	Rs.90,000/-	Rs.1,80,000/-	Rs.90,000/-
3	Attendant charges (for 28 months)	Rs.56,000/-	Rs.84,000/-	Rs.28,000/-
4	Prospective/ future medical attendant charges for 5 years	Rs.1,20,000/-	Rs.1,80,000/-	Rs.60,000/-
5	Medical expenses	Rs.78,000/-	Rs.1,00,000/-	Rs.22,000/-
6	Transportation charges	Rs.9,000/-	Rs.20,000/-	Rs.11,000/-
7	Pain and sufferings	Rs.20,000/-	Rs.1,00,000/-	Rs.80,000/-
Total compensation		Rs.4,70,000/- (however as per calculations of different heads the amount comes to Rs.4,73,000/-)	Rs.9,84,000/-	Rs.5,11,000/-

[21]. Since the total amount of compensation was calculated

to be Rs.4,70,000/- by the Tribunal instead of Rs.4,73,000/-, therefore an amount of Rs.3,000/- is added to the enhanced amount i.e. Rs.5,11,000/-. In this way the total amount of enhanced compensation would come out to be Rs.5,14,000/-. The same would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the same.

[22]. In view of aforesaid, the award is modified for assessing just and reasonable compensation in favour of the claimant, who has become virtually 100% crippled because of the accident in question.

[23]. Appeal stands disposed of.

September 20, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)

JUDGE

Yes/No

Yes/No