IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No.2213 of 2008(O&M)**

Shyamlal ...Appellant

Vs.

Director Health Service Punjab Chandigarh
and another ...Respondents

2. **FAO No.2212 of 2008(O&M)**

Amar Singh Rana ...Appellant

Vs.

Director Health Service Punjab Chandigarh
and another ...Respondents

Date of Decision: 14.09.2017

CORAM:-HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Ashwani Arora, Advocate,
for the appellant(s).

Mr. Manoj Bajaj, Addl. A.G. Punjab.

AVNEESH JHINGAN, J. (Oral)

These are two appeals filed against the award dated 07.12.2007 passed by Motor Accident Claims Tribunal, Chandigarh (in short 'the Tribunal')

The brief facts necessary for adjudication of the present appeals are noted below:

The appeals have been filed by Shyamlal and Amar Singh Rana. Both of them met with an accident while going on a two wheeler near bypass of Morinda (Punjab). An ambulance bearing Registration No. PB-12D-9910 came at high speed from the wrong side and hit their two wheeler. As a result of accident both suffered injuries.

The claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (in short "the Act') and the Tribunal after considering the witnesses and evidence awarded ₹85,000/- to Amar Singh Rana and ₹65,000/- to Shyamlal.

Since the present appeals arise out of same award and are with regard to enhancement of compensation awarded for injuries, both are being decided together.

That on 26.02 2005, the motorcycle of the appellants was hit by the ambulance. There is no dispute with regard to rash and negligent driving of the driver of the ambulance. Due to accident Amar Singh Rana suffered fracture of his right leg and right forearm. He remained admitted in PGI from 26.02.2005 to 01.03.2005. Amar Singh Rana suffered disability of 34% in relation to whole body. The disability certificate is Ex.P6.

Shyamlal also suffered disability of 34% with relation to the right leg only and injury on his shoulder for which he was operated upon. The disability certificate is Ex.P7. He was admitted in PGI from 26.02.2005 to 01.03.2005 and again from 29.03.2005 to 09.04.2005. Both the appellants were serving in Accountant General Haryana office. Their salary certificates were produced on record. They claimed their salaries ₹11,000/- per month. The Tribunal awarded ₹85,000/- to Amar Singh Rana which included ₹15,000/- on account of pain and suffering; ₹10,000/- for conveyance and special diet etc; and ₹60,000/- on account of compensation for impairment of his body.

In case of Shyamlal, he was awarded ₹65,000/-, i.e ₹15,000/- for pain and suffering. ₹10,000/- on account of special diet etc. and ₹40,000/-on account of impairment of limb.

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

Learned counsel for the appellants argued that instead of granting consolidated amount on account of impairment of the body, a multiplier method should have been applied by the Tribunal after assessing the loss suffered on account of accident. He relies upon the decision of this Court in FAO No. 410 of 1989, *Oriental Insurance Co. Ltd. vs. Ajaib Singh and others*, decided on 17.01.2014.

Secondly that they were on medical leave during the period of treatment and even that leave should have been compensated in terms of money and relied upon the decision of this Court in FAO 5033 of 2009, titled as *Randhir vs. Raja and others*, decided on 08.02.2012.

Thirdly that amount awarded under the heads of pain and suffering etc. is on the lower side.

Learned counsel for the respondent argued that the appellants were Government employees and the disability neither effected their working nor the increments. After retirement they would be getting pension. Learned counsel further contended that in such circumstances, the amount awarded is just and equitable. He further contended that the appellants had availed only their medical leaves and not their casual leaves or earned leaves, so there is no question of paying compensation.

So far as the first argument of learned counsel for the appellants is concerned that instead of granting a lump sum amount multiplier method should have been adopted, argument appears to be attractive but assessment will have to be made considering the effect of disability on the job or profession of the injured.

In the present case both of the appellants were Government employees. It has not come on record that their day to day working has been effected with their disability. The picture which emerges is that in spite of accident they were in service and drawing their salaries as such. Their jobs are pensionable and they will be getting their pension after retirements.

In spite of what has been stated above, one thing is there that their quality of life has been effected. Law is well settled that injured is entitled to compensation on account of permanent/partial disability.

The counsel for the appellants has produced the income tax returns of Amar Singh Rana and Shyamlal. The return of Amar Singh Rana for the financial year 2004-2005 shows that he had salary income of ₹1,51,825/-. The return of Shyamlal for the same years shows that he had salary income of ₹1,08,670/-.

The monthly salary of Amar Singh Rana would be approximately ₹13,000/- per month. Since there is a 34% permanent disability of the whole body but taking in view the nature of his job it will be taken as 10% of the monthly income i.e ₹1300 per month.

Shyamlal was earning monthly salary of ₹9,100/- according to the income tax return. In this case the 34% disability is not of the whole body but only with regard to right lower limb and in such case the disability is calculated as 7% which comes to approximately ₹650/- per month.

Keeping in view the above discussion, the compensation so far as Amar Singh Rana is concerned with regard to impairment of his body is assessed as ₹1300/- per month. Keeping in view his age as 54 years, the multiplier of 11 is applied. Total comes to ₹1,71,600/-.

So far as the case of Shyamlal is concerned, his disability was 34% but of the right lower leg only. In his case the loss of impairment of body is assessed as ₹650/- per month and a multiplier of 9 is applied. Total comes to ₹70,200/-.

Since there is no fixed method either before the Tribunal or before this Court to assess this loss, the said amount calculated takes care of not only the future income effected but also of disability loss.

So far as the arguments of learned counsel for appellants for compensation on account of medical leave availed is concerned, same is devoid of merit. The decision relied upon by him is not applicable on the facts of the present case. In the said case the Court considering the facts of that case held:-

> "*I have considered the submissions made by counsel for both the sides. From the perusal of the said document, it is revealed that claimant remained on leave from March 2004 upto 3rd May 2005 and an amount of Rs.1,14,727/- was calculated towards leave without pay, whereas Rs.73,642/- was in respect of leave with pay. I am of the considered view that the leave which he has utilized for his treatment could have been utilized by him for any other purpose. So, he is entitled to get whole of the amount calculated towards leave with pay and leave without pay. A sum of Rs.1,88,309/- is the amount of loss suffered by the claimant in respect of the leave and out of which an amount of*

Rs.61,432/- has been allowed to the claimant. So, the claimant is held entitled to a further amount of Rs.1,26,877/- regarding the salary part i.e. loss of income."

On perusal of the above decision, it would be evident that it was not the medical leave which was availed. The Court compensated for the leaves for the reason that the leave taken for treatment could have been utilized for some other purpose.

In the present case, it has come on record that it was only medical leave which was availed by the claimants, such leave possibly cannot be used for any other purpose. In such circumstances, medical leaves availed are not to be compensated.

Lastly, under conventional head, so far as Amar Singh Rana is concerned the amount awarded under various heads should be enhanced. For pain and suffering amount awarded of ₹15,000/- is enhanced to ₹25,000/- and for conveyance and special diet amount awarded of ₹10,000/- is enhanced to ₹20,000/- and another sum of ₹10,000/- is granted as the expenses of the attendant.

Hence, the amount awarded by the Tribunal qua Amar Singh Rana, is enhanced as per table given below:-

Sr. No.	***Heads***	***Amount earlier awarded by the Tribunal***	***Now awarded***
1	Impairment of body	₹60,000/-	₹1,71,600/-
2	Pain and suffering	₹15,000/-	₹25,000/-
3	Conveyance and special diet	₹10,000/-	₹20,000/-
4	Expenses of the attendant	Not awarded	₹10,000/-
	Total	₹85,000/-	₹2,26,600/-

With regard to the Shyamlal, the amount awarded on account of pain and suffering amount awarded of ₹15,000/- is enhanced to ₹25,000/-. In his case he had to be hospitalized twice and had to undergo surgery also, the amount of special diet and conveyance is enhanced from ₹10,000/- to ₹20,000/- and for attendant he is awarded ₹15,000/-.

Thus, the amount awarded by the Tribunal qua Shyamlal, is enhanced as per table given below:-

Sr. No.	***Heads***	***Amount earlier awarded by the Tribunal***	***Now awarded***
1	Impairment of limb	₹40,000/-	₹70,200/-
2	Pain and suffering	₹15,000/-	₹25,000/-
3	Conveyance and special diet	₹10,000/-	₹20,000/-
4	Expenses of the attendant	Not awarded	₹15,000/-
	Total	₹65,000/-	₹1,30,200/-

The appeals are partly allowed as per above terms.

The claimants shall be entitled to the enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization.

(AVNEESH JHINGAN)
JUDGE

14.09.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*