

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 4014 of 2008

Date of Decision: 14.12.2017

Daya Wanti

.....Appellant

Versus

Sandeep and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vipin Sharma, Advocate for
Mr. S.M.Sharma, Advocate
for the appellant.

Ms. Priya Deep, Advocate for
Mr. Ashwani Talwar, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

This is the claimant's appeal seeking enhancement in the award dated 9.10.2007 passed by Motor Accident Claims Tribunal, Ambala.

The Co-ordinate Bench vide order dated 18.3.2014 on the request of the appellant had remitted the matter back to the Tribunal and had given one opportunity to the claimant to bring on record the bills and the report was awaited for 15.12.2014.

The Tribunal gave one opportunity to the claimant but failed to avail of the opportunity. Report was received that no evidence had been led. The counsel had made feeble attempt to seek another opportunity but it cannot be allowed.

Dayawanti had suffered injuries in an accident on 25.2.2005.

She and her other relatives were standing on the Bus Stand and waiting to

board a bus when a four wheeler struck against her by coming from the wrong side. An FIR was registered against the four wheeler driver.

It was claimed that the claimant was a housewife and her income was said to be Rs. 3,000/- per month. The claim petition was filed through her husband as she was unable to move or speak as she had suffered mild hemiparesis. The claimants produced bills which were only to the tune of Rs. 17,000/-. The disability given by the medical officers was only 25% and the Tribunal awarded a lumpsum amount of Rs. 1,50,000/- without giving any breakup as to how the calculations were made.

Aggrieved, this appeal has been preferred.

The submission on behalf of the appellant is that the claimant had suffered a head injury and due to that the left side of the body was affected and she was paralytic and confined to bed and only a sum of Rs. 1,50,000/- had been allowed. It was urged that they had pleaded the income to be Rs. 3,000/- per month and an addition of 25% towards future prospects should be made and the appellant be awarded separate amount for special diet, transportation, attendant and for physiotherapy as the appellant is in the same condition even now.

The submission on behalf of the insurance company is that recovery rights had been given to them as the vehicle was not insured and the policy was obtained subsequently. The counsel further submits that the bills are only to the tune of Rs. 17,000/- and there is no material to show the extent of damage to the brain or her confinement on the bed for such a long period. It was urged that this Court had permitted the appellant to examine a doctor and prove the bills but they failed to avail that opportunity for reasons only known to them.

It is disturbing that the claimant has not been unable to prove the extent of damage caused to her in the accident. The disability certificate placed on record only shows the disability to the extent of 25%. The patient was referred to a physician for neurological status. It appears that the opinion was not taken or it was taken and has not been produced for reasons which the appellant would only know. Therefore, we have to confine ourselves to the material made available. The Tribunal had allowed all the bills which were produced before it.

The claimant had pleaded the income to be Rs. 3,000/- per month and it was rightly taken as the accident had occurred in February 2005. I would make an addition of 25% towards future prospects and the income would be Rs. 3750/-. Considering the disability to be 25%, the amount would be Rs. 938 x 12 x 14 = 1,57,584/-. Therefore, the compensation payable is as under:-

<i>(In Rs.)</i>		
1.	Disability	1,57,584/-
2.	Actual bills	17,000/-
3.	Special diet	5,000/-
4.	Transportation	10,000/-
5.	Attendant (2500 x 12)	30,000/-
6.	Physiotherapy (2500 x 12)	30,000/-
7.	Pain and suffering	50,000/-
	Total	2,99,584/-

The Tribunal had allowed Rs. 1,50,000/- which would be deducted and the remaining amount i.e. Rs. 1,49,584/- would firstly be paid by the insurance company with interest @ 6% from date of filing of the

appeal till the amount is actually paid and thereafter they can recover the amount from the owner driver by filing an execution petition.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

December 14, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No