

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
FAO No.5219 of 2008
Decided on: 14.12.2017

Hanuman

.....Appellant

versus

Manoj Kumar and Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Anil Malik, Advocate
for the appellant.

Mr. R.N. Singal, Advocate
for respondent No.3.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This is the appeal filed by the injured claimant, challenging the order passed by Motor Accident Claims Tribunal (in short 'MACT'), Hisar on the ground of insufficiency of compensation amount.

Brief facts of the case are that on 26.01.2004 at about 8.30a.m., the claimant along with his son-in-law Ashok had come to village Shahpur from Dhani on a new motor-cycle bearing engine No.51011492 of Kinetic Boss, make, for purchasing household items on the occasion of marriage of his son. After making the purchases when they were going back to their dhani and reached near outskirts of village Shahpur, a truck bearing registration No.RJ-10G/1277, which was going towards village Mastersham and was being driven by respondent No.1 in a rash and negligent manner, hit against their motor-cycle. It was claimed that the motor-cycle was being driven by the claimant at a moderate speed on the left side of the road. As a result of the impact, the motorcycle fell on the berm of the road and the claimant received serious and grievous injuries on different parts of his body. The main injury was on the head of the claimant. He was admitted to

CMC Hospital, Hisar. It was claimed that in this regard, an FIR was also registered. It was further claimed that the claimant remained admitted in CMC, Hospital, Hisar from 26.01.2004 to 29.02.2004. He was treated by different doctors and was still under treatment. It was claimed that an amount of Rs.80,000/- have already been spent on the treatment. It was further pleaded that the doctor had opined that there was no possibility of regaining in future also. Hence, the compensation was claimed for the injuries suffered in the accident.

On notice, respondents No.1 and 2 filed joint written statement. Besides taking preliminary objections, they denied the contents of the claim petition. They denied the accident altogether. It was claimed that the false case was registered against respondent No.1.

Respondent No.3 in the claim petition, the Insurance Company of the offending truck filed separate written statement. Besides taking preliminary objections, the Insurance Company denied the allegations regarding the accident, age, income and the antecedent of the injured. Still further it was pleaded that the offending vehicle was being driven in contravention of the terms and conditions as to limitation to the use of vehicle prescribed under the policy of Insurance and the Motor Vehicle Act, 1988. It was further claimed that the driver of the offending vehicle was disqualified for holding the driving licence at the time of alleged accident. All other material contents on the claim petition were also denied.

Parties led their evidence.

After hearing the parties, the Tribunal held that the accident in which the claimant got injured took place due to rash and negligent driving of truck bearing registration No.RJ-10G/1277.

While assessing the quantum of the compensation, the Tribunal awarded a total amount of Rs.3,28,000/- as compensation to the claimant. To arrive at this amount the Tribunal held that the claimant had to remain admitted in Hospital for one and a half month at one hospital and thereafter, he was sent to another hospital. Therefore, as per the bills produced on record, the Tribunal granted an amount of Rs.1,30,400/-, as compensation for medical treatment. The Tribunal further held that the PW-11 Dr. Suresh Kumar, Medical Officer, General Hospital, Hisar has proved the disability certificate as Ex.P109 to prove the disability of the injured to be 70%. Therefore, on account of physical disability, the Tribunal awarded an amount of Rs.1,40,000/- as compensation. The amount awarded on account of pain and suffering is Rs.40,000/-. The transportation charges was awarded at Rs.5000/-. The income of the claimant was assessed to be Rs.2700/- per month. Therefore, the loss of current income for the period of about 3 months of treatment was awarded at Rs.8100/- (2700x3). Beside this, the attendant charges were awarded for three months at the rate of Rs.1500/- per month, i.e., Rs.4500/- (1500x 3).

Arguing the appeal, learned counsel for the appellant has submitted that the claimant has not been compensated for loss of future income. Still further, it is argued by the counsel that the compensation has not been granted to the claimant on account of loss of amenities and loss of life expectancy. Still further, it is submitted by the counsel that the amount awarded on account of pain and suffering is grossly inadequate. The attendant charges is also stated to be on extremely lower side. The counsel submits that in view of the fact that the claimant has suffered paralysis on the right side of the body, therefore, his disability has to be taken as 100%

functional disability, in terms of judgment of Hon'ble Supreme Court rendered in **2017 (3) R.C.R. (Civil) 241** titled a ***Dixit Kumar and Anr. Vs. Om Prakash Goel*** and the claimant has to be compensated for future loss of income. For quantum of compensation, the counsel has also relied upon the judgment of Hon'ble Supreme Court rendered in **2013 (3) RCR (Civil) 996** titled as ***Rekha Jain Vs. National Insurance Company Ltd.*** Accordingly, the enhancement of the compensation is prayed for.

On the other hand, learned counsel for the respondents has submitted that the compensation has rightly been awarded by the Tribunal. According to the counsel for the respondents, no increase in compensation is called for in the present 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 submissions made by the learned counsel for the appellant merits acceptance. Admittedly, in the present case, the claimant has suffered 70% permanent disability on account of paralysis of the right side of the body. It has come on record (as recorded by the Tribunal) that even at the time of passing of the award, the claimant had not recovered. This shows that the claimant is not able to pursue his ordinary routine of earning. Hence, in terms of the judgment of Hon'ble Supreme Court in ***Dixit Kumar & Anr.*** (supra) the disability of the claimant has to be taken to be 100% functional disability. The claimant has to be compensated for loss of future income on account of permanent disability.

The Tribunal has taken the income of the claimant to be Rs.2700/- per month. The age of the claimant is stated to be 45 years of age. Accordingly, the claimant is entitled to be compensated for loss of

future income by applying the multiplier formula. Hence, for the loss of future income, the claimant would be entitled to an amount of Rs. 4,53,600/- ($2700 \times 12 \times 14$) by applying the multiplier of 14, as per the judgment of Hon'ble Supreme Court in **Sarla Verma & Ors. vs. Delhi Transport Corp. & Anr. 2009 (6) SCC 121**. Accordingly, the claimant is held entitled to this amount. The loss of current income granted to the claimant also deserves to be enhanced to at least 6 months, keeping in view the injury and nature of the treatment taken by the claimant. Accordingly, the claimant is held entitled to an amount of Rs.16,200/- (2700×6) on account of loss of hospitalization/ loss of current income.

In view of the above judgments of the Hon'ble Supreme Court, the counsel for the appellant is also justified in making his submission qua enhancement of compensation on account of the loss of amenities, loss of life expectancy and pain and suffering. Keeping in view the enormity of the pain suffered by the claimant and also the fact that the injuries have left him in paralysis, the claimant is held entitled to an amount of Rs.1,00,000/- on account of the loss of amenities, amount of Rs.1,00,000/- on account of loss of life expectancy and an amount of Rs.1,00,000/- on account of pain and suffering. The amount on these heads is granted/enhanced accordingly. The claimant would be requiring the service of attendant for his remaining life, due to paralysis, therefore, the amount awarded on account of attendant charges is also required to be enhanced as per the applicable multiplier. The Tribunal has taken the attendant charges to be Rs.1500/- per month. Therefore, applying the multiplier, which has been applied for future loss of income, the compensation on account of attendant charges comes to Rs. 2,52,000/- ($1500 \times 12 \times 14$).

The medical expenses have rightly been granted by the Tribunal at Rs.1,30,400/- as per the bills produced before it. This needs no enhancement in the facts and circumstance of the case.

Accordingly, the claimant in the present case is held entitled to an amount of **Rs.12,92,200/-** as per the details given below:

Sr.No.		Amount (Rs.)
1.	Loss of future income -	4,53,600/-
2.	lost of current income -	16,200/-
3.	Compensation of disability -	1,40,000/-
4.	Medical expenses -	1,30,400/-
5.	Pain and suffering -	1,00,000/-
6.	Loss of amenities -	1,00,000/-
7.	Loss of life expectancy -	1,00,000/-
8.	Attendant charges. -	2,52,000/-
	Total -	12,92,200/-

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 award of Motor Accident Claims Tribunal, is modified and the appeal is allowed in the above said terms.

14th December , 2017

Manju

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No