

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

607

FAO No.3563 of 2010
Decided on : 02.11.2017

Srinder Girdhar

... Appellant

Versus

Amod Kumar and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.A.P.Bhandari, Advocate
for the appellant.
None for respondents No.1 and 2 in spite of service.
Mr.R.C.Kapoor, Advocate for respondent No.3.

Avneesh Jhingan, J. (Oral)

The present appeal is for enhancement of compensation for the injuries suffered by Srinder Girdhar, aged 27 years in a motor vehicular accident which occurred on 21.7.2006.

2 The appellant was going on his motorcycle bearing registration No.HR-51/0753 in New Janta Colony, NIT Faridabad. His motorcycle was banged by a Dumper bearing registration No.HR-55E/2588. As a result of the accident, the appellant fell down on the road and suffered multiple injuries, fracture as well as crush injury left upper limb with degloving of left arm and forearm with exposed bone in forearm and hand with open wrist joint and loss of soft tissue on the dorsum of hand and forearm including loss of radial nerve and extensor tendons. FIR No.232 dated 22.7.2006 was registered at Police Station Mujessar, Faridabad.

3 The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed. The Motor Accidents Calims

Tribunal, Faridabad (for short, 'the Tribunal') after considering the material before it awarded a sum of Rs.4,18,541/- along with interest at the rate of 7.5% per annum.

4 I have heard learned counsel for the parties, perused the paper-book and the record.

5 Learned counsel for the appellant argued that the injuries suffered by the appellant were grievous in nature. He was taken to B.K. Hospital, from where he was taken to Escort Hospital. From Escort Hospital, he was referred to Apollo Hospital, New Delhi. He was operated upon. He contends that there was hospitalization for 22 days and the appellant was advised regular check up thereafter. His grievance is that the amount awarded for pain and suffering, special diet and loss of income is on the lower side. Further grievance is that no amount has been awarded for transportation and actual medical bills produced have only been reimbursed. He contends that the injury was such which needed future treatment and the same has not been considered by the Tribunal while awarding compensation.

6 Learned counsel for the respondents has argued that the amount awarded is just and equitable. No disability has been proved on record. He further contends that whatsoever material was produced by the appellant, the same was duly considered by the Tribunal and thereafter, the amount was awarded. Hence, no more enhancement is called for.

7 The appellant in this case suffered injuries in a motor vehicular accident. While awarding compensation to such a person, it is to be kept in mind that he had done nothing wrong and he suffered because of

wrong doer.

8 The Hon'ble Apex Court in case of **Raj Kumar** Vs. **Ajay Kumar and another** 2011 (1) SCC 343 has held as under:-

“4. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.”

9 From the perusal of the above decision, it is evident that in order to arrive at just and equitable compensation, the aspect mentioned in the above decision has to be taken care of.

10 In the present case, there is no proof of permanent or temporary disability on record. But the injuries suffered and as mentioned in the award have not been seriously disputed by the parties. The appellant was 27 years young man who had suffered because of the accident. He underwent pain and suffering, trauma, mental agony and harassment. His hospitalization ensures that the attendant was required during the period of hospitalization and thereafter, during the period of recovery also. He was going from one hospital to another and he had changed minimum three hospitals during injury period and thereafter

followup treatment was there. Keeping this fact in consideration, transportation costs must have been there. The Tribunal while awarding the compensation should have considered that at the time of crisis, it is not always possible for the family to maintain the accounts and to vouch for each and every penny spent. It cannot be ruled out that apart from 22 days hospitalization, there must be a recovery period as there was fracture, open wounds and post operational recovery also. The Tribunal noted the fact that he was engaged in manufacturing of Namkeen and biscuits and he used to supply the same to the market. The nature of business shows that until and unless, he was 100% fit he could not have carried his business. In such circumstance, loss of income Rs.6000/- as assessed by the Tribunal is on the lower side.

11 Keeping in view the decision referred above and the reasons mentioned, the amounts awarded by the Tribunal are enhanced as per table given below:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal</i>	<i>By this Court</i>
1	Hospital expenses	3,80,0000	3,80,0000
2	Medicine expenses	12541	12541
3	Pain and suffering	Rs.10,000	Rs.25,000/-
4	Loss of Income	Rs.6000/-	Rs.15,000/-
5	Special diet	Rs.5000/-	Rs.15,000/-
6	Transportation		Rs.15,000/-

12 Apart from the amount awarded and enhanced above, other sum of Rs.50,000/- is awarded to compensate for attendant, loss of income and future medical expenses.

13 The award dated 17.07.2009 is modified to the extent that amount awarded of Rs.4,18,541/- is enhanced to Rs.5,17,541.

The claimant shall be entitled to the enhanced amount along with interest at the rate of 6% per month from the date of filing the claim petition till realization of the amount.

14 The appeal stands partly allowed in the above terms.

[Avneesh Jhingan]
Judge

02.11.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No