

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

FAO-1617-2011 (O&M)
Date of decision: 03.10.2017

Khushi

.... Appellant

Versus

Dayal Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Gurdeep Kaur, Advocate and
Mr.Sandeep K.Sharma, Advocate
for the appellant.

Mr.Kuldeep V.Singh Ahluwalia, Advocate
for respondents No.1 and 2.

Mr. Pardeep Goyal, Advocate
for respondent No.3.

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 08.05.2010 passed by Motor Accidents Claims Tribunal, Rohtak (hereinafter referred to as the 'Tribunal').

The present appeal involves an issue of assessing compensation where a girl, who was 7 years, met with an accident, resulting into deformity of her right toes and crushed right foot. The untoward incident resulted in 15% permanent disability and 5% temporary disability.

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

The Tribunal after considering the witnesses and evidence, awarded a sum of Rs.1,25,000/- along with interest @ 7.5% per annum (in the award, it has been wrongly typed as Rs.1,35,000/-).

The undisputed facts are that on 19.10.2008, Khushi was hit by an Innova car bearing registration No.HR-65-2324 (for short, 'the offending vehicle'). The offending vehicle was driven in a rash and negligent manner. She was hospitalised for almost one month and underwent surgeries. The disability certificate Ex.P5 was produced. PW2 Dr. R. P. Colonia, Medical Officer, General Hospital, proved the disability by deposing before the Tribunal.

Learned counsel for the appellant has argued that the compensation has not been awarded keeping in view the temporary and permanent disability and the amounts granted under the various heads are on the lower side.

Learned counsel for the respondent has vehemently opposed enhancement of awarded compensation by stating that she was just 7 years old kid and no amount can be granted for her future prospects. Moreover, she is the daughter of a doctor, therefore, even medical expenses awarded by the Tribunal needs no further enhancement.

I have heard the learned counsel for the parties and have perused the paper-book and record with their able assistance.

It cannot be accepted that because the disability is of a 7 years old kid, therefore, her future prospects would not be effected. The argument of learned counsel for the respondent that she was daughter of the doctor

therefore, medical expenses should not be enhanced, has no merit. Even if she was daughter of doctor, the medical expenses are bound to be there. Only thing is that her father being in the medical profession she could have got the better treatment or the expenses might have been little less. The pain and suffering undergone by the child would be the same irrespective of the profession of the father. In such circumstances, the amount awarded by the Tribunal needs to be enhanced.

The Hon'ble Apex Court in **G. Ravindranath @ R. Chowdary Versus E. Srinivas and another, 2013(12)SCC 455**, held as under:

"It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains), which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

A perusal of the above decisions shows that in case of personal injury pecuniary damages (special damages) should be given under various heads. It was further held that non-pecuniary damages should also be compensated.

In the present case, it is very difficult to assess the loss suffered by a kid and thereafter to assess that how her future would be effected by this accident. Be that as it may, the Courts are duty bound to arrive at a just and equitable compensation keeping in view the various factors. The Tribunal while awarding the compensation should have considered various heads as mentioned in the decision of the Hon'ble Apex Court referred above. The amounts granted are enhanced and the heads which were not considered by the Tribunal while awarding the compensation are awarded

as per table below :-

<i>Sr.No.</i>	<i>Heads</i>	<i>Amount earlier awarded by the Tribunal</i>	<i>Now awarded</i>
1	Disability compensation	Rs.60,000/-	Rs.1,00,000/-
2	Pain and suffering	Rs.20,000/-	Rs.40,000/-
3	Medical expenses	Rs.15,000/-	Rs.15,000/-
4	Attendant	Rs.10,000/-	Rs.20,000/-
5	Deformation	Rs.20,000/-	Rs.50,000/-
6	Transportation	Not awarded	Rs.10,000/-
7	Special diet	Not awarded	Rs.10,000/-
8	Expenses for surgery	Not awarded	Rs.40,000/-
9	Loss of future prospects	Not awarded	Rs.1,00,000/-
10	continuing treatment after the accident	Not awarded	Rs.25,000/-
11	Loss of marriage prospects	Not awarded	Rs.2,50,000/-
	Total	Rs.1,25,000/-	Rs.6,60,000/-

The award dated 08.05.2010 is modified to the extent that the amount awarded by the Tribunal of Rs.1,25,000/- is enhanced to Rs.6,60,000/-.

The claimant shall be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed accordingly.

(AVNEESH JHINGAN)
JUDGE

03.10.2017

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1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes