

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

FAO No. 6068 of 2010

DATE OF DECISION : 23.08.2017

Vijay Kumar

.... APPELLANT

Versus

Hem Raj and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sudip Sahil, Advocate, for
Mr. Arvind Kashyap, Advocate,
for the appellant.

Mr. Suvir Dewan, Advocate,
for respondent No.3 – Insurance Company.

* * *

AVNEESH JHINGAN, J.

The present appeal is against the award dated 20.01.2010 passed by the Motor Accident Claims Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal'). The appeal has been filed by the claimant for enhancement of compensation of ₹ 1,20,000/- awarded by the Tribunal on account of fracture to the right leg suffered by the claimant due to road accident between Maruti Van driven by the claimant and the truck driven by Hem Raj (respondent No.1).

2. The brief facts necessary for adjudication of the present appeal are that on 06.11.1999, the appellant – claimant was driving a Maruti Van bearing registration No. HP-38-4198. He was coming from Jammu to Pathankot after delivering the business material. At about 6.10 AM, near

Sangwan Mor Raja Bagh (J&K), a truck bearing registration No. JK-02-5266 (hereinafter referred to as 'the offending vehicle') which was driven by Hem Raj (respondent No.1) came from the opposite side and struck against the Maruti Van. The offending vehicle was coming on wrong side of the road and was driven rashly and negligently at a very high speed. As a result of the accident, right leg of the appellant – claimant was fractured. He was initially taken to Sehgal Hospital, Pathankot. FIR No. 107 of 1999 was also lodged in Police Station Raja Bagh.

3. A claim petition was filed by the appellant claiming a compensation of ₹ 5.00 lacs on account of injury suffered by him. Before the Tribunal, the appellant – claimant tendered his affidavit stating that he was employed as driver with Lovely Sweets, Gandhi Chowk, Pathankot. At the time of the accident, his age was 29 years. It was claimed that he was drawing salary of ₹ 2,000/- per month along with daily allowance of ₹ 50/-. He claimed that a sum of ₹ 10,000/- was spent by him for fixation of plates in the right leg.

4. The Tribunal, on the basis of evidence and witnesses produced before it, held that the accident took place because of rash and negligent driving of respondent No.1.

5. The appellant – claimant produced disability certificate issued by Civil Surgeon, Gurdaspur, certifying that the claimant suffered 55% permanent disability because of fractured shaft femur. The Tribunal awarded ₹ 2,000/- on every 1% of disability. With this formula, since the appellant – claimant had suffered 55% disability, a sum of ₹ 1,10,000/- was granted as

compensation for disability. Another sum of ₹ 10,000/- was granted on account of medical expenses incurred by the appellant – claimant. Thus, a sum of ₹ 1,20,000/- in total was awarded by the Tribunal along with interest at the rate of 6% per annum from the date of filing of the claim petition, and further interest at the rate of 12% per annum from the date of passing of award till realisation of the amount. Further, counsel fee of ₹ 1,000/- was assessed.

6. The present appeal has been filed by the claimant for enhancement of compensation awarded by the Tribunal.

7. Learned counsel for the appellant – claimant argued that the appellant had suffered 55% permanent disability. He submitted that such high disability visits the victim with many other complications. Due to the injury suffered by the appellant, there was heavy loss to his future prospects, as he had to depend on others, and has to suffer for the rest of life. In these circumstances, the Tribunal erred in not awarding any compensation on account of loss of future prospects. Learned counsel further argued that the compensation of ₹ 10,000/- granted by the Tribunal on account of medical expenses is on the lower side. He further submitted that since the appellant had suffered leg fracture, therefore, he had to engage auto rickshaw etc. to move around, and had suffered pain for a long period. Therefore, the Tribunal further erred in not awarding any amount either on account of transport charges or for pain and sufferings.

8. On the other hand, learned counsel for respondent No.3 – Insurance Company argued that the appellant had merely suffered a fracture

and there was no permanent disability. Therefore, the amount awarded by the Tribunal is sufficient and it does not require any enhancement. It was further argued that though no medical details were produced, yet a sum of ₹ 10,000/- for medical expenses was awarded by the Tribunal. Learned counsel concluded his arguments by submitting that just and equitable compensation has already been granted by the Tribunal. Therefore, the appeal is liable to be dismissed.

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

10. There is no denial to the fact that the appellant – claimant suffered a fracture because of the accident and there was 55% permanent disability, as certified by the Doctor. The fact regarding fixing of plates in the right leg of the appellant for treatment of the fracture has also not been disputed. The appellant was working as a driver and because of this injury, he would not have been able to perform his duty for a long period.

11. The Hon'ble Apex Court in **R.D. Hattangadi v. Pest Control (India) Private Limited and Ors., 1995 (1) SCC 551**, speaking about the heads of compensation held as under :

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are

incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

In **Rushton v. National Coal Board, 1953 (1) QB 495 at p. 499**, Singleton

L.J. has said that:

"When damages have to be assessed in a case of this kind there are many elements for consideration: the pain and suffering undergone and that which may occur in the future; the loss of some of the amenities of life; the fact that a man with an injury of this kind will always require some measure of help, even though he may be able to earn considerable money. These are some of the matters which have to be taken into consideration, and another is the fact that

his earnings will probably be less than they were before.”

In **Kavita v. Deepak (2012) 8 SCC 604**, the Hon'ble Apex Court referred to earlier precedents and held:

“In the light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses.”

In the above said decisions, the Hon'ble Apex Court in the cases of injury has allowed the amount for special diet, pain and sufferings, transportation, mental and physical shock, and loss of amenities.

12. In the present case, the Tribunal has not awarded any amount on account of special diet, pain and sufferings, transportation, mental and physical shock, and loss of amenities. Even it has not been taken into consideration that job of the appellant – claimant was of a driver and because of his fractured leg, he would not have been able to perform his

duty for a long period.

13. Keeping in view the totality of the facts and circumstances of this case, a further sum of ₹ 1,00,000/- is awarded to the appellant – claimant for special diet, pain and sufferings, transportation, mental and physical shock, and loss of amenities.

14. Consequently, the instant appeal is partly allowed and the award dated 20.01.2010 passed by the Tribunal is modified to the extent that compensation of ₹ 1,20,000/- is enhanced to ₹ 2,20,000/-. It is made clear that in case, the amount of compensation is not paid to the appellant within a period of three months from the date of receipt of certified copy of this order, the respondents would be liable to pay interest at the rate of 9% per annum from the date of filing of the claim petition till realisation.

August 23, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes