

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

451

FAO-1157 of 2012 (O&M)

Decided on : 23.10.2017

*Arshida**... appellant**Versus**Hamid Khan and others**.. Respondents***CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN**

Present : Mr.Sanjeev Sharma, Advocate/Amicus Curiae
for the appellant.

Ms.Vandana Malhotra, Advocate for respondent No.3.

Avneesh Jhingan , J. (Oral)

The present appeal has been filed against the award dated 08.09.2011 passed by Motor Accidents Claims Tribunal, Palwal (for short 'the Tribunal').

2. On 22.12.2007, Arshida aged 20 years was travelling in a Jeep bearing registration No.HR-18-7559. The said jeep was being driven by Hamid in a rash and negligent manner. Due to the rash and negligent driving, the jeep hit a bullock cart near village Kot. As a result of the accident, Arshida suffered fracture on right fibula and left femur. She was taken to General Hospital Mandikhera, she remained hospitalized from 22.12.2007 to 17.1.2008. FIR No.286 dated 22.12.2007 was lodged.

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

4. The Tribunal after considering the evidence and witnesses, awarded a sum of Rs.71,188/-.

5. The present appeal has been filed for enhancement of

compensation.

6. I have heard learned counsel for the parties and perused the paper-book.

7. Mr.Sanjeev Sharma, appointed as Amicus curiae appearing for the appellant argued that the Tribunal while awarding the compensation has not taken into consideration the various heads like special diet, attendant, transportation etc. He further argued that the amount awarded is on the lower side.

8. Learned counsel for the respondent No.3 argued that the amount awarded by the Tribunal needs no enhancement as no permanent disability has been proved on record. It is contended that even no actual medical expenses were proved on record yet the Tribunal awarded medical expenses, the actual medical expenses have already been awarded and even Rs.25,000/- awarded for the operation, hence, no enhancement is called for.

9. Considering the arguments raised by learned counsel for the parties, present is a fit case where the amount awarded should be enhanced. It would be appropriate to note that injured was a 20 years old married woman. There was a claim made that the injury has resulted in shortening of her leg but the same could not be substantiated. Nothing has been brought on record to establish her earning. Be that as it may, the role of house wife cannot be underestimated and her contribution as home maker cannot be evaluated in monetary terms. She discharges her duties round the clock. Even if her leg was not shortened, one thing is sure that her role as a house maker was effected because of accident.

10 The Hon'ble Apex Court in **Jitendra Khimshankar Trivedi and others** Versus **Kasam Daud Kumbhar and others**, 2015 (4) SCC 237, has held as under:

"Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

11. From the perusal of the above decision, it is evident that the duties performed by the house maker cannot be under-estimated.

12. There is no denial to the fact that the appellant was hospitalized for almost 25 days. Though there was some controversy with regard to two surgeries but injury was not disputed. The fractures on the right fibula upper side and left femur were also not disputed. In such circumstances, while awarding the amount for pain and suffering, it is not the physical pain & suffering which is to be taken care of but the trauma, mental agony and the suffering of the family is also to be considered. The injury suffered by the appellant was such that attendant would be required not only during the period of hospitalization but thereafter also. In case of injuries, as in the present case, the appellant would not be in a condition to move of her own without attendant even after being discharged from the hospital. Transportation would have been required during the period of treatment and thereafter also, as the recovery of fracture takes time. In case of fracture, special calcium rich diet as advised by the doctor had to be provided to the

appellant.

13. Keeping in view the law laid down by the Apex Court and the facts mentioned above, the amount awarded by the Tribunal is enhanced and amounts under various heads are awarded as per table given below:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Compensation awarded by tribunal</i>	<i>By this Court</i>
1	Pain & suffering	8000	35000
2	Hospital Bill	26450	26450
3	Medical bill	11738	11738
4	Operation	25000	25000
5	Attendant	-	25000
6	Special diet	-	15000
7	Future treatment	-	10000
8	Transportation	-	10000
	Total	71188	1,58,188

14. The award dated 08.09.2011 is modified to the extent that amount awarded by the Tribunal of Rs.71188/- is enhanced to Rs.1,58,188/-.

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

16. The appeal, is accordingly, partly allowed.

[Avneesh Jhingan]
Judge

23.10.2017

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