

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

FAO No. 2049 of 2012

DATE OF DECISION : 03.11.2017

Sada Singh

.... APPELLANT

Versus

Rajinder and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Parveen Sharma, Advocate,
for the appellant.

Mr. Siddharth Sanwaria, DAG, Haryana,
for respondents No.2 and 3.

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AVNEESH JHINGAN, J. (Oral)

The present appeal involves the issue of enhancement of compensation awarded by the Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') in an injury case.

The appellant has filed this appeal against the award dated 03.12.2011 awarding compensation of ₹ 62,000/- along with interest at the rate of 6% per annum.

The brief facts necessary for adjudication of the present appeal are that on 15.07.2009, Sada Singh met with a motor vehicular accident as he was hit by a rashly and negligently driven Haryana Roadways bus bearing registration No. HR 56-2458. As a result of the accident, he suffered

injuries and two fractures of right hand. He was taken to Virk Hospital, Karnal, where he remained admitted from 15.07.2009 to 30.07.2009. He was also operated upon.

A claim petition under Section 166 of the Motor Vehicles Act, 1966 (for short, 'the Act') was filed.

Before the Tribunal, it was proved that the appellant had suffered disability as per the certificate Ex.P1. Dr. Vinod Kumar, Medical Officer, General Hospital, Karnal, proved the disability certificate Ex.P1 and it has come on record that the appellant had suffered 30% disability qua the limb and 15% qua the whole body.

I have heard learned counsel for the parties and perused the paper-book and the learned lower court record.

The facts regarding involvement of the vehicle and the rash and negligent driving of the vehicle are not disputed by the parties.

Learned counsel for the appellant argued that it was proved on record by the exhibits and deposition of Dr. Vinod Kumar that the claimant was having mal united fracture right forearm bones with restriction of right wrist movements, and sustained disability to the extent of 30% qua a particular limb i.e. wrist and to the extent of 15% qua the whole body, yet the amount awarded by the Tribunal is very meager. He further contended that the Tribunal, while awarding compensation, has not taken care of the various heads, like future income, attendant and transportation. His grievance is also against the amount awarded for disability, pain and

suffering and special diet.

On the other hand, learned Deputy Advocate General, Haryana, appearing for respondents No.2 and 3 defended the award and resisted the enhancement. He further argued that only a fracture was there and it has not been proved that what was the functional disability due to injury. He further contended that the Tribunal has taken care of each and every head while awarding compensation.

The contention raised by learned counsel for the appellant deserves acceptance. There is no dispute with regard to the extent of permanent disability. The hospitalisation of the claimant for 15 days and his being operated upon is also not disputed. Though a multiplier method should be adopted, but in the present case, it has not come on record that what was the occupation of the injured, what was his earning and how this injury had functional disability effect on him. In such circumstances, it would not be appropriate to apply the multiplier method by guessing each and every aspect of the compensation. Even then, the amount of ₹ 15,000/- awarded for disability is on lower side.

In absence of above said factors, reliance can be placed upon a Division Bench decision of this Court in **Piara Singh and others Vs. Satpal Kumar and others**, 2006 (4) RCR (Civil) 546, wherein compensation on account of disability was assessed by multiplying each percentage of disability by ₹ 2000/-.

Applying the said method of assessing compensation for

disability in the present case, compensation for disability comes out to ₹ 60,000/- (30 x 2000).

With regard to awarding of compensation under various conventional heads in an injury case, 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."

As per the decision referred above, both pecuniary and non-pecuniary damages should be compensated. While awarding compensation in the present case, it is to be considered that the appellant was hospitalized for 15 days and there must have been a follow-up treatment as he was operated upon. It cannot be expected from the family to maintain accounts on day to day basis and to vouch for each and every penny spent for treatment. The appellant has not been awarded compensation for loss of future income assuming that he was a daily labourer. The pain and suffering head does not include only physical pain, but includes trauma, mental agony and harassment. 15 days hospitalization of the injured and two fractures are a pointer towards the fact that the amount of ₹ 4,000/- awarded for pain and suffering is meager. The fracture and surgery ensure that special diet was required by the appellant. The nature of injury was such that an attendant would have been required during hospitalization and thereafter during the period of recovery also. Due to restricted movement of the wrist, it can be

easily visualized that the appellant may not be able to move around freely by driving two wheeler etc. and would be needing some transportation for the treatment and thereafter also.

Keeping in view the decisions referred above and for the reasons recorded above, the amounts awarded by the Tribunal are enhanced and the amounts are awarded under certain other heads which were not considered by the Tribunal, as per the table given below :-

Head	Awarded by the Tribunal	Awarded now by this court
Treatment expenses	₹ 43,000/-	₹ 50,000/-
Disability	₹ 15,000/-	₹ 60,000/-
Pain and suffering	₹ 4,000/-	₹ 15,000/-
Loss of future income	Nil	₹ 20,000/-
Special diet	Nil	₹ 10,000/-
Attendant	Nil	₹ 10,000/-
Transportation	Nil	₹ 10,000/-
Total	₹ 62,000/-	₹ 1,75,000/-

In view of the above, the award dated 03.12.2011 is modified to the extent that the compensation of ₹ 62,000/- awarded by the Tribunal is enhanced to ₹ 1,75,000/-.

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

The appeal is partly allowed in the aforesaid terms.

November 03, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes