IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2105 of 2012
Date of Decision.31.10.2017

Alka ....Appellant

Vs

Bijender and others ....Respondents

Present: Mr. Kartar Singh Malik-I, Advocate
for the appellant.

Mr. Suvir Dewan, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal is for enhancement of compensation for injuries suffered in a motor accident. She was going on a motor cycle bearing registration No.HR-19F-1606 with her husband from village Achina to Village Singhwa and when they reached in front of Ravi Dass Mandir in the area of Kalanaur, a truck bearing registration No.HR-61A-1545 driven rashly and negligently by respondent No.1 hit their motor cycle from behind, resulting into injuries on various part of her body including fracture. In this regard, an FIR bearing No.98 dated 11.03.2011 under Sections 279, 337, 427 IPC was also registered at Police Station, Kalanaur. She remained hospitalized in PGIMS, Rohtak from 10.03.2011 to 10.04.2011. Her disability was assessed as 30% permanent in nature.

The Tribunal while assessing the compensation provided ₹12,000/- for pain and suffering, ₹60,000/- for permanent disability, ₹11,900/- for medical expenses and ₹5000/- for special diet, attendant charges and transportation, thus, in total, a sum of ₹88,900/- was awarded.

Learned counsel appearing on behalf of the appellant submits that the Tribunal grossly erred in awarding a sum of ₹60,000/- for permanent disability which was assessed by a Medical Board of Doctors to the extent of 30%. The appellant was 10+2 pass, therefore, her income should have been taken as ₹5000/- per month as per the Minimum Wages Act, prevalent at the time of accident and the loss of earning capacity should have been assessed by applying the multiplier of 18 suitable to the age of the injured. Moreover, the amount assessed under the heads of pain and suffering, medical expenses, special diet, attendant charges and transportation are also on lower side, thus, the amount of compensation is required to be enhanced.

In oppugnation, learned counsel appearing on behalf of the insurance company submits that the Tribunal has taken care of all the heads while assessing the compensation. In the absence of any documentary proof with regard to income of the injured for assessing the loss of future earning, the Tribunal has rightly awarded a sum of ₹60,000/-, thus, there is no scope for enhancement.

I have heard learned counsel for the parties and appraised the paper book. The factum of 30% permanent disability has been proved through the testimony of PW2, Dr. Pardeep Kamboj. The Tribunal erred in awarding a sum of ₹60,000/- by applying a straightjacket formula of providing ₹2000/- for each percentage of permanent disability. However, what requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity of the injured; and percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings i.e. by applying the standard multiplier method used to determine loss of dependency. This view of mine has been derived from the ratio decidendi culled out by Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and another (2011) 1 SCC 343.*** In paragraph 13 of the same, it has been held as under:-

> *"13.Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."*

Therefore, I will take the income of the injured as ₹5000/- per month as per Minimum Wages Act and apply a multiplier of 18 to assess the loss of future earning for 30% permanent disability to the tune of ₹3,24,000/-. However, I will retain the other heads of claim as assessed by the Tribunal. In sum, the total compensation payable shall be ₹3,52,900/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The liability shall remain the same as has already been determined by the Tribunal.

The award passed by the Tribunal is modified in above terms and the appeal stands allowed.

(AMIT RAWAL)
JUDGE

October 31, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No