IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.224 of 2012 (O&M)
Date of Decision: December 15, 2017

Baljinder Singh ...Appellant

Versus

Laxman Singh and another ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ashwani Arora, Advocate for the appellant.

Mr.Maninder Arora, Advocate for the respondent – insurer.

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HARINDER SINGH SIDHU, J.

This is claimant's appeal for enhancement of compensation.

Brief facts are that on 15.10.2007, Baljinder Singh, claimant-injured was going from Maloya to Sector-23, Chandigarh while driving his three wheeler No.PB-65E-1876. When he was crossing the small chowk of Sectors 39/40, Chandigarh, a TATA 407 vehicle bearing No.PH-46-1086 being driven in a rash and negligent manner at a high speed came from the side of Mohali and struck against the three-wheeler. As a result, the three-wheeler turned turtle and the appellant received serious injuries. Immediately, he was shifted to General Hospital, Sector-16, Chandigarh, from where he was referred to PGI, Chandigarh.

FIR No.403 dated 15.10.2007 under Sections 279, 337 and 338 of the Indian Penal Code was registered against the driver of the TATA 407.

On a petition under Section 166 of the Motor Vehicles Act, 1988, the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') awarded him the following compensation:-

For Permanent disability	Rs.1,00,000/-
Medical expenses	Rs.16,314/-
On account of Loss of Income	Rs.25,000/-
For Pain and Suffering	Rs.10,000/-
Attendant Charges	Rs.5,000/-
Conveyance charges	Rs.5,000/-
Special diet	Rs.5,000/-
Total Compensation	Rs.1,66,314/-

Challenging the award of the Tribunal, learned counsel for the appellant has contended that the amount awarded is on the lower side. It is argued that the earning capacity of the appellant, who was aged about 26 years at the time of accident and was earning his livelihood by collecting milk from dairies from village Majra and selling the same at Chandigarh, has been adversely affected due to permanent disability of 25% suffered in the accident. It is also argued that the amounts awarded under miscellaneous heads are also not in consonance with the injuries suffered by the appellant.

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

The appellant, while appearing as PW1 has stated that he had suffered fracture both bones left leg, grade-III, DNVD, head injury and other multiple injuries. Firstly, he was taken to General Hospital, Sector-16, Chandigarh, from where, he was referred to PGI, Chandigarh, where he remained admitted from 15.10.2007 to 19.10.2007. PW2 Dr.Rajinder Kanojia, Assistant Professor, Department of Orthopaedic, PGI, Chandigarh has stated that the appellant had fracture of both bones leg left side with degloving injury of soft tissue. He was operated on 17.10.2007. Debridgement and external fixator was applied as also the plastic surgery was done by the Plastic Surgery Department. He was discharged on 19.10.2017. On 29.2.2008, his fixator was removed and plaster was applied. On 17.3.2008, he was diagnosed as a case infected non-union fracture both bone leg left side. He was re-admitted on 19.03.2008 and on 25.03.2008, surgery was done ilizarov fixator was applied. The appellant was followed after surgery in the OPD regularly. On 16.10.2008, fixator was removed and plaster was given. Dr.Kanojia further stated that on 20.11.2008, the plaster was removed and brace was applied and the appellant was advised to walk with a support and he also required an attendant. Treatment cards of PGI were proved on record as Ex.P2 to P5.

From this, it is clear that the appellant remained immobile for about 13 months i.e. from the date of accident i.e., 15.10.2007 to 20.11.2008 when the plaster was finally removed and brace was applied and he was advised to walk with support.

Dr.G.S.Bedi, Medical Officer, GMSH, Sector-16, Chandigarh, while appearing as PW3 stated that on assessing the disability of the appellant, he found that it was a case of compound fracture both bones left leg treated in PGI with multiple surgeries and POP caste. He further stated that the appellant has shortening of 1½ inches with stiffness of knee and ankle and mal-union, and that the appellant walks with a limp and PTB brace. He assessed the permanent impairment to the extent of 25% with regard to left lower limb. PW3 also stated that the appellant will have difficulty in running, driving and slight difficulty in doing heavy work. He asserted that there is little possibility that disability might improve. Disability certificate (Ex.P49) issued in this regard was also proved on record.

The appellant was doing the business of supplying milk in the city of Chandigarh after collection from nearby village in a three wheeler. This fact has even found mention in the FIR. He claimed to have been earning Rs.10,000/- per month from this business. Even though no evidence was led regarding proof of income, since he was himself driving the three-wheeler and selling milk after collecting the same from the dairies, it can safely be assumed that he would be earning at least Rs.7000/- per month.

While appearing before the Tribunal, he stated that due to the disability suffered in the accident, he is not in a position to run and drive the vehicle. PW3 Dr.G.S.Bedi also stated in his testimony that after the accident, the appellant will face difficulty in running, driving and in doing heavy work. It is thus clear that the injury would impact his earning capacity, may not be fully but to a considerable extent. It is possible he may even have to give up his earlier vocation and shift to a less demanding job than supplying milk in the city after collecting the same from dairies in the adjoining villages. In the light of this it may be fair to assume that he has suffered functional disability to the extent of 25%. As the appellant was aged about 26 years, after considering 40% enhancement for future prospects, the compensation for 25% functional disability can be calculated at $[(7000 + 2800) \times 12 \times 17]$ x 25/100= Rs.4,99,800/-

Accordingly, the compensation is re-assessed as under:-

Loss of earnings on account of disability to the extent of 25%	Rs.4,99,800/-

Loss of Income during treatment (13 months)	Rs.50,000/-
Medical expenses	Rs.16,314/-
For Pain and Suffering	Rs.50,000/-
For loss of future enjoyment of life	Rs.50,000/-
Attendant Charges	Rs.25,000/-
Conveyance charges	Rs.5,000/-
Special diet	Rs.10,000/-
Total Compensation	**Rs.7,06,114/-**

Accordingly, the appeal is allowed and the Award of the Tribunal is modified to the extent that the appellant is held entitled to total compensation of Rs.7,06,114/-, that is, Rs.5,39,800/- (706114-166314) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

December 15, 2017 **(HARINDER SINGH SIDHU)**
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No