

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

FAO No.2412 of 2012 (O&M)
Date of decision : 12.07.2017

Nitish Kumar

...Appellant

Versus

Puran Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Ms. Ekta Thakur, Advocate for the appellant.

Mr. M.B. Jain, Advocate for respondent No.3.

ANIL KSHETARPAL, J.

This is an appeal for enhancement of the compensation at the hands of unfortunate boy aged 12 years at the time of accident. Young boy-appellant had lost his leg below knee in an accident. Permanent disability has been certified as 60%. The Motor Accident Claims Tribunal has awarded total compensation of ₹6,55,000/-. The detail of the compensation under various heads is as under:-

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|----|--|-------------|
| 1. | Reimbursement of the medical bills | ₹39,729/- |
| 2. | Transportation | ₹7000/- |
| 3. | Loss of future earnings | ₹1,08,000/- |
| 4. | On account of pain and sufferings | ₹50,000/- |
| 5. | For artificial limb/Prosthesis and its maintenance | ₹4,50,000/- |

Counsel for the appellant has made following submissions:-

1. As per the evidence led, the total cost of artificial limb/prosthesis comes to ₹7,50,000/-. In support thereof, the appellant had produced PW3, the official of M/s Otto Bock Healthcare India Private Limited, Manufacturer of Prosthesis. This witness has stated that Prosthesis would require change every five years upto the age of 35 on account of growing age of the claimant. However, this evidence has been rejected by the learned Motor Accident Claims Tribunal on the ground that since boy belongs to a poor family, therefore, such costly Prosthesis is beyond the reach of the common man.
2. It has further been noticed that at present claimant is using artificial limb manufactured at Saket Hospital, Panchkula which only costs ₹1500/-.

In my opinion, everyone is entitled to best medical facilities available, particularly young boy-appellant who has lost his leg in an accident. No doubt, appellant belongs to a poor family. Requirement of replacement of Prosthesis every five years is not being disputed. Unless some compensation is paid, appellant, who stated to belonging to poor, would not be able to purchase costly Prosthesis. In my opinion, the learned Motor Accident Claims Tribunal has wrongly formed an opinion, depriving the appellant to purchase good quality Prosthesis. It is not the contention of the respondent that the estimate submitted by PW3 is exaggerated or inflated, therefore, in my considered opinion, the appellant is entitled to ₹7,50,000/- for artificial limb/prosthesis.

It has been further contended by learned counsel for the appellant that appellant is a brilliant student. He scored 89% marks in 5th class and nearly 80% in 6th class and, therefore, the amount awarded on account of loss of future earnings is on the lower side. The Motor Accident Claims Tribunal has presumed the income of the appellant to be ₹15,000/- per month. Since the appellant had suffered 60% disability, therefore, the Court appears to have taken earning capacity at 40% and worked out income to be ₹6,000/- per annum. By applying multiplier of 18, compensation has been worked out at ₹1,08,000/-. Looking into the circumstances particularly the marks scored by the appellant, it would be proper if the assumed income is taken as ₹30,000/-. 40% thereof comes to ₹12,000/-. Therefore, the compensation on account of loss of earnings comes to ₹2,16,000/-.

Counsel for the appellant has further claimed that the Motor Accident Claims Tribunal has not awarded any amount for future medical expenses and attendant required.

A reading of the file would show that no evidence has been led by the appellant to prove that he would require further treatment or medical attention. As far as requirement of attendant is concerned, once the appellant is being allowed to have Prosthesis of his choice which is stated to be best available, appellant would not require assistance of an attendant. Therefore, he cannot be awarded any amount for attendant. However, after the accident, he did require help of attendant, so on that account, I award ₹25,000/-.

Hence, in my opinion, the total compensation payable to the claimant comes to ₹10,88,000/-. The appellant shall be entitled to recover the additional amount enhanced by this Court along with interest at the rate of 8% p.a. from the date of the filing of the claim petition till payment.

Accordingly, present appeal is allowed.

12.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No