

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

FAO No. 880 of 2011

DATE OF DECISION : 02.11.2017

Amit Soni

.... APPELLANT

Versus

Randhir Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. C.L. Verma, Advocate,
for the appellant.

Mr. Pardeep Goyal and Mr. Abhishek Goyal, Advocates,
for respondent No.3 – Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

The claimant has filed this appeal challenging the award dated 01.09.2010 passed by the Motor Accident Claims Tribunal, Ludhiana (for short, 'the Tribunal'). The prayer is for enhancement of compensation awarded for the injuries suffered by him in a motor vehicular accident.

The legal aspect with regard to awarding compensation in case of non-fatal injuries has been dealt with by the Hon'ble Apex Court in **G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another**, 2013 (12)SCC 455.

In view of pronouncement, in an injury case, the pecuniary and non-pecuniary damages are to be compensated.

The Hon'ble Apex Court in *Sandeep Khanuja Vs. Atul Dande and another*, 2017 (3) SCC 351 and in *Dixit Kumar & another Vs. Om Parkash Goel*, 2017 AIR (SC) 2943 has held that it is not the percentage qua the limb which is to be accepted as it is, but it is the functional disability which has to be gone into.

The factual matrix of the case necessary for adjudication of the present case are that on 22.06.2007, claimant Amit Soni was driving motor cycle bearing registration No. PB-11Z (T) 2402 and was coming from Phillaur to Ludhiana. On the way, he stopped near water melon seller, when he was hit by a rashly and negligently driven truck bearing registration No. PB-10BE-5113. FIR No. 56 dated 23.06.2007 was registered.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the injured.

The Tribunal, after considering the entire material and after appreciating the facts of the case, awarded a sum of ₹ 8,79,000/- (though total of the amounts awarded under various heads comes to ₹ 8,79,500/-) along with interest at the rate of 6% per annum.

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

Learned counsel for the appellant argued that the appellant suffered multiple grievous injuries on both his legs. His legs were badly

fractured. He remained admitted in D.M.C. Hospital, Ludhiana from 22.06.2007 to 01.09.2007. He was again admitted in DMC Hospital, Ludhiana on 05.12.2007 and was discharged on the same day. Thereafter, he remained admitted in Amandeep Hospital, Model Town, Amritsar from 01.07.2008 to 08.07.2008 and from 21.01.2009 to 24.01.2009. Learned counsel further argued that the claimant was running a *Karyana* shop and the amount of ₹ 1,80,000/- awarded for loss of income is on lower side. He submits that treatment of the claimant is still continuing, and there was 41% permanent disability qua limb.

Learned counsel for respondent No.3 – Insurance Company argued that 41% disability of the claimant is only qua limb and not for the whole body. The Tribunal has already awarded a sum of ₹ 1,80,000/- for loss of income, inspite of the fact that the appellant was not able to substantiate his claim regarding his earning.

As per the decision of the Hon'ble Apex Court in **Sandeep Khanuja's case** (supra), permanent disability qua limb is not to be taken into consideration, but its effect on the whole body, i.e. the functional disability is to be considered. In this regard, the Hon'ble Apex Court observed as under :-

“The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In this sense, the MACT approached the issue in right direction

by taking into consideration the aforesaid test.”

In absence of any proof regarding functional disability of the claimant and the effect of injuries on his occupation, it would be very difficult at this stage to comment upon the compensation of ₹ 82,000/- awarded by the Tribunal for permanent disability. It was the case of the appellant that he was running a *Karyana* shop. His both legs suffered injuries, it would have definitely effected his working in the *Karyana* shop. But there is no positive evidence on record to state that what would be the percentage qua the functional disability.

The long hospitalization and three surgeries conducted upon the appellant ensure that there was need of an attendant throughout the period of hospitalization and thereafter also. The special diet as recommended by the Doctor in case of fracture and for speedy recovery of post surgery wounds should be considered while awarding compensation. Fracture of both the legs of the appellant resulting into 41% permanent disability is a pointer towards the fact that transportation was required during the period of treatment. In such like cases, even after the recovery with this percentage of disability, it can be easily foreseen that the appellant would be requiring the transportation as he may not be self dependent with regard to driving of a two wheeler etc.

Keeping in view the decisions referred above and for the reasons recorded above, the compensation is awarded to the appellant under various heads, which were not considered by the Tribunal, as per the table

given below :-

Head	Awarded by the Tribunal	Awarded now by this court
Expenses on treatment	₹ 4,77,500/-	₹ 4,77,500/-
Permanent disability	₹ 82,000/-	₹ 82,000/-
Loss of income	₹ 1,80,000/-	₹ 1,80,000/-
Pain and sufferings	₹ 1,40,000/-	₹ 1,40,000/-
Attendant	Nil	₹ 30,000/-
Special diet	Nil	₹ 25,000/-
Transportation	Nil	₹ 50,000/-
Total	₹ 8,79,500/-	₹ 9,84,500/-

In view of the above, the award dated 01.09.2010 is modified to the extent that the compensation of ₹ 8,79,500/- awarded by the Tribunal is enhanced to ₹ 9,84,500/-.

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 02, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes