

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

FAO No.4828 of 2012

Date of Decision.31.10.2017

Pankaj Sharma

.....Appellant

Vs

Shahid and others

.....Respondents

Present: Mr. R.K. Saini, Advocate
for the appellant.

Ms. Anamika Mehra, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal has been filed for enhancement of compensation for injuries suffered by the claimant in a motor accident that took place on 19.05.2010. He was going on his motor cycle bearing registration No.HR-07J-2462 and when he reached in front of Nagpal Nursing Home, Kurukshetra, a bus bearing registration No.UP-21N-0102 driven rashly and negligently by respondent No.1 came from the opposite side and struck into the motor cycle of the claimant, as a result of which he sustained multiple injuries. In this regard, an FIR bearing No.289 dated 21.05.2010 under Sections 279 and 337 IPC was registered at Police Station, City Thanesar against respondent No.1. The appellant-claimant remained hospitalized in Apna Hospital, Kurukshetra from 19.05.2010 to 25.05.2010. He was student of MCA and also earning ₹10,000/- per month by imparting coaching to the students upto 10+2 standard.

The Tribunal while assessing the compensation provided ₹36,000/- on account of loss of earning capacity, ₹19,934/- for expenses incurred on medicines and hospital charges, ₹3000/- as conveyance charges,

₹4000/- for special diet, ₹2500/- for attendant charges and ₹10,000/- for pain and suffering, thus, the total compensation worked out to ₹75,434/- rounded off to ₹75,500/- with interest @7.5% per annum from the date of filing of petition till its realization.

Mr. Saini, learned counsel appearing on behalf of the appellant submits that the appellant was a student of MCA at the time of accident and had already deposited ₹40,000/- as fee but he could not appear in the examination due to injuries, resulting into loss of ₹40,000/-. Due to injuries, he suffered 18% permanent disability. He was earning ₹10,000/- per month by giving tuitions to the students upto 10+2 standard, therefore, his future loss of earning is required to be assessed by applying the multiplier 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.

Per contra, Ms. Mehra, learned counsel appearing on behalf of the insurance company submits that there was only a moderate restriction of movement at right hip joint, which according to the testimony of PW-2, Dr. Bimla Gouri could be reduced with the passage of time and physiotherapy, thus, the injuries suffered by the claimant would not have much impact on his earning capacity. The Tribunal has taken care of all the heads of claim sufficiently, thus, there is no scope for further enhancement.

I have heard learned counsel for the parties and appraised the paper book. No doubt, PW-2 in her cross-examination stated that the permanent disability could be reduced with the passage of time but there was nothing stated that it will totally vanish. Moreover, with the restriction

of movement, chance of appellant-claimant for taking part in competitive examinations for Armed Forces or for any other job in which physical test is required to be qualified has been diminished. He also suffered a loss of ₹40,000/- which he deposited as fee for appearance in MCA examination. Therefore, in the absence of any concrete evidence qua income of the claimant, I will take the income of the deceased as ₹5000/- per month being an MCA student and apply a multiplier of 18 to assess the loss of earning capacity of the appellant to the extent of 18% for a sum of ₹1,94,400/-. I will further provide ₹12,000/- for special diet and attendant charges and ₹5000/- for transportation. I will not interfere with other heads of claim as has been assessed by the Tribunal i.e. expenditure incurred on medicines/hospital charges and pain and suffering.

In total, the compensation payable shall be ₹2,41,334/-. 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 Yes