IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4926 of 2012

DATE OF DECISION : 01.11.2017

Major Singh

.... APPELLANT

Versus

Ram Nath and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mrs. Gurnam Kaur Turka, Advocate,
for the appellant.

None for respondent No.3 – Insurance Company.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeal is an outcome of a motor vehicular accident which occurred on 24.02.2010 and resulted into 100% functional disability of Major Singh.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') was filed.

The Motor Accident Claims Tribunal, Patiala (for short, `the Tribunal'), considering the fact that the injured was working as a driver of a Combine and as a result of the accident, he suffered spine injury which crippled him, awarded a sum of ₹ 7,50,000/- along with interest at the rate of 9% per annum, vide award dated 14.05.2012.

Aggrieved of the said award, the present appeal has been filed for enhancement of compensation raising the issue that at the time of the accident, the injured was aged 50 years, therefore, multiplier of 13 should have been applied instead of 11. The second limb of this very argument is that income of the injured has been assessed as ₹ 4,000/- per month, whereas the Tribunal itself has observed that he was a skilled labourer and his monthly earning according to the minimum wages should have been taken.

Learned counsel for the appellant further argued that the accident took place in Maharashtra. He underwent treatment in Maharashtra and thereafter was shifted to Punjab, transportation head has not been considered by the Tribunal while awarding compensation. Her grievance is that because of spine injury, the injured has become bed ridden and would be needing permanent attendant and ₹ 10,000/- awarded towards special attendant is a meager amount. She contended for enhancement of compensation awarded for loss of amenities of life, special diet and for pain and sufferings. She concluded her arguments by urging that medical bills of ₹ 60,000/- were produced before the Tribunal as Ex.PW4/1 to Ex.PW4/32. The said bills were not reimbursed on a technical ground that Gurdarshan Singh son of the injured, the attorney holder, was not able to prove the said bills as per the Evidence Act.

None has appeared on behalf of respondent No.3 – Insurance Company inspite of service.

From the reading of the award, it is apparent that the facts are not disputed. The age of the injured has been taken as 50 years by the Tribunal itself. In such circumstances, as per the decision of the Hon'ble Apex Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and others,*** (2009) 6 SCC 121, the multiplier of 13 has to be applied in case of 50 years old person and the Tribunal erred in applying the multiplier of 11.

Though the employer of the appellant deposed before the Tribunal with regard to his monthly salary but the said statement as such was not accepted by the Tribunal. The same has not been challenged in the present appeal. The only grievance raised by the appellant is that the minimum wages for a skilled labourer prevailing at the time of the accident should be taken. The minimum wages of a skilled labourer in February, 2010, was ₹ 4,127/- per month. The same was revised in September, 2009. Hence, the monthly earning of the injured at the time of the accident is rounded off and is taken as ₹ 4,200/-.

The disability certificate of the appellant was produced as Ex.PW6/2 and proved by PW.7 Leela Dhar, Senior Assistant from the office of Civil Surgeon, Patiala. PW.3 Dr. Sahil Saha, who treated the appellant in Indus Hospital, Mohali,, deposed that the lower portion from the neck has completely become disabled, which has resulted into 100% disability. Thus, the Tribunal rightly applied multiplier method to calculate compensation. The same is being re-calculated taking the monthly income of the claimant as ₹ 4,200/- and by applying the multiplier of 13, which comes to 42000 X 12 X 13 = ₹ 6,55,200/-.

The appellant produced the medical bills before the Tribunal. His injury was such that ultimately, he was bed ridden. After tendering his affidavit Ex.PW4/A, he was not able to attend the proceedings for cross-examination, and power of attorney was given to his son Gurdarshan Singh, who was cross-examined. The medical bills produced by the appellant were not considered by the Tribunal on the ground that the same were not proved by his son in accordance with the Evidence Act. Though technically rejection of the medical bills cannot be faulted, but keeping in view the fact that the accident, disability of the appellant, surgery of his fractured spine, his hospitalization on various occasions are not disputed, it can be safely concluded that the medicines worth ₹ 60,000/- would have been consumed in such a long treatment. Keeping in view these facts, a sum of ₹ 60,000/- is awarded to the appellant for medical bills.

The contentions of learned counsel for the appellant that no compensation for transportation has been awarded and the amounts awarded for attendant and loss of amenities of life require enhancement deserve acceptance. Hon'ble the Apex Court in ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another,*** 2013(12)SCC 455, held as under:

> "It is settled law that compensation in personal injury cases should be determined under the following heads:
> Pecuniary damages (Special damages)
>
> (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.
>
> (ii) Loss of earnings (and other gains), which the

injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

A perusal of the above decision shows that in case of personal injury pecuniary damages (special damages) should be compensated under various heads. It was further held that non-pecuniary damages should also be compensated.

Further, in ***Sandeep Khanuja Vs. Atul Dande and another,*** 2017 (3) SCC 351, 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."*

Keeping in view the law enunciated by the decisions referred above and the facts of this case that the injury has resulted into 100% functional disability, the amount awarded for loss of amenities of life is on the lower side. The appellant needed transportation not only from the place of accident in Maharashtra to a Hospital in Maharashtra and then to Indus Hospital, Mohali, which is to be considered. Further, it is to be kept in view that a bed ridden person cannot travel or go for treatment of his own without the aid of a specially arranged transportation. In such circumstances, just and equitable compensation for transportation should be awarded.

The reasons referred above for granting compensation on account of transportation would apply with regard to attendant also. The appellant would have required an attendant during the period of his hospitalization and for the rest of his life. The pain and sufferings does not literally mean the physical pain and sufferings but includes the trauma, mental agony and harassment faced by the injured and his family. Therefore, the compensation awarded for pain and sufferings also requires enhancement. The amount awarded for special diet also requires enhancement, as the appellant would have spent sufficient amount for special diet, as prescribed by the doctor during treatment and thereafter also.

For the reasons mentioned above, the compensation already awarded by the Tribunal under various heads is enhanced as per the table given below :-

Head	Awarded by the Tribunal	Awarded now by this court
Disability	₹ 5,28,000/-	₹ 6,55,200/-
Bills for medical treatment	₹ 52,100/-	₹ 52,100/-
Special attendant	₹ 10,000/-	₹ 60,000/-
Special diet	₹ 10,000/-	₹ 25,000/-
Loss of amenities of life	₹ 50,000/-	₹ 75,000/-
Future prospects	₹ 50,000/-	₹ 50,000/-
Pain and sufferings	₹ 50,000/-	₹ 75,000/-
Medical bills	Nil	₹ 60,000/-
Total	₹ 6,98,000/-	₹ 10,52,000/-

In view of the above, the award dated 14.05.2012 is modified to the extent that the compensation of ₹ 6,98,000/- awarded by the Tribunal is enhanced to ₹ 10,52,000/-.

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 01, 2017 **(AVNEESH JHINGAN)**
ndj **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No