

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 5412 of 2012 (O&M)
Date of Decision: September 14, 2017

Balbir Singh

..Appellant

Versus

Avtar Singh and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Jagjeet Singh Dhaliwal, Advocate for
Mr. Balram Singh, Advocate
for the appellant.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate
for respondent no.3-insurance company.

REKHA MITTAL, J. (oral)

The injured claimant is in appeal seeking enhancement of compensation assessed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib (hereinafter to be referred as the Tribunal).

Balbir Singh claimant sustained injuries in a motor vehicular accident that took place on 24.04.2009. The Tribunal awarded compensation of Rs.1,33,783/-, detailed here under:-

Expenditure incurred on medical treatment	Rs.88,783/-
Pain and sufferings	Rs.10,000/-
Loss of income	Rs.25,000/-
Conveyance charges	Rs.5,000/-
Attendant charges	Rs.5,000/-
TOTAL	Rs.1,33,783/-

Counsel for the appellant has submitted that compensation awarded by the Tribunal under various heads except medical expenses is on lower side and needs enhancement. It is argued that the injured was a truck driver prior to the accident and on account of sustaining injuries resulting in disability to the extent of 10%, he would not be in a position to drive the truck, therefore, loss of future income is liable to be assessed by adopting multiplier method.

Another submission made by counsel is that the injured remained hospitalized w.e.f. 24.04.2009 to 16.05.2009 and he suffered fracture proximal tibia left lower limb, therefore, he could not perform his daily routine much less pursuing his avocation for a period of 4 to 5 months. It is argued that in view of nature of injury and extent of disability suffered by the victim, compensation is liable to be enhanced. The Tribunal has not allowed any compensation for loss of amenities of life qua disability to the extent of 10%.

Counsel representing the insurance company, on the contrary, would urge that adequate compensation has been awarded by the Tribunal. It is argued that the Tribunal has assessed loss of income to the tune of Rs.25,000/- which includes loss of income qua disability. It is further argued that there is no justification for enhancement of compensation.

I have heard counsel for the parties, perused the paper book and the records.

The claimant examined Dr. Rajinder Kumar Kanojia, Associate Professor, Department of Orthopedics, PGI Chandigarh to prove disability to the extent of 10% recorded in the disability certificate Ex.P-1.

The witness has deposed that Balbir Singh son of Bakhshish Singh is a case of road side accident with fracture proximal tibia left lower limb and disability to the left lower limb to the extent of 10% was found. He has further deposed that condition is not likely to improve. However, in his cross-examination, he would state to the following effect:-

“I cannot say whether the condition will improve in future or not. I cannot say if better treatment is given whether it could improve or not. I have not treated him before this certificate and after this certificate”

Perusal of testimony of Dr. Rajinder Kumar Kanojia makes it evident that he has given contradictory statement whether condition of the victim assessed by the Medical Board in February 2010 can or cannot improve in future. However, there is nothing on record suggestive of the fact that the injured approached the Medical Board for review of his disability either during pendency of the proceedings before the Tribunal or in appeal.

The Tribunal has awarded an amount of Rs.25,000/- for loss of income by taking into consideration income of the victim at Rs.5,000/- per month. The claimant has failed to adduce satisfactory much less tangible and convincing evidence on record to show that he was working as a driver on a truck prior to the occurrence. Even the minimum wage admissible in the year 2009 in the State of Punjab was less than Rs.5,000/- per month. The injured suffered fracture proximal tibia left lower limb. He remained confined to the hospital for 22 days. He must have taken some time to recover from his condition caused due to accident. In the given circumstances, the claimant is allowed loss of income for a period of three

months in regard to period of treatment and recovery to the tune of Rs.15,000/-.

The claimant suffered disability to the extent of 10% to his left lower limb. As has been noticed hereinbefore, there is no clear evidence on record that disability is permanent in nature. Taking a reasonable view of the matter, the claimant is awarded Rs.20,000/- for loss of future income qua disability. In this manner, the claimant would be entitled to an amount of Rs.35,000/- for loss of income both for period of treatment and recovery as well as qua disability.

Keeping in view the nature of injury and period of confinement in the hospital, the claimant shall be entitled to an amount of Rs.15,000/- for pain and sufferings, Rs.10,000/- for conveyance charges & special diet and Rs.10,000/- for attendant charges. He shall be entitled to another amount of Rs.10,000/- for loss of amenities of life. The total compensation is Rs.1,68,783, detailed here under:-

Expenditure on medical treatment	Rs.88,783/-
Pain and sufferings	Rs.15,000/-
Loss of income	Rs.35,000/-
Conveyance charges and special diet	Rs.10,000/-
Services of attendant	Rs.10,000/-
Loss of amenities of life	Rs.10,000/-
TOTAL	Rs.1,68,783/-

The additional amount i.e. Rs.35,000/- shall be payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

September 14, 2017

Sunil

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No