

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO NO. OF 6126 of 2012(O&M)

Date of decision: 11.01.2017

Jasrath

...Appellant

Versus

Assam and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashish Gupta, Advocate,
for the appellant.

Mr. D.K.Prajapati, Advocate, for
Mr. R.S.Madan, Advocate,
for respondent no.3.

ANITA CHAUDHRY, J.

Jasrath, aged 24 years met with an accident on 21.02.2010, when he and his brother Noorddin were returning to Tauru. They were waiting for a vehicle at Cement Factory Bawla, Mor. At about 6.30 p.m., a dumper driven by respondent no.1, came at a high speed, overtook another vehicle and directly hit the appellant. The accident led to the amputation of his right leg. The appellant used to fix punctures in tyres at Mistri Market in Tauru. The appellant claimed Rs.5,00,000/- as compensation and Rs.2,50,000/- on the amount spent on his treatment, which was still going on.

The Tribunal gave a categorical finding that the accident occurred on account of negligence of respondent no.1. It noted that FIR had been registered on 26.02.2010 and the driver had been challaned. It noted that the appellant had suffered 70% permanent disability on account of traumatic amputation of the right leg of upper one third on the basis of disability

certificate, Ex.PW5/A. Taking into account the medical bills, a sum of Rs.1,20,979/- was awarded towards the actual bills. It noted that there was no documentary evidence on record to prove the fact that he was working at a shop. The income of the appellant was taken to be Rs.4000/- per month by treating him as an unskilled labourer. Assuming the income to be Rs.48,000/- per annum, calculating the loss at 70%, the loss of future earning was taken as Rs.33,600/- per annum and considering the age, a multiplier of 18 was applied and the compensation under the head of loss of future income was taken as Rs.6,04,800/-. A total compensation of Rs.15,000/- was awarded as transportation charges besides Rs.10,000 for pain and suffering. An award of Rs.7,51,000/- was passed.

The records have been summoned. I have heard both the sides.

Counsel for the appellant contends that the appellant had met with an accident at the age of 24 years when he was unmarried and there was amputation of the right leg and he had lost the prospects of marriage and the Tribunal did not take into account that he would require further treatment or that he would need artificial leg. It was urged that the amount under the head of pain and suffering was less and no amount had been awarded for the attendant charges or special diet. It was urged that there would be future increase in the income and that has not been taken into account. It was urged that amount for pain and suffering was too meager. It was also urged that the functional disability would be 100% as for a labourer it is difficult to work. Reliance was placed upon judgment of Hon'ble the Supreme Court of India Govind Yadav v. The New India Insurance Company Limited, 2011 (4) RCR (Civil) and Dinesh Singh v. Bajaj Allianz General Insurance Co Ltd., 2014(2) Law Herald (SC) 1756.

On the other hand, the submission was that the Court below had rightly awarded compensation after taking into account the facts. It was urged that the Tribunal had awarded higher compensation, whereas the disability of 70% was only of one leg and the Tribunal has taken as if the disability was of the whole body. It was urged that the appellant would have been entitled to expenses made on the artificial leg if he had purchased it but he did not produce any document and even now he had not placed any bills to show that his treatment was going on and after the injury had healed. There was no question of any further treatment.

The fact that the appellant had suffered injuries in the accident is not in dispute. It is also not disputed that his leg was amputated. The appellant did not lead any evidence to show that he was fixing punctures at a shop. The Tribunal considered his income to be that of a unskilled labourer and took the income to be Rs.4000/- per month. The disability was permanent in nature and adversely affected the future prospects, therefore, the loss of income was rightly calculated. However, I find that the Tribunal has not awarded compensation on certain heads and the appellant is entitled to more compensation.

The Tribunal has not awarded any amount towards loss of prospects of marriage, loss of earning during the period of treatment, loss of expectation of life. The amount allowed towards pain and suffering is on the lower side and I also feel that he should have been awarded some amount for the artificial leg and some amount for the attendant. The appellant was a young man and he will have to suffer trauma for the rest of his life and therefore, I feel that ends of justice will be met if the following amounts are awarded:-

1.	Loss of prospects of marriage	Rs.1,00,000/-
2.	Pain and suffering over and above the amount allowed by the Tribunal.	Rs.1,00,000/-
3.	Artificial Leg	Rs. 25,000/-
4.	Attendant Charges	Rs. 20,000/-
5.	Earning for three months	Rs. 12,000/-
6.	Expectation of life	Rs.1,00,000/-

In the result, the appeal is partly allowed. The appellant is awarded a sum of Rs.3,57,000/- over and above the amount that was allowed by the Tribunal. The amount would be payable with interest at the rate of 7% per annum from the date of filing of the claim petition till the date of realisation.

The respondents are directed to pay the balance amount in the form of a bank draft in the name of the appellant.

January 11, 2017
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(ANITA CHAUDHRY)
JUDGE