

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

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FAO 1561 of 2013 (O&M)

Date of decision: 04.09.2017

Babloo Mandal

..... *Appellant*

Versus

Pardeep Kashyap and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Abhimanyu Kalsy, Advocate for
Mr. Rakesh Dhiman, Advocate
for the appellant

Mr. Binat Sharma, Advocate for
Mr. A S Sidhu, Advocate
for the respondent - Insurance company

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Rekha Mittal, J. (Oral)

The injured victim is in appeal seeking enhancement of compensation in regard to injuries sustained by him in a motor vehicular accident that took place on 16.05.2010.

The Tribunal has awarded compensation to the tune of Rs.74,800/- represented in a tabulated form in Para No.44 of the award impugned.

Counsel for the appellant has submitted that the claimant suffered fracture of left leg and left shoulder and remained confined to hospital for a period of one month. He was working as Mason, proved by the claimant and PW5. It is argued that compensation assessed by the Tribunal under all the heads is inadequate and needs enhancement.

With regard to compensation qua permanent disability, counsel would urge that in view of nature of work being carried out by the claimant prior to the occurrence, he would not be in a position to work as a Mason

though he has suffered permanent disability to the extent of 3%, therefore, compensation for permanent disability/loss of income is liable to be enhanced.

Counsel representing the insurance company has supported the award with the submission that the Tribunal on a detailed consideration of the matter has assessed just and reasonable compensation, therefore, intervention in appeal is not warranted.

The Tribunal has awarded an amount of Rs.11,000/- for medical expenses. Counsel for the appellant has fairly conceded that all the bills/receipts produced on record in regard to medical expenses have been reimbursed by the Tribunal. Accordingly, there is no justification for enhancement of compensation qua medical expenses.

The victim suffered fracture of left leg as well as left shoulder. He remained hospitalized for a period of one month. The Tribunal has awarded Rs.30,000/- for pain and sufferings. The disability suffered by the claimant is only to the extent of 3%. Under the circumstances, compensation for pain and sufferings awarded by the Tribunal is adequate.

The Tribunal has awarded an amount of Rs.6,000/- for permanent disability to the extent of 3% @ Rs.2,000/- per percent. To prove disability and disability certificate Ex.P3, Dr. Arvind Jindal, Ortho Surgeon, Government Hospital, Gurugram was examined. In the concluding lines of cross-examination, he has deposed that disability pertains to a particular limb and not that of whole body. It can be managed by further physiotherapy and treatment. There is nothing in the statement of Dr. Arvind Jindal that nature and extent of disability suffered by the claimant

would create any hindrance in claimant's avocation as Mason. The claimant has not examined his treating doctor to say something in the matter. As such, no increase in compensation qua disability assessed by the Tribunal is justified.

The Tribunal has assessed an amount of Rs.10,800/- for loss of income by taking into account wage at Rs.3,600/- per month. The claimant has categorically deposed that prior to the occurrence, he was working as Mason. His testimony finds corroboration from statement of PW5. The claimant remained hospitalized for a period of one month. He suffered fracture of left leg and shoulder. Taking into consideration period of treatment and recovery, the claimant shall be entitled to loss of income for a period of four months. At the relevant time, minimum wage for skilled worker was Rs.4,250/-. Accordingly, the claimant is awarded an amount of Rs.17,000/- for loss of income.

The Tribunal has awarded an amount of Rs.17,000/- (Rs.5,000/- for transportation, Rs.6,000/- for nutritious diet, Rs.6,000/- for attendant charges). In view of materials on record particularly nature of injuries sustained, claimant shall be entitled to an amount Rs.25,000/-for transportation, nutritious diet, attendant charges etc. The additional amount of Rs.14,200.00 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.

(Rekha Mittal)
Judge

04.09.2017
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No