

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

FAO-952-2012

Date of decision: 05.09.2017

Brij Mohan

.... Appellant

Versus

Krishan Kumar @ Krishan Chand and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr.R.N.Singal, Advocate
for respondent No.3.

Avneesh Jhingan, J.

Present appeal has been preferred by the claimants against the award dated 12.11.2010 passed by Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal').

The facts in this case are not in dispute. Brij Mohan was hit near Himalaya Cold Storage, G.T.Road, Bye-Pass, Karnal by a motorcycle bearing registration No.HR-05-L-0843 on 23.10.2004. As a result of the accident, Brij Mohan suffered multiple injuries including head injury. The claim was filed under Section 163-A of Motor Vehicle Act, 1988 by the injured through his mother as the injured was of unsound mind at that time.

The Tribunal after considering the evidence, awarded a sum of Rs.2,50,000/-towards medical expenses, which was the actual expenses

incurred and for which Ex.P41 to Ex.P183 were produced before the Tribunal. The Tribunal further awarded a sum of Rs.1 lakh for the injuries suffered.

Now the only issue is involved regarding enhancement of the compensation amount.

I have heard the learned counsel for the parties and have perused the paperbook with their able assistance.

Learned counsel for the appellant argued that the injured was hospitalised in Civil Hospital, Karnal and thereafter he remained admitted in L.L.R.M. Medical College and SVBP Hospital, Meerut. He further contended that the nature of the injury was such that he remained in comma and is not able to lead a normal life. Therefore, the amount awarded is very meager.

Learned counsel for the respondent-Insurance Company has argued that the claim petition was filed under Section 163-A of Motor Vehicle Act, 1988, therefore, the Tribunal can not go beyond what is provided in IInd Schedule to the Motor Vehicles Act, 1988.

Admittedly, before the Tribunal the income of the injured was not quantified rather this issue was not dealt at all. The Tribunal, even when applying IInd Schedule of the Act, should have granted loss of income for actual period of disablement not exceeding 52 weeks. Dr.V.K.Goel, Professor and Head, Department of Medicines, appeared as PW6 before the Tribunal and he deposed that this claimant was admitted in L.L.R.M. Medical College and SVBP Hospital, Meerut on 11.12.2004 and was

discharged on 04.01.2005 with final diagnosis of post head injury syndrome, sequelae presenting with parkinsonian and cerebellar involvement. This diagnosis is confirmed by MRI brain.

After going through this statement, it is clear that the injured was not able to work for a very long period. The claimant, even till date, is not able to lead a normal life. Since in IInd Schedule the maximum annual income can be taken as Rs.40,000/- and loss of income beyond 52 weeks cannot be granted.

Taking into the facts and circumstances of the case, it is deemed fit that the injured is awarded a compensation of another Rs.40,000/- as loss of his income for 52 weeks. The award dated 12.11.2010 is modified to the extent that the total compensation Rs.3,50,000/- is enhanced to Rs.3,90,000/-.

The enhanced amount of compensation shall be given to the claimant along with interest 6% per annum from the date of filing of claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

05.09.2017

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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes