IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1025 of 2014 (O&M)
Date of Decision: August 24, 2017

Kuldeep Singh ...Appellant

Versus

P.R.T.C., Bathinda and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Arvind Chauhan, Advocate for
Mr.Som Nath Sharma, Advocate for the appellant.

Mr.Amrinder Singh Sidhu, Advocate for
P.R.T.C. – respondent No.1.

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HARINDER SINGH SIDHU, J.

Kuldeep Singh, the appellant, met with an accident on 12.9.2010 involving his motorcycle No.PB-29D-7620 and bus bearing No.PB-11Y-1984 of PRTC, Bathinda, in the area of Malsiha Kalan Drain, Police Station Zira. He sustained serious injuries in the accident. The accident was alleged to be caused due to rash and negligent driving of the Bus by Partap Singh – respondent No.2 and an FIR was also registered regarding the accident.

The appellant along with his wife, three children and the aged parents filed claim petition under Section 166 of the Motor Vehicles Act before Motor Accident Claims Tribunal, Ferozepur (for short 'the Tribunal'). The Tribunal dismissed the claim of the wife, three children and the parents of the appellant rightly as only the injured appellant would be entitled to file claim and receive compensation in respect of the injuries sustained by him.

In order to determine the future loss of income to the appellant because of the injuries sustained in the accident, the Tribunal assessed his income at Rs.5000/- treating him to be a labourer, deducted 1/3rd towards his personal living expenses and applied multiplier of 15 [(5000x12)-1/3]x15 = 6,00,000/-. However, since the appellant has suffered 50% disability, the loss of future income was also assessed at half of that amount i.e. Rs.3,00,000/-. Further, in view of its finding that the accident was due to the contributory negligence of the drivers of both the vehicles (bus and the motorcycle), the appellant was held entitled to 50% of this amount i.e., Rs.1,50,000/- as loss of future income.

The following compensation was awarded with interest:-

(A) PECUNIARY COMPENSATION	**Rupees**
(1) Amount spent on medical treatment	2,21,000/-
(2) Amount spent on special diet	0,10,000/-
(3) Expenses qua conveyance and services of attendants	0,05,000/-
(B) NON PECUNIARY COMPENSATION	
(1) For physical pain and mental agony	0,05,000/-
(C) COMPENSATION QUA LOSS OF FUTURE INCOME	1,50,000/-
GRAND TOTAL	3,91,000/-

Feeling dissatisfied with the quantum of compensation, the claimant has filed the instant appeal.

The factum of the accident, involvement of the vehicle and liability to pay the compensation are not in dispute.

The grievance of the appellant is that since the compensation is payable on account of injuries to him, the deduction of $1/3^{rd}$ towards his personal living expenses could not be made. It is also contended that very meagre amount under the head of 'physical pain and mental agony' has been awarded and no separate amount for the 'loss of amenities of life' has been granted.

Having heard Ld. Counsel for the parties and going through the paper-book with their assistance, I find merit in the submissions made on behalf of the claimant/ appellant.

So far as the deduction of $1/3^{rd}$ from the income towards the personal expenses of the claimant is concerned, there is no justification for such deduction while assessing the loss. The claimant has survived the unfortunate accident and his personal expenses subsist. It is not a case where the loss of dependency is to be assessed, rather here, the loss of future earnings to the appellant is to be determined.

After the accident, the claimant-injured was taken to Kalra Hospital, Makhu, from where he was referrred to Guru Ram Dass Hospital, Amritsar for treatment. Dr.Gagan Khanna, MS Ortho Assistant Professor, Department of Orthopedic, Guru Ram Dass Institute of Medical Science and Research while appearing as CW3 stated that on 12.9.2010, the claimant was admitted as patient due to the injuries suffered in a road side accident. He was having head injury, a fracture of both bone left forearm with fracture of thigh bone both sides, fracture of wrist right side. He was operated on 8.10.2010 for left forearm and right thigh bone, and discharged on 29.10.2010. This witness also proved the medical bills Ex.C-2 to C-18. Ex.C-219, the disability certificate of the claimant was also brought on record, whereby, the disability has been assessed at 50% and it has been mentioned that the patient suffered from Post Traumatic stiffness of left knee with total loss of range of motion at left knee with parietal foot drop and left side weakness of working of left quadriceps of calf muscles. He is declared physically disabled and his condition is non-progressive.

It has come on record that the claimant remained admitted from 12.9.2010 to 29.10.2010 i.e. for 47 days due to multiple fractures including left forearm, thigh bone both sides, wrist right side as also head injury. He is rendered disabled to the extent of 50% because of total loss of range of motion of left knee with parietal foot drop and other injuries.

In **Govind Yadav vs. The New India Insurance Company Limited, 2011(10) SCC 683**, the Hon'ble Supreme Court elaborated on the principles for grant of compensation in personal injury cases and also outlined the heads, under which the compensation is to be awarded, as under:-

> "*14. In **Raj Kumar v. Ajay Kumar 2011(2) R.C.R.(Civil) 101 : 2011(1) Recent Apex Judgements (R.A.J.) 571 : 2010(3) AICJ 453 : (2011) 1 SCC 343,** the Court considered some of the precedents and held:*
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> > *"The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.*
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> *The heads under which compensation is awarded in personal injury cases are the following:*
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> > *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). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence 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."*
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> *(emphasis supplied)*
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> *15. In our view, the principles laid down in* ***Arvind Kumar Mishra v. New India Assurance Company Ltd.*** *(supra) and* ***Raj Kumar v. Ajay Kumar*** *(supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."*

The Hon'ble Supreme Court in **Subulaxmi vs. M.D.,Tamil Nadu State Transport Corporation and another, 2012(10) SC 177** and **Manickam vs. Metropolitan Transport Corp. Ltd., 2013 AIR (SC) 2629** has held that an injured is entitled to separate amount for permanent disability apart from compensation under the head `loss of earning' or `earning capacity'.

The appellant-claimant was stated to be self-employed Television Mechanic though the Tribunal has assessed his income as that of a labourer @ Rs. 5000/- per month as a labourer. He was 36 years of age at the time of accident. Hence he would be entitled to 50% increase thereon on account of future prospects as laid down in **Santosh Devi Vs. National Insurance company Ltd. & others, 2012(6) SCC 421** and **Rajesh and Others Vs. Rajbir Singh and Others 2013(9) SCC 54**.

In view of above, the appellant is held entitled to the following compensation :-

Heads	**Amount** (in Rupees)
Amount spent on medical treatment *(as awarded by the Tribunal)*	2,21,000/-
Amount spent on special diet *(as awarded by the Tribunal)*	10,000/-
Expenses qua conveyance and services of attendants	20,000/-
For physical pain and mental agony	50,000/-
Loss of Future Earning : [5000+(5000x50/100)] = Rs. 7500/- p.m.. 50% is to deducted thereform as disability is to the extent of 50% only = Rs.3750/- per month Total loss of future earning (applying the multiplier of 15) (3750x12x15)= Rs.6,75,000/- Amount payable after deduction of 50% thereof on account of contributory negligence = Rs. 3,37,500/-	3,37,500/-
Compensation for permanent disability	1,00,000/-
Loss of amenities	50,000/-
GRAND TOTAL	**7,88,500/-**

Accordingly, the appeal is partly allowed and the Award of the Tribunal is modified to the extent that the appellant is held entitled to total compensation of Rs.7,88,500/-, that is, Rs.3,97,500/- (788500-391000) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

The respondent – PRTC is directed to disburse the amount to the appellant within three months of receipt of certified copy of this judgment and submit compliance report before the Tribunal.

August 24, 2017 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes / No
Whether Reportable	Yes / No