

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

FAO No. 1219 of 2014

Date of decision:- 27.09.2017

Priyanka Chdiar

...Appellant

Versus

Gurdev Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Manjuli Joshi, Advocate
for the appellant

Mr. S.S. Momi, Advocate
for respondent No. 1

Mr. Neeraj Khanna, Advocate and
Mr. Ravinder Arora, Advocate
for respondent No. 2

RITU BAHRI J.

1. The present appeal has been preferred by the injured-appellant (for short 'the appellant'), against award dated 11.07.2013 passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') to the tune of Rs.09,63,166/-.

FACTS NOT IN DISPUTE

2. On 01.10.2007, appellant (08 years of age) was standing on a road side when vehicle Turbo Eicher make bearing No. HR-65-1224 driven by Gurdev Singh s/o Bhulla Singh came from the side of Kully rashly, negligently, crushed her right foot and stopped after about 10 feet. Kulwinder Kaur (mother of the appellant) was an eye witness of the accident besides Smt. Kvita Chdiar and Vijay Kumar on whose statement, F.I.R No. 418 dated 01.10.2007 u/s 279/337 IPC was registered in P.S. Sadar Mandi, District Mandi. She was taken to Government Hospital,

Mandi. As per doctor, she suffered permanent disability to the extent of 40%.

COMPENSATION ASSESSED BY MACT

3. The learned Tribunal assessed the salary of the claimant to the tune of Rs.3500/- per month and she was awarded Rs.3,02,400/- towards loss of future earnings. Rs.1,50,000/- was awarded towards pain and suffering, Rs.1,50,000/- towards loss of amenities, Rs.3000/- towards transportation charges, Rs.6000 towards special diet. Rs.1,10,000/- towards silicon cosmetic partial foot and Rs.2,20,000/- towards future expenses on artificial shoe. Rs.21,766/- towards medical bills.

4. The learned counsel for the claimant-appellant contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced, in view of the judgment of Hon'ble the Supreme Court of India in a case of ***Govind Yadav vs. The New India Insurance Co. Ltd., 2011(4) RCR (Civil) 817*** wherein a claimant who was working as a helper met with an accident and his leg was amputated resulting in 70% permanent disability. Since, he could not prove his salary, his salary was taken at Rs.3000 per month and his notional annual income comes to Rs 36000/- and loss of earning on account of 70% permanent disability came at Rs.25,200/- per annum and multiplier of 18 was applied. Further Rs. 2 lacs was awarded towards future treatment and Rs.1.50 lacs towards pain and suffering and trauma and further Rs.1.50 lacs towards loss of amenities. In para 17, 18, 19 and 20 of the judgment, it has been observed as under:-

“17. A brief recapitulation of the facts shows that in the petition filed by him for award of compensation, the appellant had pleaded that at

the time of accident he was working as Helper and was getting salary of Rs.4,000/- per month. The Tribunal discarded his claim on the premise that no evidence was produced by him to prove the factum of employment and payment of salary by the employer. The Tribunal then proceeded to determine the amount of compensation in lieu of loss of earning by assuming the appellant's income to be Rs.15,000/- per annum. On his part, the learned Single Judge of the High Court assumed that while working as a Cleaner, the appellant may have been earning Rs.2,000/- per month and accordingly assessed the compensation under the first head. Unfortunately, both the Tribunal and the High Court overlooked that at the relevant time minimum wages payable to a worker were Rs.3,000/- per month. Therefore, in the absence of other cogent evidence, the Tribunal and the High Court should have determined the amount of compensation in lieu of loss of earning by taking the appellant's notional annual income as Rs.36,000/- and the loss of earning on account of 70% permanent disability as Rs.25,200/- per annum.

*The application of multiplier of 17 by the Tribunal, which was approved by the High Court will have to be treated as erroneous in view of the judgment in **Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121**. In para 42 of that judgment, the Court has indicated that if the age of the victim of an accident is 24 years, then the appropriate multiplier would be 18. By applying that multiplier, we hold that the compensation payable to the appellant in lieu of the loss of earning would be Rs.4,53,600/-.*

18. The award made by the Tribunal for future medical expenses was

wholly inadequate. In Nagappa v. Gurudayal Singh (2003) 2 SCC 274, this Court considered whether it was permissible to award compensation in installments or recurring compensation to meet the future medical expenses of the victim. After noticing the judgment of M. Jagannadha Rao, J. (as he then was) in P. Satyanarayana v. I. Babu Rajendra Prasad 1988 ACJ 88 (AP), the judgment of the Division Bench of the Kerala High Court in Valiyakathodi Mohd. Koya v. Ayyappankadu Ramamoorthi Mohan 1991 ACJ 140 (Kerala), this Court observed:

“In this view of the matter, in our view, it would be difficult to hold that for future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment, the court has to arrive at a reasonable estimate on the basis of the evidence brought on record. In the present case, it has been pointed out that for replacing the artificial leg every two to three years, the appellant would be required to have some sort of operation and also change the artificial leg. At that time, the estimated expenses for this were Rs 18,000 and the High Court has awarded the said amount. For change of the artificial leg every two or three years no compensation is awarded. Considering this aspect, if Rs one lakh is awarded as an additional compensation, the appellant would be in a position to meet the said expenses from the interest of the said amount.” After the aforesaid judgment, the cost of living as also the cost of artificial limbs and expenses likely to be incurred for periodical replacement of such limb has substantially increased. Therefore, it will be just and proper to award a sum of

Rs.2,00,000/- to the appellant for future treatment. If this amount is deposited in fixed deposit, the interest accruing on it will take care of the cost of artificial limb, fees of the doctor and other ancillary expenses.

19. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the Tribunals and the Courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the Tribunals and the Courts should make a broad guess for the purpose of fixing the amount of compensation. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs.1,50,000/- in lieu of pain, suffering and trauma caused due to the amputation of leg.

20. The compensation awarded by the Tribunal for the loss of amenities was also meager. It can only be a matter of imagination as to how the appellant will have to live for the rest of life with one artificial leg. The appellant can be expected to live for at least 50 years. During this period he will not be able to live like normal human being and will not be able to enjoy the life. The prospects of

his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs.1,50,000/- for the loss of amenities and enjoyment of life.”

5. Learned counsel for the appellant has further referred to judgment of Hon'ble the Supreme Court of India in a case of **V. Mekala vs. M. Malathi and anr, 2014(11) SCC 178** wherein in a motor accident, the victim was a student and bones of her both legs fractured. Hon'ble the Supreme Court assessed her notional monthly income at Rs.10,000/- and awarded her 50% future prospects. She was awarded Rs.3 lacs under the head Loss of enjoyment of life and marriage prospects. She was awarded Rs. 2 lacs under the head pain and suffering and Rs. 2 lacs under the head loss of amenity and attendant charges.

6. Reference has further been made to a judgment of this Court in a case of **Priyanka Bhutani vs. Sukh Pal Singh and others, 2011(2) RCR Civil 586** wherein a girl child suffered brain injuries on her head. The Tribunal awarded Rs.6,32,000 but this Court enhanced the compensation amount to Rs.44.65.000/-. Her income had been assessed at Rs.10000 per month and she was awarded Rs.21,60,000/- under the head loss of earning capacity. She was awarded Rs.5,00,000/- towards loss of amenities. Rs.1 lac was awarded towards loss of prospect of marriage and Rs.1 lac was awarded towards pain and suffering.

7. Reference has been made judgment of Hon'ble the Supreme Court of India in a case of **Dinesh Singh vs. Bajaj Allianz General Insurance Co. Ltd, 2014 (3) RCR Civil 123** wherein Hon'ble the Supreme Court was dealing with a case of 24 year old victim, who met a motor accident. His one leg amputated. He suffered 60% permanent disability. He

was awarded Rs.1,20,000/- towards pain and agony, Rs.3,10,000/- towards medical expenditure. Rs.3,08,160 towards loss of income, Rs.15,72,000/- towards loss of future income, Rs.3,50,000/- towards loss of happiness and loss of amenities, Rs.1 lacs towards loss of marriage prospects, Rs.5,50,000/- towards future medical expenses.

8. On the other hand, learned counsel for the Insurance Company has opposed the prayer made by the appellant for enhancement of compensation.

9. I have heard learned counsel for the appellant and perused the record.

RE-ASSESSED COMPENSATION

10. The fact that the appellant suffered injuries in the accident is not in dispute. It is also not in dispute that the appellant was 08 year old at the time of accident. The appellant had suffered 40% permanent disability, as admitted by the parties.

11. Reference can be made to the judgment of Hon'ble the Supreme Court of India in the case of ***Syed Sadiq etc. vs. Divisional Manager, United India Ins. Co. 2014(1) RCR (Civil) 765***, where the accident victim was aged 24 years and was vegetable vendor. It was held that a vegetable vendor is reasonably capable of earning Rs.6500/- per month with 50% increment in the future prospect of income. Multiplier of 18 was applied for calculating the amount of compensation

12. In the facts of the present case, the fact which is not dispute that the right foot of the appellant was seriously injured and completely destroyed in the accident. The foot had to be amputated resulting in 40% permanent disability.

13. Applying the ratio of the above mentioned judgments, the compensation is re-assessed as under:-

HEAD	COMPENSATION AMOUNT
Salary (Notional income)	Rs.10000 per month
Annual Salary	Rs.10000X12=1,20,000/-
Future Prospect 50%	Rs.120000 + Rs.60000 = Rs.1,80,000/-
Loss on account of disability	180000 X 40%=Rs72,000/-
Multiplier of 18 (age 08 years)	72000 X18=12,96,000/-
Medical Expenses	Rs.21,766/-
Special Diet	Rs.12000/-
Transportation Charges	Rs.6000/-
Attendant Charges	Rs.10000/-
Future treatment	Rs.2,00,000/-
Pain and sufferings	Rs.2,00,000/-
Loss of amenities	Rs.2,00,000/-
Loss of enjoyment of life and marriage prospects	Rs.5,00,000/-
Silicon cosmetic partial foot	Rs.2,00,000/-
Future expenses on artificial shoe	Rs.3,00,000/-
Total compensation awarded:-	Rs.29,45,766/-
Enhanced amount of compensation	29,45,766-09,63,166=Rs.19,82,600/- rounded off to Rs.19,82,000/-

14. The enhanced amount of compensation of Rs.19,82,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of *Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539*. Remaining conditions of disbursal of amount shall remain unaltered.

15. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

September 27, 2017

G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No