

FAO No. 1693 of 2015

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1693 of 2015

DATE OF DECISION:03.02.2017

Smt. Santosh

.....Appellant

Versus

Surender and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Parminder Singh, Advocate
for the appellant.

Mr. R.K. Agnihotri, Advocate
for respondent No.2.

Mr. Punit Jain, Advocate
for respondent No.3.

DAYA CHAUDHARY, J.

The present appeal has been filed by the claimant for modification/enhancement of compensation awarded by Motor Accident Claims Tribunal, Karnal (for short 'the Tribunal') vide award dated 10.11.2014 on the ground that less compensation has been granted on account of loss of income during treatment, whereas, the claimant-injured remained admitted in the hospital for a period of six months. It is also prayed that neither attendant charges have been awarded nor any amount has been paid towards special diet, transportation, pain and suffering and even the interest awarded is also very less.

Briefly, the facts of the case as made out in the present appeal

are that on 8.9.2011, the claimant-appellant Smt. Santosh alongwith her daughters, namely, Sunita, Vidya Devi and Bishan Devi was returning to her village Mohidinpur, in a three-wheeler bearing registration No. HR-45-6449, which was being driven in a very rash and negligent manner, got struck with a truck coming from the opposite direction and resultantly the claimant received multiple and grievous injuries. She was admitted in Civil Hospital, Karnal by one Ramesh Kumar and regained consciousness after two days i.e. 10.9.2011. On the same day, FIR No. 237 under Sections 279 and 338 IPC was registered on her statement at Police Station Kunjpura against driver of the offending vehicle. In the claim petition, the complainant-appellant pleaded that she was 45 years of age. Her monthly income was ₹ 12000/- per month and she had spent ₹ 2,00,000/- on her treatment.

The claim petition was contested by the respondents on the ground that the claim petition was not maintainable as the accident took place due to rash and negligent driving of truck driver. The driver of the three-wheeler had been falsely implicated. Respondent No.3-Insurance Company also contested the claim petition but inspite of availing many opportunities, no written statement was filed and ultimately the defence of Insurance Company was struck off under Section 35 B of Code of Criminal Procedure, 1908. None appeared for respondent No.3-Insurance Company and it was proceeded ex parte.

From the pleading of the parties, following issues were framed by the Tribunal:-

- (1) Whether the accident in question took place due to rash and negligent driving of three-wheeler No. HR-45-6449 by

respondent No.1? OPP

(2) Whether the claimant is entitled to any compensation. If so,

how much and from whom?

(3) Relief.

The Tribunal after appreciating the evidence allowed the claim petition and awarded ₹ 50,000/- as compensation to the claimant towards hospitalization and medicines and ₹ 10,000/- as loss of income during treatment by considering the age of claimant as 55 years. She was also awarded ₹ 1,18,800 towards loss of future earnings by considering the permanent disability of 30%. She was awarded ₹ 2,02,800/- in total as compensation against different heads. The respondents were held liable jointly and severally to pay the amount of compensation along with interest at the rate of 7.5 % per annum from the date of filing of claim petition till its realization. It was also mentioned in the award that the first liability to pay the amount of compensation shall be of insurance company.

Learned counsel for the appellant submits that the compensation awarded to the appellant is on the lower side under all the heads as neither the total permanent disability has been taken into consideration nor adequate compensation has been awarded towards other heads and as such the award passed by the Tribunal is liable to be modified.

Learned counsel for respondent-Insurance Company has opposed the submissions made by learned counsel for the appellant. He submits that the defence of Insurance Company was struck off and, therefore, award of compensation cannot be said to be on the lower side. Learned counsel further submits that a detailed investigation was conducted

by the police and it was found in the investigation that the accident took place due to rash and negligent driving of the three-wheeler. Learned counsel also submits that the claimant was a household lady and was not earning anything and the amount awarded by the Tribunal cannot be said to be on the lesser side.

Heard the arguments advanced by learned counsel for the parties and have also gone through the award passed by the Tribunal.

The facts regarding travelling of the claimant in three-wheeler, occurrence of accident, hospitalization of the claimant and ultimately registration of FIR are also not disputed. The age of the appellant and compensation amount awarded by the Tribunal are not disputed. In the claim petition, the claimant pleaded to be of 45 years of age and admitted that her monthly income is to the tune of ₹ 12,000/- per annum. She also pleaded that she had spent an amount of ₹ 2 lacs on her treatment. Claimant-Santosh herself appeared in the witness box as PW2 and tendered in evidence her affidavit Ex. PW-2/A, wherein, she deposed that on 8.9.2011, she was travelling in three-wheeler alongwith her daughters Sunita, Vidha Devi and Bishan Devi, which was being driven by respondent No.1 in a rash and negligent manner due to which it got struck by the side of the truck and she received multiple injuries. Claimant examined PW-3 Ramesh, who was also travelling in three-wheeler and corroborated the statement of the claimant. The driver of the three-wheeler i.e. respondent No.1 did not appear in the witness box to rebut the evidence led by the claimant. FIR was registered and investigation was completed by the police, wherein, it was found that the accident took place due to rash and negligent driving of the three-wheeler, who is stated to be facing trial after

lodging of the FIR. It has been held by the Tribunal that driver of three-wheeler was the best witness to explain as to in what manner the accident took place but he was not examined and by taking adverse influence against him, it was presumed that the accident took place due to rash and negligent driving of the three-wheeler. The Tribunal by relying upon the judgment in the case of **Bhagwani Devi Vs. Krishan Kumar Saini and others** 1986 ACJ 331, wherein, it has been held that the cause of accident can be best explained by the drivers concerned and if they are kept away from the witness box without sound reasons, it must indeed be construed as a telling circumstance against the respondents, allowed the claim petition and awarded ₹2,02,800/- as compensation to the claimant.

The issue regarding services of homemaker/house wife and nature of domestic duties was before Hon'ble the Apex Court in the case of **Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Khumbhar and others** 2015 (2) SCC (Civil) 581, wherein, the amount of compensation awarded to housemaker was found to be on the lower side and award passed by the Tribunal was modified by enhancing the amount of compensation. Another judgment of Hon'ble the Apex Court in the case of **Arun Kumar Agrawal and another Vs. National Insurance Company Limited and others** 2010 (3) RCR (Civil) 827 was relied upon, wherein, services of homemaker and domestic services were recognized in terms of the money. The relevant portion of the said judgment is reproduced as under:-

“The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are

commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.

Household work performed by women throughout India is more than US \$612.8 billion per year (*Evangelical Social Action Forum and Health Bridge*, p. 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing "just compensation".

Certain other judgments where amount of compensation was enhanced were also relied upon and are **Nagappa Vs. Gurudayal Singh and others** 2003 (1) RCR (Civil) 258, **Oriental Insurance Company Ltd. Vs. Mohd. Nasir and another** 2009 (3) RCR (Civil) 849 and **Ningamma and another Vs. United India Insurance Company Ltd.** 2009 (3) RCR

(Civil) 435.

In the present case also, the income of the injured has not been taken into consideration while awarding compensation and the amount awarded by the Tribunal is on the lower side. There is no dispute with regard to grant of loss of income during treatment i.e. ₹10,000/-. An amount of ₹50,000/- has been awarded towards medicines, which cannot be interfered with as said amount has been awarded on the basis of bills produced by the injured. However, no amount has been awarded towards attendant charges, whereas, services of attendant were availed. During the period of admission in the hospital, only an amount of ₹3000/- has been awarded towards special diet. Similarly an amount of ₹1000/- has been awarded towards transportation, whereas, the claimant not only remained admitted in the hospital but also visited the hospital subsequently for follow up treatment. There is no dispute with regard to loss of future earnings as the same has been awarded by considering the disability of the injured to the extent of 30%.

Keeping in view the facts and circumstances of the case as discussed above, the impugned award passed by the tribunal is modified to the extent that the amount of compensation awarded towards special diet is increased from ₹3000/- to ₹10,000/-, amount of transportation is increased from ₹1000/- to ₹10,000/- and amount towards pain and suffering is increased from ₹20,000/- to ₹30,000/-. The respondents are directed to pay the said amount jointly and severally along with interest at the rate of 7.5% per annum from the date of filing of claim petition till its realization and the first liability shall be that of the Insurance Company. However, the respondent-Insurance Company shall have the recovering rights. The

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amount of compensation be paid to the claimant within a period of two months from the date of receipt of copy of the order.

February 03, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes