

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

FAO No.4207 of 2014

Date of Decision:15.12.2017

Parmod Singh

... Appellant

Vs.

Dhiren and another

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Naveen Batra, Advocate for the appellant.

Mr. Amit Jaiswal, Advocate for respondent No.2.

AVNEESH JHINGAN J. (Oral)

The present appeal has been filed against award dated 01.08.2013 passed by the Motor Accident Claims Tribunal, Hoshiarpur (for short "the Tribunal").

Parmod Singh aged 44 years who was working as a cleaner on Truck No.PB07-R-7994 met with an accident on 3.1.2008. The truck was struck by a tanker bearing registration No.MH04-CG-2888 which was being driven rashly and negligently. As a result of the accident, appellant suffered injuries resulting into 50% disability. FIR No.3 dated 03.01.2008 was registered.

The claim petition under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") was filed. The Tribunal awarded a sum of ₹ 2,00,000/-. The said amount includes ₹ 70,000/- for medical expenses, ₹ 1,00,000/- for permanent disability and ₹ 30,000/- for pain and suffering. The present appeal has been filed for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper-book and the record.

Learned counsel for the appellant argued that the appellant was

working as a cleaner in the Truck. He has suffered 50% disability qua left lower limb, he had suffered fracture of knee cap and injuries on the head. He argued that he was operated upon and his fracture was treated by Nailing. His contention is that due to injuries sustained, he was not able to do work of cleaner. He further argued that the Learned Tribunal had not awarded any compensation under various pecuniary and non-pecuniary heads. He contended that no loss of income during the period of treatment has been awarded. His grievance is that instead of granting ₹ 1,00,000/- compensation, multiplier method should have been applied. Learned counsel for the appellant argued that the Tribunal had not awarded any interest, it is only the penal interest which had been awarded.

Learned counsel for respondent-2-Insurance Company contended that there is no scope for enhancement to the compensation as awarded by the Tribunal. He further argued that there is no evidence to substantiate the evidence that some of the expenses were incurred under the various heads like transportation etc. He argued that there is no proof that after the accident, appellant lost his job.

Legal position with regard to the injuries case is that Hon'ble the Apex Court in the case of **G. Ravindranath @ R. Chowdary v. E. Srinivas and another**; 2013 (12) SCC 455 held that in case of non fatal injury pecuniary and non pecuniary damages should be compensated.

Endeavour of the Tribunal and the Court should compensate the injured to the extent that he should be put back to his original position as far as money is concerned.

The facts which have not been disputed by the parties are that appellant suffered injuries in an accident and suffered 50% disability qua

the lower limb. It has also not been disputed that he was working as a cleaner in the Truck.

Hon'ble the Apex Court in the case of **Raj Kumar** v. **Ajay Kumar**; 2011 (1) SCC 343 has held that percentage qua the lower limb should not be adopted as it is to calculate the loss of future earning. Further Hon'ble the Apex Court instead of remanding the matter back took 45% disability qua the lower limb as 20% qua the whole body.

In the present case since there is no positive evidence on record to establish functional disability, taking into account the above cited decision and keeping in view the fact that appellant was working as a cleaner in the truck and because of injuries of hip joint and fracture of knee his job would have been badly affected. In such circumstances, it would be appropriate to take into account 50% disability qua lower limb as 30% qua whole body. Since the earning of the appellant was not established, the minimum wages prevalent at the relevant point of time are being considered to calculate the compensation. Monthly wages in the State of Punjab during the period January 2008 was ₹ 2620/-. Hence, the compensation for permanent disability is calculated as: ₹ 2620/- X 30% X 12 X 14 = ₹ 1,32,048/-.

The Tribunal while awarding the compensation for pain and suffering had not considered the fact that the appellant was hospitalized for 20 days and underwent surgery. The pain and suffering does not involve only the physical pain but trauma, mental agony and the harassment suffered. In case of fractures, surgery and hospitalization, there cannot be any dispute that there was requirement of attendant, special diet and transportation was required during the period of hospitalization and thereafter

also. The appellant was hospitalized and was suffering fractures. In such circumstances, it can safely be concluded that he was not able to work minimum for three months and thereafter also he would have been unable to earn for certain period to his full capacity. It has come on record that fractures were treated by nailing, such nails will have to be removed subsequently.

The contention raised by the learned counsel for the appellant that no interest was awarded deserves acceptance Under Section 171 of the Motor Vehicle Act, there is a statutory provision for awarding interest. The Tribunal has not even dealt with the said aspect.

Hon'ble the Apex Court in the case of **Dharampal and others** v. **U.P. State Road Transport Corporation**; 2008 (12) SCC 208 has held that interest to be awarded is statutory. Tribunal while awarding the compensation should separately deal with awarding of interest. In the present case, the Tribunal had given no finding for awarding interest. Claimants would be entitled to 6% interest on the original compensation as well as on the enhanced compensation from the date of filing of the claim petition till realization of the amount.

In view of the discussion and the case law cited above, compensation is recalculated as under:

<i>Description</i>	<i>Amount</i>
Medical Expenses	₹ 70,000/-
Permanent Disability	₹ 132048
Pain and suffering	₹ 50,000/-
Transportation	₹ 25,000/-
Attendant	₹ 20,000/-
Loss of earning Rs.15,000/- + Special Diet Rs.10,000/-	₹ 25,000/-
Future treatment and Surgery	₹ 20,000/-
Total	₹ 342048/-

Accordingly, the award dated 01.08.2013 is modified to the extent that amount of ₹ 2,00,000/- awarded by the Tribunal is enhanced to ₹ 3,42,048/-.

The appellant would be entitled to interest @ 6% per annum on original amount awarded by the Tribunal and on enhanced amount from the date of filing of the claim petition till realization of the amount.

Consequently, appeal is partly allowed in the above said terms.

15.12.2017
rajeev

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No