

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

**F.A.O No. 2290 of 2016 (O&M)
Date of Decision:- 05.12.2017**

Sandeep Kumar

....Appellant

Versus

Pawan Kumar & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Subhash Godara, Advocate, for
Mr. S.S. Dinarpur, Advocate, for the appellant.

Ms. Vandana Malhotra, Advocate, for respondent No.3.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 24.12.2015 passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, 'the Tribunal').

The appellant was going to his duty on his motor-cycle bearing registration No. HR-02Z-2521. The said motor-cycle was hit by a rashly and negligently driven bus bearing registration No. HR-58A-8248. As a result of the accident he suffered serious injuries and was taken to Civil Hospital, Jagadhari and thereafter he was taken to Nandra Hospital, Ambala Cantt. FIR No. 64 dated 18.04.2014 was registered at Police Station Chhapper.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short,'the Act') was filed. The Tribunal after appreciating the facts and considering the evidence produced awarded a sum of Rs.3,67,804/-, which was rounded off to Rs.3,68,000/- along with interest @9% per annum.

The present appeal has been filed for enhancement of the compensation.

I have heard learned counsel for the parties, perused the paper-book and the relevant documents produced by the parties.

Learned counsel for the appellant argued that though the Tribunal applied the multiplier method and considered 20% disability qua limb as 10% qua whole body, his grievance is that the salary has been taken as Rs.6000/- whereas he was earning Rs.7802/-, which was proved by Exhibit P/1. His contention is that compensation for disability should be calculated considering the salary as Rs.7802/- per month. He further contended that the appellant suffered closed fracture basal neck of femur right side and severally comminuted ipsilateral fracture patella. He was operated upon 16.04.2014 under spinal anesthesia a closed reduction and internal fixation of fracture neck femur with DHS was done. His patella was fixed with mild circumferential wire. His further grievance is that the amounts awarded under various heads are on lower side.

Learned counsel for the insurance company argued that it has not been proved on record that how the permanent disability suffered by him has affected his functional abilities. He defended the award and contended that a just and equitable compensation has been awarded and no further enhancement is called for.

The contention raised by the learned counsel for the appellant regarding the salary part deserves acceptance. The salary was duly proved and it was not the take home salary which was to be considered, but the gross salary which should have been taken into consideration by the Tribunal. Since the percentage of disability qua whole body has not been

disputed and the multiplier applied is also not in dispute, the disability compensation is calculated as under:-

Rs.7802/- is rounded off to Rs.7800/-

10% disability qua whole body = 780 x 12 x 17 = Rs.1,59,120/-

The appellant was working as a mechanic. With his restricted hip movement and leg movement, he would be suffering for his entire life. He was hospitalised for 10 days. These facts show that he would have needed transportation, special diet and attendant not only during the period of hospitalisation, but thereafter also. With the type of injuries and surgeries he would not have been able to drive two wheelers for a long period. He was young man of 28 years. His amenities of life suffered because of his permanent disability. The Hon'ble Apex Court in **G.Ravindranath @ R. Chowdary Vs. E. Srinivas & Anr. 2013 (12) SCC 455** has held that in case of the non-fatal injuries both pecuniary and non-pecuniary damages should be compensated.

Keeping in view the facts and circumstances of the case and the law and the decision cited above, the amounts awarded by the Tribunal are as under:-

	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court.</i>
Treatment incl. Medicines, Hospitalisation	₹1,52,104/-	₹1,52,104/-
10% disability & future loss of work	₹1,22,400/-	₹1,59,120/-
Pain and sufferings	₹40,000/-	₹70,000/-
Transportation, Special diet, Future attendant charges etc.	₹20,000/-	₹45,000/-
Loss of amenities of life	₹30,000/-	₹40,000/-
Damage to the motorcycle	₹3300/-	₹3300/-
Total	₹3,67,804/-	₹4,69,524/-

Accordingly, the award dated 24.12.2015 is modified to the extent that amount awarded of ₹3,67,804/- is enhanced to ₹4,69,524/-.

The appellant shall be entitled to the interest on the enhanced amount along with interest @6% per annum from the date of filing of the claim petition till realisation.

The appeal is partly allowed.

December 05, 2017
tripti

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No