

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

F.A.O No. 5757 of 2013

Date of Decision:- 03.11.2017

Pardeep Kaur

.... Appellant

Versus

Hardeep Singh & Ors.

.... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Inderjit Sharma, Advocate, for the appellant.

Mr. Inderpal Singh Parmar, Advocate,
for respondent No.1.

Mr. D.P. Gupta, Advocate, for respondent.

AVNEESH JHINGAN, J. (Oral)

The appellant has filed the present appeal for enhancement of compensation awarded for the permanent disability by the Motor Accident Claims Tribunal, Ludhiana (for short, 'the Tribunal').

Pardeep Kaur aged 29 years met with motor vehicular accident on 06.08.2009. She was standing on the left side of Kachha portion of the road and she was hit by rashly and negligently driven bus bearing registration No. PB-10-AH-9717. As a result of the accident she suffered multiple grievous injuries and ultimately her left leg had to be amputated below knee. FIR No. 147 was registered on 07.08.2009.

Claim petition was filed under Section 166 of Motor Vehicles Act, 1988 (for short, 'the Act'). Before the Tribunal amongst other things permanent disability of 65% qua a limb was proved by Exhibit P/10. The

said certificate was proved by PW-10 Dr. Sudesh of Civil Hospital, Ludhiana.

The Tribunal after considering the witnesses and evidence awarded a sum of Rs.6,11,200/-. Out of the said amount awarded, Rs.3,81,200/- was for medical expenses.

I have heard learned counsel for the parties and perused the paper-book. The facts have not been disputed by the parties.

Learned counsel for the appellant argues that amount awarded by the Tribunal is on the lower side. He contends that no amount has been awarded for attendant, loss of social status and amount collectively awarded for pain and suffering, transportation, loss of amenities and loss of prospective of life is on the lower side. He further argues that the appellant was hospitalised from 06.08.2009 upto 14.09.2009.

The counsel for the respondent defends the award and resists enhancement of the compensation. He argues that medical bills have been taken care of. Permanent disability has been compensated by awarding Rs.1,30,000/- and Rs.1,00,000/- has been awarded keeping into consideration the various Heads.

The appellant was 29 years old married lady, who lost her leg in the accident. While awarding compensation in case of injury, the point is to be kept in consideration is that the claimant had done nothing wrong but is suffering because of wrong doer.

Hon'ble Apex Court in case of **Dixit Kumar & Anr Vs. Om Parkash Goel, 2017 AIR (SC) 2943** has held that it is not the percentage of disability qua the limb which is to be considered but it is the functional

disability which has to be taken into consideration.

Though the appellant may not have been able to prove to the satisfaction of the Tribunal about her earning capacity but a role as a house-wife is not disputed.

The Hon'ble Apex Court in *Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others, 2015 (4) SCC 237*, has held that the contribution of a house-maker cannot be underestimated and it is very difficult to equate her contribution in the monetary terms. The house-maker not only does the duties of a house-wife but also performs her matrimonial duties.

In the present case without her one leg her duties as a house-maker definitely would have been effected. Keeping in view the above decision the amount awarded for permanent disability of Rs.1,30,000/- is enhanced to Rs.2 lacs.

In case of amputation it is not a pain and suffering of one time rather a person has to lead her rest of the life with this pain and suffering. It is not only the physical pain and suffering, it is a loss of social status which is also there. In such circumstances while awarding the compensation a due consideration should be given to the loss of social status. Amount of Rs.50,000/- is awarded for loss of social status.

The amputation of leg, hospitalisation and the type of injury ensures that an attendant would have been required not only during the period of hospitalisation but thereafter also. A sum of Rs.30,000/- is awarded towards attendant.

The actual amount spent by the appellant for an artificial limb,

which was proved by Exhibit P/1 was reimbursed by the Tribunal. The Tribunal has not taken into consideration that the prosthesis has to be changed from time to time.

The Hon'ble Supreme Court in case **New India Assurance Co. Ltd. Vs. Gajender Yadav & Ors. 2017(3) RCR (Civil) 974** held in para No.9 as follows:-

“9. Towards the claim for change of artificial limb at least once in two years, we are of the view that it will be just and proper that a further amount of Rs.2,00,000/- (Rupees Two Lakhs) is awarded. These appeals are thus disposed of by holding that the claimant shall be entitled to a total compensation of Rs.23,26,835/- (Rupees Twenty Three Lakhs Twenty Six Thousand Eight Hundred and Thirty Five). The claimant shall also be entitled to interest at the rate of 8% from the date of the claim petition.”

In the above decision the amount was awarded by the Supreme Court for change of the artificial limb.

Keeping in view the facts of the present case and the law laid down in the above decision an amount of Rs.50,000/- is awarded for change of the artificial limb.

The award dated 01.05.2013 is modified to the extent that amount awarded of Rs.6,11,200/- is enhanced to Rs.8,11,200/- as discussed above.

The appellant would be entitled to enhanced amount along with

interest @6% per annum from the date of filing of claim petition till
realisation of the amount.

The appeal is partly allowed and disposed of accordingly.

November 03, 2017
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(AVNEESH JHINGAN)
JUDGE

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