

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 218

FAO No.5759 of 2013 (O & M)
Date of Decision: February 08, 2017

Kailash Rani

..... APPELLANT

VERSUS

Gurdeep Singh & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

PRESENT: - Mr. Saurabh Bhardwaj, Advocate, for the appellant.

None for respondent Nos.1 and 2.

Mr. Rajbir Singh, Advocate, for respondent No.3 –
Insurance Company.

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Jaspal Singh, J

1. Dis-satisfied with the inadequacy of compensation awarded by the Motor Accident Claims Tribunal, Kurukshetra (for short, 'Tribunal') vide its award dated January 31, 2013 on account of sustaining of injuries in a vehicular accident occurred on June 14, 2011 in the area of village Santokh Majra, District Kaithal involving Truck No.HR-46A-6663 driven by respondent No.1 in a rash and negligent manner, the appellant – claimant preferred the instant appeal.

2. The facts giving rise to the instant appeal are that on

Santokh Majra, District Kaithal, on motorcycle bearing registration No.HR-08E-5751 being driven by her husband Anil Kumar. At about 5:00 PM, when they crossed the Bus Stand of village Saunti, a truck bearing registration No.HR-46A-6663 came from Ladwa side at a very fast speed in a rash and negligent manner, struck against the motorcycle. Due to impact, both the occupants fell down and appellant sustained serious and grievous injuries. She was rushed to LNJP Hospital, Kurukshetra, from where, she was admitted to Anand Orthopaedic Centre, Kurukshetra. On account of injuries, she was operated upon as bones of her legs were fractured, and a rod was inserted. She remained admitted there for several days. FIR No.166 dated June 16, 2011 under Sections 279, 337, 338 IPC was also registered against respondent No.1.

3. After her recovery from the injuries, she preferred a claim petition seeking compensation on account of injuries sustained by her while filing a claim petition under Section 166 of the Motor Vehicles Act, 1988 which was disposed of vide Award dated January 31, 2013 whereby a meagre amount of ₹ 1,15,100/- was awarded which can neither be termed to be just nor proper.

4. While assailing the impugned award, it has been submitted by learned counsel for the appellant that the Tribunal has committed a grave error while calculating the prospect of amount spent by the claimant for her treatment as well as medicine. Only a sum of ₹ 40,000/- has been awarded under this head by learned Tribunal. At that time, it has failed to consider that a rod has been implanted in her

left leg and she remained admitted in the hospital for about a month, and further, she had to undergo another operation for removal of the aforesaid rod. But, learned Tribunal has failed to appreciate all these facts. The amount required for future treatment was also not taken into consideration by the Tribunal at the time of passing the impugned award.

5. Learned counsel for the appellant further contended that though the Tribunal, on the basis of evidence available on file, came to the conclusion that during of accident, appellant – claimant Kailash Rani suffered permanent disability to the extent of 18% to her left leg but it has been wrongly opined by the Tribunal that above said disability suffered by Kailash Rani does not extinguish her earning capacity in any manner. As, at the relevant time, she was aged about 37 years and while doing work of sewing and stitching, she was earning ₹ 6,000/- per month and even after sustaining of grievous injuries, she is not in a capacity to earn that much of amount. Infact, the appellant – claimant is entitled to the compensation on account of sustaining of permanent disability because in addition to sewing & stitching work, she has to perform other household work being a house wife.

6. While concluding his arguments, learned counsel for the appellant has submitted that appellant – claimant deserves compensation on account of permanent disability which is to the extent of 18% as well as enhancement of compensation awarded by the Tribunal under other heads.

7. On the other hand, learned counsel representing respondent No.3 – Insurance Company has submitted that just and adequate compensation has already been awarded by the Tribunal keeping in view all the material aspects and factors of the case. There is nothing on record to suggest that permanent disability sustained by the appellant – claimant has in any way diminished her financial position. She was earning a sum of ₹ 6,000/- per month by doing sewing & stitching work prior to the accident and so much amount can be easily earned by her from the said profession even after sustaining 18% permanent disability. Moreover, under all other heads, more than suffice compensation has already been awarded by the Tribunal.

8. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties and scrutinizing the impugned award, as well as evidence available on file, this Court is of the considered view that amount of compensation awarded by the Tribunal deserves to be enhanced, especially on account of permanent disability sustained by the appellant – claimant.

9. PW-1 – Dr. Rattan Lal Arya, SMO, CHC Shahabad, has been examined by the appellant – claimant qua her disability who has clearly stated that on April 18, 2012, on being examined, the appellant was found to have 18% physical disability attributable to post operative restricted movements of left knee and ankle. He has proved disability certificate as Ex.P1. Though, while subjecting to cross-examination, he stated that disability so assessed was qua particular limb and not qua whole body and it may reduce to some extent if it is assessed qua whole

body, and further that, disability may reduce with passage of time, physiotherapy and medication. But, it cannot be said that it is not permanent in nature or that there is no disability at all. If it was to be reduced with passage of time, physiotherapy and medication, the appellant was required to incur on medication besides a lot of time for that purpose. She remained out of job for a period of more than three months. Thus, taking into consideration all these aspects, this Court of the considered view that ends of justice would meet in case, the compensation awarded by the Tribunal is enhanced by ₹ 40,000/- in lumpsum, especially on account of sustaining of disability. Ordered accordingly.

10. The enhanced compensation to the tune of ₹ 40,000/- shall be payable by the Insurer i.e. Insurance Company – respondent No.3 within a period of two months from the date of receipt of certified copy of this judgment and on its failure to pay the same within the stipulated period, the appellants – claimants shall be entitled to interest @ 7.5% from the date of filing of claim petition.

11. No order as to costs.

February 08, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No