

CM-22244-CII-2017 in
FAO-3717-2015

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

CM-22244-CII-2017 in
FAO-3717-2015
Date of decision: 25.10.2017

Shamsher

.... Appellant

Versus

Manoj Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Naresh Kumar, Advocate for
Mr.R.D.Yadav, Advocate
for the appellant.

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

Avneesh Jhingan, J.

CM-22244-CII-2017

Application under Order 41 Rule 19 read with Section 151
CPC has been moved for restoration of the appeal and re-calling of the
order dated 09.10.2017.

An advance copy was given to learned counsel for respondent
No.3 and she has no objection if the order dated 09.10.2017 is recalled.

Application is allowed and the appeal is restored to its original
number.

The main appeal taken on Board today itself.

FAO-3717-2015

The present appeal has been preferred against the award dated 04.03.2015 passed by Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as the 'Tribunal').

On 20.02.2013, Shamsher met with a motor vehicular accident. He was a pillion rider on motorcycle bearing registration No.HR-43B-0490. The said motorcycle was being driven by Anil. Near Rawaldhi turn on Dadri-Samaspur Road, the motorcycle was struck by truck bearing registration No.HR-69A-4670 (for short, 'the offending vehicle'). As a result of the accident, Shamsher suffered multiple injuries including fracture. FIR was lodged.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed.

The Tribunal after considering the witnesses and evidence produced, awarded a sum of Rs.1,48,004/- along with interest @ 6% per annum.

Aggrieved of the said order, the present appeal has been filed for enhancement of compensation.

I have heard the learned counsel for the parties and perused the paperbook.

The facts are not disputed in the present case. There is no dispute with regard to the rash and negligent driving of the offending vehicle. Even the percentage of permanent disability of the appellant qua limb is not disputed.

Learned counsel for the appellant has argued that there was 32% permanent disability qua limb as per disability certificate PW8/A. He contended that PW8-Dr.Ashok Saini deposed before the Tribunal regarding the disability of the appellant. He further argued that the appellant was working as a driver and with restricted movement of right knee with partial loss of stability and pain, he is not able to do work as driver of the school bus. He further contended that the amount awarded under the various heads like disability, special diet, pain and suffering and transportation is on the lower side and the loss of future income has not been considered by the Tribunal while awarding the compensation.

Learned counsel for respondent No.3 has defended the award and has argued that the disability is only qua limb and there is no proof with regard to the percentage of disability for whole body. She further argued that amount of Rs.64,000/- has already been given for disability and no further enhancement is required.

The contentions raised by learned counsel for the appellant deserve acceptance. The amount awarded of Rs.5,000/- each for better diet, pain and suffering and transportation is on the lower side. The appellant was hospitalised for 6 days, operated upon because of fracture in his right leg with the restricted movement of right knee, attendant was needed during the period of hospitalisation and thereafter also. Though nothing has come on record that this restricted movement would effect his profession as driver but it cannot be ruled out that he may not be able to drive the heavy vehicle with the restricted movement of right knee.

Hon'ble the Apex Court in **G. Ravindranath @ R. Chowdary**

Versus E. Srinivas and another, 2013(12)SCC 455, held as under:

"It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains), which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on

account of permanent disability, future medical expenses,
loss of amenities (and/or loss of prospects of marriage)
and loss of expectation of life."

A perusal of the above decision shows that in case of personal injury pecuniary damages (special damages) should be compensated under various heads. It was further held that non-pecuniary damages should also be compensated.

In view of the facts mentioned above and law laid down in **G. Ravindranath @ R. Chowdary's case (supra)**, it is deemed appropriate that another sum of Rs.1 lakh is awarded over and above that had already been awarded by the Tribunal so as to arrive at just and equitable compensation.

The award dated 04.03.2015 is modified to the extent that the amount awarded by the Tribunal of Rs.1,48,004/- is enhanced to Rs.2,48,004/-.

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

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

25.10.2017
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1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes