

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

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FAO No.2816 of 2016 (O&M)
Decided on : 23.10.2017

Amit Kumar

... Appellant

Versus

Salim Khan and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Minakshi Poswal, Advocate for
Mr.R.S.Mamli, Advocate
for the appellant.

Mr.Inderjeet Singh, Advocate
for respondents No.1 and 2.

Mr.Suvir Dewan, Advocate for respondent No.3.

Ayneesh Jhingan , J. (Oral)

The present appeal has been filed against the awarded dated 08.10.2015 passed by Motor Vehicles Accident Tribunal Yamuna Nagar at Jagadhri (for short 'the Tribunal')

2. Amit Kumar met with an accident on 15.11.2013 while he was going on motorcycle bearing registration No.HR-71B-1237. He was on his way to SK Plywood Factory, when he reached near near Om Dharam Kanta Amadalpur Road Jagadhri, his motorcycle was hit by rashly and negligently driven Bolero Pick up Jeep bearing registration No.HR-58A-7285. As a result of the accident, he suffered various grievous injuries including fracture on right leg below knee and fracture of right hand. After the accident, he was taken to Saini Orthopeadic Centre, Jagadhri from where he was admitted to Astha Hospital, Jagadhri then he was admitted to Civil

Hospital, Yamuna Nagar. Thereafter, he was referred to PGI, Chandigarh where he remained admitted till 25.12.2013.

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

4. The Tribunal after considering the witnesses and evidence, awarded a sum of Rs.2,72,500/- along with interest at the rate of 8% per annum.

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

6. The facts have not been disputed by either party.

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

8. Learned counsel for the appellant has argued that the amount awarded under various conventional heads are on the lower side and need to be enhanced.

9. Learned counsel for the respondents defended the award and argued that since the claimant was not able to prove his income before the Tribunal in spite of that sufficient amount has been awarded by the Tribunal and no further enhancement is called for.

10. The facts to be taken into consideration for awarding compensation are that youth 25 years old suffered 50% permanent disability which was duly proved by the disability certificate Ex.PW2/A. Dr. Kevin Shyam Senior Resident Department of Orthopedic, PGIMER, Chandigarh testified the disability. The doctor also mentioned that there is slight restriction of movement in right knee with pain and difficulty in walking

and sitting cross legs. It has come on record that his future income would be effected. Even though the learned counsel for the appellant has not challenged the amount awarded for loss of future income but her contention with regard to enhancement for other conventional heads deserves acceptance.

11. The injuries were suffered in the leg and arm and in such case, the attendant would be needed even after his discharge from the hospital. The injured underwent three surgeries though actual cost of three surgeries was awarded by the tribunal but while dealing with pain and suffering, the Tribunal has not considered the trauma, the physical pain, mental agony, suffering and the harassment to the family. It was not considered that an implant was made and fixture was affixed. In such circumstances, the amount awarded for pain and suffering of Rs.26,000 needs to be enhanced.

12 With the broken leg and arm, the conveyance is needed during the period of treatment and in the present case as the movement of the leg is restricted, the conveyance would be required after his discharge from the hospital also. The surgeries and hospitalization show that special Calcium-Rich Food (diet) was needed by the appellant.

13. 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 decisions shows that in case of personal injury pecuniary damages (special damages) should be given under various heads. It was further held that non-pecuniary damages should also be compensated.

Keeping in view the reasons mentioned above and the law

laid down by the Apex Court the amount awarded by the Tribunal is enhanced as under:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Compensation awarded by the Tribunal (in Rs.)</i>	<i>By this Court</i>
1	Medical expenses	89000	89000
2	Conveyance charges	3000	3000
3	Special Diet and Special attendant	5000	25000
4	Loss of earning	18000	18000
5	Future loss of earning	90000	90000
6	Pain and suffering & Operation	47500	1,00,000
7	Loss of amenities of life	10000	10000
8	Future medical expenses	10000	10000
	Total	2,72,500	3,45,000

The award dated 08.10.2015 is modified to the extent that the amount of Rs.2,72,500/- awarded by the Tribunal is enhanced to Rs.3,45,000/-. The claimant shall be entitled to interest at the rate of 6% from the date of filing the complainant till its realization.

The appeal is partly allowed with the above observation.

[Avneesh Jhingan]
Judge

23.10.2017
sd

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No