

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

226

FAO No.3163 of 2016 (O&M)

Decided on : 13.11.2017

Kiran Kumar

... Appellant

Versus

Desh Raj and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Adit Kumar Sharma, Advocate for
Mr.R.D.Yadav, Advocate for the appellant.
Mrs.Vandana Malhotra, Advocate
for respondent No.3-Insurance Company.

Avneesh Jhingan, J. (Oral)

The present appeal is against the award dated 26.11.2015
passed by the Motor Accidents Claims Tribunal, Rewari (for short, 'the
Tribunal').

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the present appellant as he had suffered injuries in a motor vehicular accident which occurred on 27.4.2014. The appellant was coming home on his motorcycle bearing registration No.HR-16L-1254 when a rashly and negligently driven car bearing registration No.HR-36-M-0770 struck the motorcycle from behind. He sustained fracture and other multiple injuries. FIR No.134 dated 02.05.2014 was registration at Police Station City Rewari.

The Tribunal after considering the evidence and the witnesses, awarded a sum of Rs.17,73,701/- along with interest at the rate of 7% per annum. The present appeal has been filed for enhancement of amount awarded by the Tribunal.

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

Learned counsel for the appellant argued that the Tribunal has not awarded any amount for change of artificial limb and the amounts awarded for transportation charges, attendant, special diet and pain & suffering are on the lower side.

Learned counsel for the Insurance company defended the award and contended that just and equitable compensation has already been awarded and no further enhancement is called for.

While dealing with the cases of awarding compensation in the injury cases, the issue which has to be considered is that the claimant had suffered not by doing something wrong but he is suffering because of wrong done by someone else. In the present case, the appellant was 33

years old and suffered 60% disability as his right leg was amputated. The said disability was certified by Exhibit PW-4/1. Dr. Ashok Saini, deposed before the Tribunal and proved disability. Since the appellant was not able to prove his earning, the Tribunal took the minimum wages of labourer as were prevalent in the year 2003-04 as notified by the Deputy Commissioner, Govt. of Haryana. It has been proved on record that he was hospitalized for 51 days and was operated upon also.

In such circumstances, the appellant would have been needing transportation during the period of treatment and thereafter also. The amputation of his right leg hampers his movement as he cannot drive the two wheeler. Meaningthereby, he would be needing transportation for rest of his life. Long hospitalization, surgery and amputation ensures that attendant would have been needed for a very long time and after hospitalization also. Special diet in case of surgery is always advised.

While dealing with the amount awarded under the head of pain & suffering it has to be considered that this psychology pain & suffering included mental agony, trauma and the harassment suffered. It has been brought on record that artificial limb has been fitted to the appellant. The Tribunal though has compensated the amount for the artificial limb but has not considered that this limb has to be changed after some period which would result in further future medical expenses. Hon'ble Apex Court in case **New India Assurance Co.Ltd.** Vs. **Gajender Yadav and others**, 2017 (8) Scale 190 has held as under:-

“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.”

From the above decision, it is clear that Hon'ble Apex Court has awarded a compensation for change of prothesis.

Keeping in view the decision referred above and the reasons mentioned, the amounts awarded by the Tribunal are enhanced and the amounts under various heads are being awarded as per the table blow:-

<i>SR.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>By this Court</i>
1	Loss of income (Rs.3450 X 3)	Rs.10,350/-	Rs.10,350/-
2	Transportation charges	Rs.15,000/-	Rs.65,000/-
3	Attendant charges	Rs.10,000/-	Rs.35,000/-
4	Loss of earning on account of permanent disability	Rs.3,72,600/-	Rs.3,72,600/-
5	Special diet	Rs.10,000/-	Rs.25,000/-
6	Medical expenses	Rs.13,35,751/-	Rs.13,35,751/-
7	Pain and suffering as the claimant had multiple injuries	Rs.20,000/-	70,000/-
8	Change of artificial limb		1,00,000/-
	Total	Rs.17,73,701/-	Rs.20,13,701

The award dated 26.11.2014 is modified to the extent that the amount of Rs.17,73,701/- awarded by the Tribunal is enhanced to Rs.20,13,701/-

The claimant would be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the

claim petition till realization of the amount.

This appeal is partly allowed, accordingly.

13.11.2017
sd

[Avneesh Jhingan]
Judge

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