

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

FAO-4280-2015

Date of decision: 11.5.2017

Birender Singh

...Appellant

Versus

Usman Khan and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Aditya Yadav, Advocate for the appellant

Mr.Bineet Sharma, Advocate for respondent No.3.

SNEH PRASHAR, J.

By filing the present appeal, appellant Birender Singh has sought enhancement of the compensation awarded to him by learned Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal') vide award dated 26.11.2014 passed in MACT case No.315 of 2012, on account of the injuries suffered by him in a road side accident.

The submissions made by Mr.Aditya Yadav, Advocate representing the appellant and Mr.Bineet Sharma, Advocate for respondent No.3 have been heard and record perused.

Learned counsel for the appellant submitted that the appellant was working as a Munim (accounts clerk) with a firm

named Baba Earth Mover, Rewari of which PW5 Mahabir Singh Yadav was the proprietor. PW5 Mahabir Singh Yadav testified that he was paying a salary of Rs.13,800/- per month to the appellant. No evidence to rebut the same was led by the respondents but learned Tribunal ignoring the said fact, wrongly assessed the income of the appellant as Rs.5200/- per month. Learned counsel further contended that in the claim petition, the appellant mentioned his age as 40 years and in his deposition also, he stated that he was 40 years old at the time of accident but learned Tribunal without referring to any document wrongly observed his age as 45 years and applied the multiplier of 14. It was also submitted that the appellant remained admitted in Ram Manohar Lohia Hospital, New Delhi from 16.3.2012 to 18.6.2012, 2.7.2012 to 10.7.2012, 17.9.2013 to 11.12.2013, 18.12.2013 to 20.1.2014 and 5.2.2014 to 3.3.2014. He suffered 70% disability on account of amputation of his right leg below the knee, but the compensation awarded does not cover all the counts on which the appellant suffered pecuniary loss and is also inadequate.

As far as occupation and income of the appellant is concerned perusal of the evidence led by him shows that it is neither substantive nor reliable. In his cross-examination, PW5 Mahabir Singh, who claimed to be proprietor of the firm in which the appellant was employed, deposed that he used to maintain register

regarding attendance and salary paid to the employees. However, he did not produce any appointment letter, service record, attendance register, salary register or his individual income tax return or income tax return of the firm to prove that the appellant was employed with him as an accounts clerk and was being paid a salary of Rs.13,800/- per month. In said set of facts, learned Tribunal rightly assessed the income of the appellant as Rs.5200/- per month.

Indeed, in the claim petition, the appellant mentioned his age as 40 years. When he appeared in the witness box he again stated his age as 40 years. No evidence was led by the respondents to rebut his deposition. Learned Tribunal without referring to any document took his age as 45 years and applied the multiplier of 14, which was not right. When the age of the appellant was 40 years, 15 was the appropriate multiplier.

The expenses incurred on medical treatment as per the bills and receipts produced i.e. Rs.40,000/- has already been allowed to the appellant. The amount awarded on account of special diet expenses i.e. Rs.10,000/- and expenses incurred on conveyance i.e. Rs.7500/- are just and appropriate. Apart from it, the amount of Rs.1,50,000/- for mental agony/ distress, pain and suffering and Rs.1,00,000/- for loss of amenities of life allowed by learned Tribunal, appears to be reasonable. Needless to say that during the period of hospitalisation the appellant required a full time attendant.

Even if his family members were attending on him, it is obvious that he must have spent a good amount on their transportation and boarding- lodging. On this count, a sum of Rs.20,000/- is allowed to the appellant.

No other point has been raised.

Accordingly, the enhanced compensation of Rs.63,680/- (70% of 5200 x 12 x 15+20,000= 6,75,200- 6,11,520) shall be paid to the appellant within two months from the date of receipt of the certified copy of the judgment, failing which it shall carry interest at the rate of 7.5% per annum from the date of filing of the appeal till its realisation.

With the aforesaid modification in the impugned Award, the present appeal is partly allowed.

11.5.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No