

FAO No. 6330 of 2014 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6330 of 2014 (O&M)

Date of Decision: 27.10.2017

Santa @ Shanti Devi

.....Appellant

Versus

Hira Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vikas Kumar, Advocate
for the appellant.

Mr. R.S. Dhull, Advocate
for respondents No. 1 and 2.

Ms. Vandana Malhotra, Advocate
for respondent No.3 -Insurance Company.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 24.10.2013 passed by the Motor Accidents Claims Tribunal, Palwal (for short 'the Tribunal').

The brief facts necessary for adjudication of the present appeal are as under:

On 11.10.2010 Santa @ Shanti Devi aged 51 years was a pillion rider on the motor cycle which was being driven by her son Hukam Chand, on Punhana-Hodal road. The motor cycle was struck by rashly and negligently driven Dumper bearing registration No.HR-55-J-7005. As a result of the accident, she suffered multiple injuries. FIR No. 370 dated 13.10.2010 was registered at Police Station Punhana District Mewat in this regard.

The claim petition under Section 166 was filed by the claimant.

The Tribunal after considering the material produced, awarded a sum of Rs.8,58,592/- along with interest at the rate of 7 % per annum.

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

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

Learned counsel for the appellant argued that right leg of the appellant was crushed and was amputated. He further submitted that the appellant was hospitalized from 12.10.2010 to 11.11.2010 at Safdarjung Hospital, New Delhi and thereafter admitted on 11.11.2010 to 2.12.2010 at G.G. Medical Institute Agra, and from 2.12.2010 to 21.1.2011 at Satya Saraswati Hospital, Agra. She was again admitted at Rashmi Medical Center from 30.6.2011 to 7.7.2011 and from 16.10.2011 to 23.10.2011.

Learned counsel for the appellant contended that the appellant suffered 50% disability which was proved by Ex.P-176. The said disability was proved by Dr. Bir Singh, who deposed before the Tribunal as PW-19. Learned counsel further contended that the appellant was doing a tailoring job and her working ability was badly effected by amputation of leg. She was operated upon and the treatment of the appellant continued for almost one year. Thereafter also future treatment was required. In such circumstance, the amounts awarded under various heads by the Tribunal are on lower side and need to be enhanced.

Learned counsel for the Insurance Company contended that there is no dispute with regard to the disability compensation awarded by the Tribunal, therefore, no enhancement is called for and she vehemently opposed the enhancement of compensation under various heads.

The fact to be noticed in the present case is that 51 years old housewife who was also allegedly doing tailoring job lost her leg suffered injuries. Her life was crumbled as it is proved on record that there was 50 % disability. Though the appellant was not able to prove her monthly income and nothing has come on record with regard to her functional disability. Be that as it may, the fact remains that her role as a house-maker would be badly effected. She would be needing attendant throughout her life. There is also loss of social status. Her travelling would be effected for which she would be needing transportation throughout the life. The treatment itself continued for almost one year and thereafter also there was a follow up treatment. Special diet would have been required. Loss of income has been awarded only for the actual days of the hospitalization whereas from the evidence on record it is substantiated that her initial treatment itself continued for one year. The Tribunal while awarding compensation has not considered that pain and suffering, not physical pain alone which is to be taken into account but it is the mental agony, trauma and the harassment faced by the injured and her family. Though it has not come on record that she was fitted with an artificial limb but it cannot be ruled out that in case of amputation prosthetic limb would be required, in any case, even if prosthetic limb is not fitted, some external support would be required to keep herself dependant. The said aspect should have also been considered.

The Hon'ble Apex Court in *Jitendra Khimshankar Trivedi and others Versus Kasam Daud Kumbhar and others*, 2015 (4) SCC 237, has held as under:

"Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker.

It is hard to monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognised the contribution made by the wife to the house is unvaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency."

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."

From the perusal of above decisions, it emerges that in case of non-fatal injury pecuniary and non-pecuniary lost has to be compensated and further Hon'ble the Apex Court, has held that the role of a house-wife cannot be under estimated as her duties are 24 x 7.

Keeping in the view facts mentioned above and the decisions, following amounts are awarded to the appellant and the amounts awarded by the Tribunal are enhanced as per table given below:

<i>Sr. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount now awarded</i>
1	Permanent disability	Rs.2,97,000/-	Rs.2,97,000/-
2	Amount of medical bills	Rs.5,17,392/-	Rs.5,17,392/-
3	Transportation charges	Rs.5000/-	Rs.50,000/-
4	Attendant Charges	Rs.5000/-	Rs.30,000/-
5	Special Diet	Rs.5000/-	Rs. 25,000/-
6	Loss of income	Rs.19200/-	Rs.35000/-
7	Amenities of life	Rs.5000/-	Rs.25000/-
8	Pain and suffering	Rs.5000/-	Rs. 50,000/-
9	Prosthetic limb/artificial limb	Not awarded	Rs.30,000/-
10	Loss of social status	Not awarded	Rs.25,000/-
	Total	8,58,592/-	10,84,392/-

The award dated 24.10.2013 is modified to the extent that the amount awarded by the Tribunal of Rs.8,58,592/- is enhanced to Rs.

10,84,392/-.

The claimant shall be entitled to 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.

The appeal is partly allowed in the above terms.

27.10.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No