IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4767-2015 (O&M)
Date of decision: 17.11.2017

Angrej Singh .... Appellant

Versus

Rohit Kumar Walia and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Ashwani Bakshi, Advocate
for the appellant.

Mr. Suman Jain, Advocate
for respondent No.3-Insurance Company

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Avneesh Jhingan, J.

The present appeal has been preferred against the award dated 06.01.2015 passed by Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as the 'Tribunal').

On 05.10.2010, Angrej Singh, aged 28 years, suffered multiple injuries in a motor vehicular accident involving a motorcycle bearing registration No.HR-04B-2413 and a TATA Sumo bearing registration No. HR-37B-1525 (for short, 'the offending vehicle'). FIR No.136 dated 06.10.2010 was registered at Police Station Bilaspur.

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

The Tribunal after considering the material produced before it, awarded a sum of Rs.3,23,183/- along with interest @ 7.5% per annum.

Aggrieved of the said award, the present appeal has been filed for enhancement of compensation awarded by the Tribunal.

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

The parties have not disputed the involvement and rash and negligent driving of the offending vehicle. Even the injury suffered and treatment undertaken has also not been disputed. Disability of 7% qua the limb was also not questioned.

Learned counsel for the appellant has argued that the accident took place on 05.10.2010 and the injured was taken to Civil Hospital, Yamuna Nagar, from where he was referred to PGI, Chandigarh. But instead of PGI, Chandigarh, he was taken to Government Hospital, Sector 32, Chandigarh. He remained admitted there from 05.10.2010 to 16.10.2010. His right leg was operated upon and plates were fitted to treat the fracture. On 17.10.2010, the appellant underwent a plastic surgery of pace and moves in PGI. Thereafter, from 03.01.2011 to 17.01.2011, he was again admitted in PGI, Chandigarh for plastic surgery of his leg. From 16.06.2011 to 28.06.2011, he was admitted in Goel Hospital, Jagadhri, where he was again operated upon. He was again admitted from 17.09.2011 to 28.09.2011 in Goel Hospital, Jagadhri, he was operated upon and again plates were fitted and bones drafting was done. He further remained hospitalised from 11.03.2013 to 15.03.2013 for removal of implant.

Counsel further contends that 7% permanent disability qua the limb was proved vide Ex.P195. The said certificate was proved by deposition of PW7-Dr. Vikas Paul. He proved the disability, both bones fracture right leg united restriction of movement of knee joint. He further contended that there was a permanent disability which effected his day to day working and long hospitalization has not been considered by the Tribunal while awarding the compensation under the various heads. He further argued that the appellant was running a computer centre and the Tribunal admitted that his monthly earning was Rs.20,000/-

On the other hand, learned counsel for Insurance Company has argued that there was no functional disability, it was a case of simple fracture, which has not effected his day to day working. He further argued that the appellant had failed to establish that he was running a computer centre and his earning was Rs.20,000/- per month. He further argued that the Tribunal has already taken into consideration various heads and awarded a just and equitable compensation. No further enhancement is called for.

On the first glance of the case, it appears to be a case of simple fracture but the hospitalization and the treatment which continued for almost 2½ years shows that apart from the fracture there were other certain medical complications. The two plastic surgeries undergone by the appellant would establish the grievous nature of injuries suffered by him.

The Tribunal, while awarding the compensation, has just awarded Rs.25,000/- for the disability. It has not been considered that he was a young boy of 28 years of age. Though, it may not have been established that he was running a computer centre and his earning was

Rs.20,000/- per month, but on the basis of other evidence adduced before the Tribunal, it was assumed that he was earning Rs.20,000/- per month. In any case, in order to arrive at just and equitable compensation, the Tribunal ought to have applied multiplier method.

Hon'ble Apex Court in ***Sandeep Khanuja vs. Atul Dande and another, 2017(3) SCC 351*** has held that multiplier method should be adopted to award compensation for permanent disability.

There are two fold issues to be decided before applying the multiplier method. Firstly, the income of Rs.20,000/-per month has been guessed by the Tribunal. There is no basis to assess the said amount. Be that as it may, it has been proved on record that he was commerce graduate and had been earlier working abroad as a data operator and was awarded with an appreciation certificate in his field. In such circumstances, it would be on the safer side to assume that at least he was earning Rs.15,000/- per month which was the minimum wages for a skilled labourer during the relevant period. With regard to the disability vis-a-vis the whole body, no positive evidence has come on record to show that 7% permanent disability qua limb has effected his functional disability.

The reliance in this regard on the decision in ***Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343,*** has held as under:-

> *18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked*

the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%."

In the above said decision, the Hon'ble Apex Court instead of remanding the matter back took 45% disability qua limb as 25% disability qua the whole body.

Considering the above facts and relying upon the decision referred above, disability is recalculated as under :-

Monthly income	*Rs.15,000/-*
Disability	Rs.15,000x3.5%=Rs.525/-
Annual income	Rs.525x12=Rs.6300/-
Multiplier of 17	Rs.6300x17=Rs.1,07,100/-

The long hospitalization for almost 2½ years shows that the transportation would have been required during the period of treatment and thereafter during the recovery period also. The fracture in the leg and three operations on the leg ensured that he would not able to drive the two wheeler. In such circumstances, it would be safely assumed that he would be needing transport facility after the treatment also. An attendant would have been required during the period of hospitalization and thereafter also. The period of hospitalisation varied almost from October 2010 to March 2013. The special diet compensation awarded by the Tribunal is very meager, keeping in view the period of treatment. While dealing with the amount to be awarded for pain and suffering, it has to be considered that it is not only the physical pain and suffering but the mental agony, trauma and harassment to the appellant and to his family members.

The Hon'ble Apex Court in ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another, 2013(12)SCC 455*** has held that in case of non-fatal injuries, the pecuniary and non-pecuniary damages has to be compensated.

While dealing with such like cases it is to be considered that the appellant has suffered not by doing anything wrong but because of someone else was a wrong doer.

As per the decision referred above and keeping in view the facts of the case, the amounts awarded by the Tribunal are enhanced as per table given below :-

Sr.No.	***Heads***	***Amount earlier awarded by the Tribunal***	***Now awarded***
1	*Disability*	*Rs.25,000/-*	*Rs.1,07,100/-*
2	*Loss of wages*	*Rs.1,00,000/-*	*Rs.1,00,000/-*
3	Medical expenses	Rs.1,54,581-	Rs.1,54,581/-
4	For pain and suffering	Rs.20,000/-	Rs.1,00,000/-
5	Transportation	Rs.12,102/-	Rs.30,000/-
6	Attendant	Rs.10,000/-	Rs.40,000/-
7	Special diet	Rs.15,00/-	Rs.25,000/-
	Total	Rs.3,23,183	Rs.5,56,681/-

The award dated 06.01.2015 is modified to the extent that the amount awarded by the Tribunal of Rs.3,23,183/- is enhanced to Rs.5,56,681/-.

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

17.11.2017
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1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes