

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

**FAO No.5649 of 2015 (O&M)
Date of Decision: 31.08.2017**

Abhishek Sharma

.....Appellant

Vs

Sher Singh and Ors.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. J.P. Sharma, Advocate
for the appellant.

Mr. B.R. Madan, Advocate
for respondent No.3.

RAJ MOHAN SINGH, J.

[1]. This is an appeal preferred against the award dated 02.03.2015 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter to be referred as 'the Tribunal') by the injured claimant, who had sustained injuries in the motor vehicular accident.

[2]. Brief facts are that the accident took place on 01.01.2012, when the claimant being a pillion rider was going along with his maternal uncle Rajat from his house in Model Town, Karnal to Sector 7, Urban Estate, Karnal. The scooter

was being driven by the maternal uncle of the injured on his correct left hand side of the road. At about 11.00 a.m., when they reached near State Bank of India, Model Town, Karnal, the offending vehicle make Canter was going ahead of them in a rash and negligent manner. When driver of the scooter was in the process of overtaking the said Canter, the driver of the offending vehicle/respondent No.1 immediately turned his vehicle towards right side and applied brakes, as a result of which scooter hit with the Canter from behind and due to the impact both the occupants of the scooter fell down on the road. The claimant received grievous injuries including the injury on the left eye and forehead. The left eye of the injured came out from its place and it fell down on the road. The left eye completely lost its sight. The name of the driver came to be known as Sher Singh and he ran away from the spot leaving behind the Canter at the spot. The injured was taken to Arora Eye and Lasik Laser Centre for treatment and was got admitted. FIR was registered against the driver of the offending vehicle.

[3]. The Tribunal came to the conclusion that the accident in question took place due to rash and negligent driving of the driver of the offending vehicle under issue No.1. The appellant was examined as PW-1. According to the testimony of claimant, he sustained multiple injuries on the vital parts of his body

including the left eye and forehead. His left eye came out from its place and it fell down on the road. Dr. Sanjeev Arora, Arora Eye and Lasik Laser Centre, Karnal was examined as PW-3, who deposed that the injured came to his hospital on 01.01.2012 with a history of road side accident. There was corneoscleral tea with uveal, iris and vitreous prolapse. Primary repair was done under local anesthesia and the tea was sutured and uveal tissue was repositioned back. The injured remained hospitalized for one day and the Doctor had charged Rs.15,000/- from the patient vide bill Ex.PW-3/B. The witness had proved the treatment chart and deposed that there were remote chances of restoration of vision of left eye of the patient.

[4]. The Tribunal awarded an amount of Rs.37,000/- towards medical expenses. An amount of Rs.20,000/- was awarded towards pain and sufferings. An amount of Rs.10,000/- was awarded towards attendant charges, special diet and transportation. The permanent disability and loss of studies was considered and a cumulative amount of Rs.1,00,000/- was assessed towards permanent disability and loss of studies due to permanent disability. In this way total amount of Rs.1,67,000/- was awarded as compensation by the Tribunal.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. As per medical evidence, particularly in view of statement of Dr. Sanjeev Arora PW-3, there are remote chances of restoration of vision of left eye of the appellant. The appellant has become permanently disabled to the tune of 30% on account of loss of vision of his left eye. The same can be considered for the purposes of disfigurement as well as for the purposes of assessing future loss of income on account of this permanent disability.

[7]. In view of law laid down in **Govind Yadav vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817;** **K. Suresh vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312;** **S. Manickam vs. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696;** **G. Ravindranath @ R. Chowdary vs. E. Srinivas and another, 2013(3) RCR (Civil) 934;** **Rekha Jain vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996;** **Neerupam Mohan Mathur vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422** and **Yadava Kumar vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155** the permanent disability of the injured in terms of loss of earning capacity has to be considered and for such determination, loss of earning capacity has to be calculated on the basis of multiplier method

which was held to be proper. Some hypothetical considerations are also required to be made on some guess work based on sympathy, but ultimate determination has to be done with objective standards. There cannot be any flight in fancy. The award of compensation should correspond to the reasonableness and should be in consonance with conventional sum to commensurate the sufferance of the injured person.

[8]. The compensation towards permanent disability and loss of earning capacity has to be assessed separately. Permanent disability contributing to loss of income in future has to be assessed with reference to age and longevity of the injured. In order to arrive at exact loss towards future earning of the injured, the age of the injured and monthly income of the injured are to be assessed.

[9]. In the instant case, the claimant was student and his age was 17 years at the time of accident. There cannot be any straightjacket formula for assessing the monthly income of a student. However, a notional income of the injured can be presumed keeping in view that he was a brilliant student at the time of accident. The notional income of the claimant/injured for the purposes of assessing future loss of income on account of permanent disability can be assessed on the basis of some

guess work to the tune of Rs.1500/- per month. In case of 30% permanent disability the loss of income would come out to be Rs.450/- per month i.e. Rs.5400/- per annum.

[10]. In view of age of the claimant as 17 years at the time of accident and as per ratio laid down in **Smt. Sarla Verma vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 77,** multiplier of 18 would be just and appropriate. In this way, the loss of future income on account of permanent disability to the tune of 30% would come out to be Rs.97,200/- (5400 x 18). In addition to the aforesaid, against the 30% permanent disability, an amount of Rs.2,000/- per percent of permanent disability has to be assessed towards heading of permanent disability. In this way an amount of Rs.60,000/- would be just and appropriate to meet out this head. Since, the Tribunal while assessing the amount of Rs.1,00,000/- under permanent disability has also added up loss of studies due to permanent disability, therefore, an amount of Rs.60,000/- can be extracted from the aforesaid amount based on 30% permanent disability. The remaining amount of Rs.40,000/- towards loss of studies can be computed under the head loss of studies due to permanent disability.

[11]. The Tribunal has granted an amount of Rs.37,000/- towards medical expenses. Payment of Rs.15,000/- has been proved on record by way of bill Ex.PW-3/B. There can be some

unforeseen expenses incurred by the claimant during currency of his confinement, therefore, I deem it appropriate to increase the said amount to Rs.50,000/- under the heading of medical expenses.

[12]. The Tribunal has awarded only an amount of Rs.20,000/- towards pain and sufferings. In my considered opinion, the same is totally on the lower side keeping in view the great trauma faced by the claimant during currency of his hospitalization and nature of injuries suffered by him involving 30% permanent disability. The pain and sufferings of the claimant cannot be compensated in terms of money in view of permanent loss of left eye sight, however I deem it appropriate to enhance the said amount of 20,000/- to Rs.1,00,000/- for the sufferings of the claimant.

[13]. The Tribunal has assessed an amount of Rs.10,000/- towards attendant charges, special diet and transportation under all the three heads. The same is also too meager to meet out any exigencies of transportation, attendant charges and special diet need in view of injuries on the person of the claimant. In my considered opinion, the said amount needs to be enhanced to the tune of Rs.50,000/- cumulatively under all the aforesaid three heads.

[14]. The claimant must have suffered loss of future enjoyment of life on account of permanent disability and also the loss of marriage prospects being 17 years of age at the time of accident and sufferance of permanent disability of left eye sight. In my considered opinion, the amount of Rs.1,00,000/- would suffice to serve the purpose under both the aforesaid heads.

[15]. In view of aforesaid, a comparative chart can be prepared in the following manner:-

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in Appeal	Difference
1	Loss of future income, Permanent disability & loss of studies on account of permanent disability	Rs.1,00,000/-	Rs.1,97,200/- (97,200+60,000 + 40,000)	Rs.97,200/-
3	Medical expenses	Rs.37,000/-	Rs.50,000/-	Rs.13,000/-
4	Pain and Sufferings	Rs.20,000/-	Rs.1,00,000/-	Rs.80,000/-
5	Attendant charges, special diet and transportation	Rs.10,000/-	Rs.50,000/-	Rs.40,000/-
6	Loss of enjoyment in life and loss of marriage prospects.	Nil	Rs.1,00,000/-	Rs.1,00,000/-
Total compensation		Rs.1,67,000/-	Rs.4,97,200/-	Rs.3,30,200/-

[16]. The enhanced amount i.e. Rs.3,30,200/- would carry

interest @7.5% per annum from the date of filing of the claim petition till final realization of the same.

[17]. In view of aforesaid modification, the present appeal stands disposed of.

August 31, 2017

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No