IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7634 of 2014
Date of Decision: 30.08.2017

Krishna Devi .....Appellant
Vs
Sonu Yadav and others ....Respondents

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

Present: Mr. Kulvir Narwal, Advocate
for the appellant.

None for respondent No.2.

Mr. G.D. Gupta, Advocate
for respondent No.3.

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RAJ MOHAN SINGH, J.

[1]. This is an appeal filed by the injured appellant for enhancement of the compensation awarded vide award dated 14.02.2013 passed by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal').

[2]. Brief facts are that the appellant was going from village Jahadpur to village Bhungarha (Rajasthan) as a pillion rider on the motorcycle being driven by her son Anil Kumar. When the motorcycle reached near village Bhungarha, her son stopped the motorcycle on the berms of the road on correct side in order to enquire the way leading to the village. The offending vehicle i.e. Indigo Car came from opposite side in a rash and negligent

manner and hit the motorcycle after coming on the wrong side of the road. The appellant sustained grievous injuries on various parts of her body and her son also sustained injuries in the aforesaid accident. The accident took place solely due to the rash and negligent driving of offending vehicle by respondent No.1. FIR was registered at the instance of son of the appellant. Appellant remained admitted in the hospital and became permanent disabled due to injuries suffered by her. She claimed that an amount of Rs.3 lacs was spent by her on her treatment towards medicines, transportation and special diet etc.

[3]. The claim petition was contested by the respondents on all counts.

[4]. The Tribunal held that the accident in question took place due to rash and negligent driving of the offending vehicle by respondent No.1. It was held by the Tribunal that the appellant has suffered 25% permanent disability due to fracture of right femur bone in which plate was inserted. The Tribunal awarded an amount of Rs.12,000/- towards pain and sufferings and an amount of Rs.45,000/- was awarded towards 25% permanent disability which was proved by the disability certificate Ex.P-41 and was proved by Dr. Kumud Sharma as PW-4.

[5]. The Tribunal did not grant any amount towards Bills Ex.P-10 to Ex.P-30 as the execution of the same was not proved on record with reference to the signatory. Keeping in view the statement of Umesh Kumar, Report-Keeper, who appeared as PW-3, the Tribunal awarded an amount of Rs.19,985/- against the bill Ex.P-31. The Tribunal besides the aforesaid amount, proceeded to grant cumulative amount of Rs.25,000/- including the amount under Bill Ex.P-31 towards more expenses incurred by the claimant towards her treatment and medicines. Lump sum amount of Rs.4,000/- was awarded towards special diet, transportation charges and attendant charges. In this way total, amount of compensation was calculated as Rs.86,000/-. The said amount of compensation was ordered to carry interest @ 6% per annum from the date of the institution of the claim petition till final realization of the amount. The liability of the respondents was held to be joint and several to pay the aforesaid amount of compensation.

[6]. I have heard learned counsel for the parties.

[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 of loss of earning capacity has to be considered 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 present case, the injured was housewife and her age was 45 years at the time of accident. In case of housewife the criteria specified in clause (6) of Second Schedule referred to Section 163-A of the Motor Vehicles Act, 1988 can be looked into. The contribution made by the housewife towards family is invaluable and cannot be computed in terms of money. In case of injured housewife, this Court in ***FAO No.3143 of 2013*** titled '***Neelam Rani vs. Anish Kumar and others'*** decided on 21.10.2016 computed the monthly income of the injured housewife to be Rs.6,000/- per month in the accident which took place in April 2011. The accident in the present case has taken place in January 2011 and, therefore, the said assessment will suffice to answer the notional monthly income as Rs.6,000/- per month of the injured housewife. In case of 25% permanent disability, the loss of income would come out to be Rs.1500/- per month i.e. Rs.18,000/- per annum.

[10]. In view of age of the appellant as 45 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 14 would be just and appropriate. In this way, the loss of future income on account of permanent disability to the

tune of 25% would come out to be Rs.2,52,000/- (18000 x 14). In addition to the aforesaid future loss of income on account of 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 as against the 25% permanent disability, an amount of Rs.50,000/- would be just and appropriate to meet out this head. The total amount under the permanent disability and loss of future income on account of permanent disability would come to Rs.3,02,000/-(2,52,000 + 50,000).

[11]. The Tribunal has granted a cumulative amount of Rs.25,000/- towards treatment and medical expenses. Even though an amount of Rs.14,350/- for the bills Ex.P-10 to Ex.P-30 were not included, still this Court feels that the amount of Rs.25,000/- towards medical expenses would be on correct side. No enhancement can be made under this head.

[12]. The Tribunal has awarded an amount of Rs.12,000/- towards pain and sufferings. The injured appellant has suffered permanent disability on account of fracture of right femur bone and plate was inserted after knailing. The appellant remained admitted in hospital. In my considered view, an amount of Rs.12,000/- for pain and sufferings cannot be treated to be just and appropriate. Some guess work has to be done keeping in

view the age and the injuries suffered by the claimant/appellant. An amount of Rs.50,000/- in lump sum would suffice to meet the requirement under this head.

[13]. The Tribunal has awarded an amount of Rs.4,000/- towards transportation charges, special diet and attendant charges. In my considered opinion, the said amount is too meagre to answer the claim under all the three heads. Keeping in view the period of treatment and nature of injuries suffered by the claimant, I deem it appropriate to award a cumulative amount of Rs.50,000/- towards all the three heads i.e. transportation charges, special diet and attendant charges.

[14]. 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	Permanent disability and loss of future income on account of permanent disability	Rs.45,000/-	Rs.3,02,000/- (2,52,000 + 50,000)	Rs.2,57,000/-
2	Medical expenses	Rs.25,000/-	Rs.25,000/-	Nil
3	Pain and sufferings	Rs.12,000/-	Rs.50,000/-	Rs.38,000/-
4	Transportation charges, special diet and attendant charges	Rs.4,000/-	Rs.50,000/-	Rs.46,000/-

Total compensation	Rs.86,000/-	Rs.4,27,000/-	Rs.3,41,000/-

[15]. The enhanced amount i.e. Rs.3,41,000/- would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the same.

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

August 30, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No