

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

(216)

**FAO-786-2014
Decided on: July 04, 2017.**

Dalip Kumar

.... Appellant

Versus

Jitender Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

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

Mr. Ajay Singla, Advocate, for respondent No.3.

M.M.S. BEDI, J (ORAL)

Considering appellant's age as 26 years and the injury i.e. fracture of right tibia and Situ having been implanted therein, the Motor Accident Claims Tribunal, SAS Nagar Mohali has awarded compensation of Rs.1,33,457/- to the appellant.

Learned counsel for the appellant submits that the disability was assessed to the extent of 20% and that he is entitled to the compensation for periodical medical expenses and loss of future income.

Perusal of the judgment indicates that the appellant has claimed to be earning a sum of Rs.5,000/- by running Flour Mill which is in the name of his father. He has not produced any evidence regarding the nature of the work done by him in the Atta Chaki but considering the age of the appellant and his notional income, he has been granted adequate compensation on the basis of nature of the disability.

It is debatable whether the disability is permanent but taking into consideration the fact that the appellant has suffered fracture of tibia

which is an important weight bearing bone of the leg, the appellant could have been granted an additional amount for the loss of future income but on account of no substantive evidence having been led regarding the extent of the loss of future income and the periodical medical expenses, in the interest of justice, an additional sum of Rs.50,000/- can be awarded as compensation for symbolic loss for future income. Expecting that the appellant has to bear the periodical medical expenses another sum of Rs.25,000/- can be awarded on this count.

Appeal has been opposed by counsel for the Insurance Company.

Taking into consideration the totality of the circumstances, the judgment of the Court and the record available, this petition is allowed. Compensation is enhanced by the sum of Rs.75,000/- on account of the above said circumstances.

It is not out of place to mention here that while granting the above said compensation, this Court has taken into consideration the parameters laid down by the Apex Court in **R.D. Hattangadi Vs. Pest Control (India) Private Limited, (1995) 1 SCC 551** wherein it has been held as follow:

“ Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the

claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

The amount will be payable within a period of three months.

The liability to pay the compensation would be jointly and severally.

However, this amount will be payable by the insurance company.

In case, the amount is not paid within a period of three months, interest of 6% per annum will be payable with effect from the date of this order.

(M.M.S. BEDI)
JUDGE

July 04, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No