

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 8183 of 2014 (O&M)

Date of Decision: 1.11.2017

Usha

.....Appellant

Versus

Anil and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ram Pal Verma, Advocate
for the appellant.

Mr. Radhe Shyam Sharma, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

Usha who suffered injuries in a motor vehicular accident which occurred on 5.2.2012 has come up in appeal for enhancement of compensation awarded on 1.8.2013 by Motor Accidents Claims Tribunal, Sonipat (for short 'the Tribunal'), for her injuries.

The legal position with regard to awarding compensation to an injured has been dealt with by Hon'ble the Apex Court in **Yadava Kumar Versus The Divisional Manager, National Insurance Co. Ltd. and another, 2010 (10) SCC 341.** Hon'ble the Apex Court has dealt with the basis of assessment of damages of personal injuries for determination of compensation. It has been held that it is to be considered that whether permanent disability has any adverse effect on the earning capacity of injured.

The idea behind granting compensation is to put back the claimant-injured in the same position as she was, in so far as money can. It was further stated that a perfect compensation is hardly possible but what has to be considered is that the claimant has done no wrong and has suffered

at the hands of a wrong doer.

Hon'ble the Apex Court in case of **Dixit Kumar and another Versus Om Parkash Goel, 2017 AIR (SC) 2943**, had occasion to deal with the case where there was 50% permanent disability but in the facts and circumstances of the case, the functional disability was seen.

In the present case, there is no permanent disability. While dealing with the compensation in such cases, the functional disability will not have to be considered.

The matter will have to be decided taking into consideration the decision of Hon'ble the Apex Court in **G. Ravindranath @ R. Chowdary Versus E. Srinivas and another, 2013(12)SCC 455**, wherein in it has been 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."

In the decisions referred above, Hon'ble the Apex Court held that in case of non-fatal injuries, pecuniary and non-pecuniary losses should be compensated.

The appellant was a pillion rider on a scooty, when the scooty was hit by a rashly and negligently driven motor cycle bearing registration No. HR-10-J-4192, FIR No. 94 dated 8.2.2012, was registered at Police Station City Sonipat.

The appellant suffered grievous injuries and under-went a long treatment including hospitalization. Temporary disability was proved vide disability certificate Ex.P-30. PW6-Anurag Singh, Medical Record Technician of St. Stephen's Hospital, Delhi, deposed before the Tribunal and proved that she was hospitalized from 18.2.2012 to 20.4.2012. He deposed that she remained admitted in Orthopedic Surgery under Dr. Mathew Varghese. He proved medical bills for Rs.1,56,637.99 paise On the day of accident, the appellant was taken to Sushruta Trauma Centre, Delhi, where she remained admitted upto 18.2.2012.

Learned counsel for the appellant argued that the appellant underwent number of surgeries on her leg. He argued that she was doing

tailoring work. The emphasis is that the amount awarded under various heads are on the lower side and no amount has been awarded for attendant and for special diet.

Learned counsel for the respondent No.3 opposed the enhancement of compensation and argued that the medical bills as proved have already been taken care of by the Tribunal. He contended that disability is only temporary and nothing has been brought on record to prove that any attendant was required and there is no proof for transportation etc.

The split up of the amount awarded by the Tribunal would shows that out of Rs. 2,33,750/- awarded, Rs. 1,63,750/- is on account of medicines which were duly proved vide Ex.P7 to Ex.P 20 and P29. The compensation under rest of the heads is Rs.70,000/-.

The tailoring work of the appellant was not proved before the Tribunal. It is not denied that she was a house maker. Her duties and contribution towards the family has to be considered as she not only undertakes the family duties 24 x 7 but also performs her matrimonial duties.

Hon'ble the 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 has held that the contribution and the work done by house-maker cannot be under-estimated and it is difficult to convert the same into monetary terms.

The parties are not able to dispute the fact that she was hospitalized for almost more than two months and the treatment was going on thereafter also. In such long hospitalization, pain and suffering is bound to be there. Pain and suffering itself will not include only physical pain and suffering but the trauma and mental agony underwent not only by the appellant but by the entire family.

Keeping in view the number of surgeries and long hospitalization, the transportation would have been required right from the day of the accident, till she recovered fully. Fractured leg would have restricted her movement. Number of operations ensure the need of attendant was there for a very long time as the hospitalization was for more than two months. The appellant had suffered fracture and undergone surgery and in order to have a speedy recovery, special calcium rich healthy diet, must have been recommended by the Doctor. The loss of income awarded by the Tribunal is meager considering that she would not have been able to attend her family for the period of hospitalization and thereafter also during her recovery. The disability may not be permanent but would hinder her day to day working for some period and there are chances that it may have after effects.

The actual medicine bills have been reimbursed but in case where there is a long hospitalization coupled with subsequent treatment and lady of the house is hospitalized, it cannot be expected that the family would have been able to maintain accounts and to vouch for each and every penny spent for the medical expenses.

Keeping in view the decisions referred above and the reasons mentioned above, the amounts awarded are enhanced and the amounts not awarded by the Tribunal are awarded as per the Table given below:

<i>Sr. No.</i>	<i>Description</i>	<i>Amount earlier awarded by the Tribunal</i>	<i>Amount now awarded</i>
1	Costs on medicines	Rs. 1,63,750/-	Rs. 2,00,000/-
2	Pain and suffering	Rs.15000/-	Rs.50,000/-
3	Disability	Rs. 30,000/-	Rs.50,000/-
4	Transportation	Rs.10,000/-	Rs.25,000/-
5	Loss of income	Rs.15,000/-	Rs.25,000/-
6	Attendant	Not awarded	Rs.25,000/-
7	Healthy diet	Not awarded	Rs.20,000/-
	Total:	Rs.2,33,750/-	Rs.3,95,000/-

The award dated 1.8.2013 is modified to the extent that an amount of Rs.2,33,750/- awarded by the Tribunal, is enhanced to Rs.3,95,000/-. The claimant would be entitled to the enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the petition till its realization.

The appeal is partly allowed in the above terms.

1.11.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No