

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

FAO-8248-2014 (O&M)
Date of decision: 14.11.2017

Ram Karan

...Appellant

Versus

Royal Sunderum Alliance Insurance Co. Ltd. and ors. ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Anuj Balian, Advocate for the appellant.

Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate
for respondent No.1.

REKHA MITTAL, J. (Oral)

CM No.21653-CII-2016

Heard.

For the reasons stated in the application supported by affidavit
of Mr. Shanty Bawa, Clerk of Mr. Anuj Balian, Advocate, same is allowed.
Delay of 9 days in filing the application (CM No.21654-CII-2016) is
condoned.

CM No.21654-CII-2016

Heard.

For the reasons contained in the application, same is allowed

and order dated 09.09.2016 is recalled.

The main appeal is restored to its original number and stage and taken on board today itself.

Main Case

The injured-claimant is in appeal seeking enhancement of compensation in respect of injuries sustained in a motor vehicular accident that took place on 22.04.2009.

The Tribunal has awarded compensation of Rs.2,69,304/-, detailed hereunder:-

1.	Annual amount spent on treatment and purchase of medicines	Rs.1,04,854/-
2.	Loss of future earning	Rs.88,200/-
3.	Pain and sufferings	Rs.20,000/-
4.	Attendant charges	Rs.10,000/-
5.	Special diet	Rs.10,000/-
6.	Miscellaneous expenses including transportation etc.	Rs. 36,250/-

Counsel for the appellant has submitted that compensation awarded by the Tribunal qua loss of future earning and other heads needs enhancement. To bring home his contention, it is argued that the Tribunal has assessed income of the victim @ Rs.3500/- per month but the minimum wage of a casual labour at the relevant time was approximately Rs.4000/- per month. The injured suffered disability to the extent of 50% of the lower limb but the Tribunal has assessed functional disability to the extent of

15%. According to counsel, as the claimant has been treated as an agricultural labour, nature and extent of disability suffered by him is likely to render him unable to perform the said job.

Counsel would argue that the Tribunal has awarded compensation of Rs.20,000/- for pain and sufferings. The injured victim remained hospitalized initially for a period of 7 days and thereafter for 16/17 days from 07.11.2009 to 23.11.2009. He suffered fracture of left femur and both bones of left leg rendering him disable to the extent of 50%. It is urged that the claimant may be allowed adequate compensation for pain and sufferings and loss of amenities as well.

Counsel representing the insurance company, on the contrary, has supported the award with the submission that adequate compensation has been assessed by the Tribunal.

I have heard counsel for the parties, perused the paper book and the records.

The Tribunal has assessed income of the deceased at Rs.3500/- per month and allowed loss of future earnings @ 15% functional disability. The Tribunal has not allowed any compensation for loss of earnings during the period of treatment and recovery. Taking into consideration the minimum wage available at the relevant time, income of the victim is assessed at Rs.3850/- per month. He is awarded loss of income for a period of three months i.e. period of treatment and recovery to the tune of Rs.3850 x 3 = Rs.11,550/-.

The claimant examined Dr. Umesh Modi, Senior Medical Officer, Government Hospital, Sector 6, Panchkula to prove disability. A relevant extract from the testimony reads as follows:-

On examination he was a case of old operated case of supracondylar fracture of left femur and fracture of both bones of left leg with ankylosed knee. His physical disability was assessed to be 50% which is relation to injured limb only. The disability certificate is Ex.P3 which bears my signature and that of other members of the medical board.

In response to a question 'what would be the functional disability in this case?', he has answered in the following terms:-

Ans. The patient will have difficulty in carrying out his day to day activities and his professional agricultural activities.

Taking into consideration the medical opinion given by Dr. Umesh Modi and in absence of any rebuttal to evidence of the claimant, functional disability of the injured is assessed at 25%. The injured was 43 years of age at the time of occurrence. Accordingly, loss of future income qua disability comes to $\text{Rs.}3850 \times 12 \times 14 \times 25\% = \text{Rs.}1,61,700/-$.

Compensation awarded by the Tribunal for pain and sufferings, attendant charges, special diet, miscellaneous expenses including transportation etc. is ordered to be affirmed. However, the claimant shall be entitled to an amount of Rs.30,000/- for loss of amenities of life.

The total compensation comes to Rs.3,84,354/- and the additional amount is Rs.1,15,050/- ($3,84,354 - 2,69,304$). The additional

amount shall carry interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

14.11.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No