

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

FAO No. 6836 of 2015

DATE OF DECISION : 07.11.2017

Sudhir

.... APPELLANT

Versus

Dharmender Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sudhir Kumar Hooda, Advocate,
for the appellant.

Mr. M.B. Jain, Advocate,
for respondent No.3 – Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

The present appeal is filed against the award dated 02.09.2014 passed by the Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal').

The grievance of the appellant is that the amount of ₹ 3,00,000/- awarded by the Tribunal as compensation for the injuries suffered by the appellant is on lower side and requires enhancement.

The factual matrix of the case necessary for adjudication of the appeal is that on 18.03.2013, appellant Sudhir aged 15 years was a pillion rider on motor cycle bearing registration No. HR-12S-4095. The said motor cycle was hit by a rashly and negligently driven Tata 407 bearing

registration No. HR-39A-3175 (for short, 'the offending vehicle'). As a result of the accident, the appellant suffered fracture both bones of right leg, fracture neck of right femur and fracture supra condylar. He was taken to PGIMS, Rohtak.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed.

The Tribunal, after considering the witnesses and material produced before it, awarded compensation of a sum of ₹ 3,00,000/- along with interest at the rate of 7.5% per annum.

Aggrieved of the said award, this appeal has been filed for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper-book.

Learned counsel for the appellant has argued that the appellant remained admitted in PGIMS, Rohtak, for 22 days. He was operated upon. He further contended that the appellant suffered 43% permanent disability qua right leg. He argued that the Tribunal has not considered various heads while awarding compensation. Learned counsel further argued that keeping in view the fact that the appellant suffered 43% permanent disability, the amount of ₹ 1,50,000/- awarded for loss of future prospects is on lower side.

Learned counsel for respondent No.3 - Insurance Company argued that adequate compensation has already been awarded and it is not a case for enhancement of compensation.

Hon'ble the Apex Court in ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another***, 2013(12)SCC 455, 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."

As per the above decision, in case of non-fatal injury, pecuniary and non-pecuniary damages should be compensated.

In this case, the Tribunal while awarding compensation has considered the medical expenses, pain and sufferings and loss of future prospects. The Tribunal has not considered the compensation on account of attendant, special diet and transportation. The appellant was hospitalized for 22 days. Both bones of his right leg were fractured. In case of such an injury, he would be needing transportation and attendant not only during the period of hospitalization but thereafter also. After being discharged from the Hospital, fracture takes time to heal and it can be easily foreseen that movement of the injured would be restricted and he may not be able to move around on a two wheeler. In such circumstances, some compensation for transportation and attendant should be awarded.

Similarly, in case of fracture and operation, special diet as advised by the Doctor has to be taken by the injured. Without the prescribed diet, post-surgery recovery and healing up of fracture will take more time.

For the reasons mentioned above and keeping in view the decision of the Hon'ble Apex Court, the appellant is awarded ₹ 20,000/- for attendant, ₹ 20,000/- for transportation and ₹ 10,000/- for special diet.

So far as the contention raised by learned counsel for the appellant with regard to enhancement of compensation for loss of future

prospects is concerned, same cannot be accepted at this stage. From a perusal of the award, it is evident that there is no positive evidence produced on record showing the effect of functional disability on the earning of the injured. The Hon'ble Apex Court in **Sandeep Khanuja Vs. Atul Dande & another**, 2017 (3) SCC 351 has held as under :-

“15. The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured. In this sense, the MACT approached the issue in right direction by taking into consideration the aforesaid test.”

In the said decision, it has been held that in injury case, it is to be seen that what is the effect of the functional disability on the earning capacity of the injured. In the present case, such evidence was produced neither before the Tribunal nor before this Court in the appeal. In such circumstances, the amount of ₹ 1,50,000/- awarded for loss of future prospects cannot be enhanced.

In spite of the above stated facts, it cannot be disputed that future of 15 years old young boy has been crippled. He has suffered 43% permanent disability vis-a-vis his lower limb. In such circumstances, even if there is no positive evidence to enhance compensation for loss of future prospects awarded by the Tribunal, but keeping in view the fact that the injured would not be able to walk properly, a sum of ₹ 50,000/- is awarded

for loss of status also.

In view of the above, the award dated 02.09.2014 is modified to the extent that the amount of ₹ 3,00,000/- awarded by the Tribunal is enhanced to ₹ 4,00,000/-.

The appellant shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

November 07, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes