

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Cross Objection No.31-CII of 2016 in/and
FAO No. 8911 of 2014 (O&M)

Date of Decision: 3.11.2017

Shri Joginder Singh

.....Appellant

Versus

Shri Vipul Jain and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjay Jain, Advocate
for the appellant.

Respondent No.1 already proceeded against exparte
vide order dated 14.9.2015.

Mr. Rakesh Gupta, Advocate
for respondent No.2/cross-objector.

Ms. Vandan Malhotra, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

The present appeal and cross objection arise out of an award dated 20.8.2013 passed by the Motor Accidents Claims Tribunal, Ambala (for short 'the Tribunal').

The present appeal has been filed for enhancement of compensation awarded of Rs. 1,11,000/- along with interest at the rate of 7.5% per annum.

The appeal is result of an accident which occurred on 23.11.2011. Joginder Singh, aged 46 years, met with a motor vehicular accident when a rashly and negligently driven three wheeler bearing Registration No. HR-37-A-8460 (for short 'the offending vehicle'), hit him, while he was going on his bicycle. As a result of the accident, he suffered

multiple injuries. FIR No. 593 dated 24.11.2011 was registered at Police

Station Ambala Cantt.

In consequence of these injuries, there was 10% permanent disability on account of fracture of left knee with restriction of movement of joint. The disability was proved vide Ex.P6. Dr. Vikas Paul, Medical Officer of Govt. Hospital, Ambala City deposed before the Tribunal to prove the disability. Further PW3 Dr. Vijay Bansal, Medical Officer, Civil Hospital, Ambala Cantt., deposed before the Tribunal to prove that the appellant underwent surgery on 29.11.2011 for band wiring in order to treat his fracture. It was also proved that there was a follow up treatment. The appellant was hospitalized for 21 days. The appellant claimed himself to be a denter and painter.

Learned counsel for the appellant argued that the amount awarded for compensation is on the lower side. He further contended that no amount has been awarded for special diet, attendant and transportation.

Learned counsel for the Insurance Company defended the award and resisted any 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."

A perusal of the above decisions shows that in case of personal injury pecuniary damages (special damages) should be given under various heads. It was further held that non-pecuniary damages should also be compensated.

Keeping in view the facts and circumstances mentioned above, since there was a fracture for which he was operated upon and there was hospitalization for treatment, these things ensure that there was need of attendant and transportation facility as the movement was restricted because of fracture in the leg. The necessity of hospitalization ensure that the doctor must had recommended special calcium rich diet.

In these circumstances, I deem it appropriate that a sum of

Rs. 50,000/- is awarded for attendant, special diet and transportation.

The award dated 20.8.2013 is modified to the extent that the amount awarded of Rs.1,11,000/- is enhanced to Rs.1,61,000/-.

The claimant would be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the petition till realization of the amount.

Learned counsel for respondent No.2 raised an objection that he had sold the vehicle to respondent No.1 who was the driver of the vehicle at the time of accident. He further stated that the earlier amount awarded by the Tribunal has been paid by Vipul Jain-respondent No.1 and thereafter the execution was withdrawn. He raised an argument that liability should be fixed for payment of enhanced amount awarded. Since, this is the factual aspect which has not been dealt with by the Tribunal, the cross objections are disposed of with liberty to respondent No.2 to raise these issues before the Executing Court, if need so arise.

The appeal is partly allowed and the cross objections are disposed of, in the above terms.

3.11.2017

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No