

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.9502 of 2014
Date of Decision: 05.07.2017

Rahul @ Hira Lal

.....appellant.

Vs.

Hanuman and Ors.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.R.C.Saini, Advocate, for the appellant.

Mr.D.K.Mittal, DAG, Haryana.

Mr.Pradeep Kumar, Advocate, for respondent No.4.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimant-appellant (for short 'the appellant'), against award dated 01.05.2014, passed by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal') vide which compensation to the tune of Rs.3,58,000/- was awarded to the claimant on account of injury suffered by him.

FACTS NOT IN DISPUTE

On 29.10.2012, the appellant was coming to his house from Bus Stand, Hisar, where his cousin Mohan Lal met him. Mohal Lal went to a shop to purchase bananas and he kept waiting near the shop, in the meantime a bus bearing registration No.HR-39C/9435 (for short the offending vehicle) which was being driven by respondent at a very high speed and in a rash and negligent manner came from Bus Stand and hit the appellant. As a result of which, the appellant sustained multiple injuries. The accident took place due to rash and negligent driving of the offending vehicle. The appellant

was shifted to General Hospital, Hisar and thereafter to Sapra Hospital, Hisar and from the Lok Nayak Hospital, Delhi. A criminal case bearing FIR No.1037 dated 28.10.2012 under Sections 279, 337, 429 IPC was registered against the respondent No.1 in Police Station City Hisar.

On notice, written statements have been filed by the respondents praying for dismissal of the claim of the appellants.

COMPENSATION ASSESSED BY MACT

The Tribunal held that accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1. The age of the appellant was taken by the learned Tribunal as 30 years as per his Aadhaar Card (Ex.P24). The learned Tribunal has assessed the compensation on account of injury suffered by the appellant:-

Sr.No.	Heads	Amount
1.	Medical expenses As per bills Ex.P4 to Ex.18.	Rs.22,000/-
2.	Pain and suffering and mental agony	Rs.30,000/-
3.	Loss of income (6 months)	Rs.24,000/-
4.	Loss of earning @ Rs.4,000/- X 25% =Rs.1000 X 12 X 17	Rs.2,04,000/-
5.	Loss of amenities	Rs.30,000/-
6.	Special diet	Rs.20,000/-
7.	Transportation charges	Rs.10,000/-
8.	Attendant charges	Rs.18,000/-
	Total	Rs.3,58,000/-

Learned counsel for the claimant-appellant contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced, in view of the judgment **Raj Kumar vs. Ajay Kumar and**

another 2011 ACJ 1. Learned counsel submits that the loss of income

awarded by the Tribunal is on the lower side and further nothing has been awarded towards love and affection to parents, who were fully dependent upon the deceased. Further, as per disability certificate Ex.P-1, the total disability was assessed by the medical board as 85% but while assessing the compensation, learned Tribunal has assessed 25% disability for assessing compensation. On the other hand, the learned counsel for the respondents have vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the record.

In the present case, the disability suffered by the claimant Rahul @ Hira Lal who was 30 years old at the time accident. As per disability certificate Ex.P-1, he has suffered 85% permanent disability due to amputation of left thigh at above knee. As per PW4 Dr.Reena Jain, this disability was qua particular limb and thus his disability qua whole body was taken as 43% and loss of earning capacity was taken as 25% in view of the judgment of the co-ordinate Bench of this Court in the case of Hans Raj Narang vs. Kanwar Bhan @ Kalu and Others passed in FAO No.4322 of 2003 (O&M) decided on 09.04.2014. A perusal of the judgment shows that in that case claimant was suffered 70% functional disability of the hand. This Court has taken 35% disability qua whole body for the purpose of assessing loss of earning capacity. As such, disability was taken as 25% in the present case. In the resent case, 85% disability is qua the whole body and this is a case where left leg was amputated. The disability qua whole body has to be taken as 60% and earning capacity as 40% and compensation can be reassessed as under.

Sr.No.	Heads of compensation	Amount
1	Loss of income Rs.5,000 X 6 months	Rs.30,000/-
2.	Loss of earning capacity 5000 X 40%= Rs.2,000 per month and Annual loss of earning capacity after applying multiplier Rs.2,000 X 12 X17	Rs.4,08,000/-
3.	Pain and suffering	Rs.1,00,000/-
4.	Loss of amenities	Rs.1,00,000/-
6.	Special diet	Rs.20,000/-
7.	Attendant Charges	Rs.18,000/-
8.	Transportation Charges	Rs.10,000
	Reassessed compensation	Rs.6,86,000/-
	Enhanced compensation	Rs.6,86,000/- ---- Rs.3,58,000/- =Rs.3,28,000/-

Resultantly, the enhanced amount of compensation of Rs.3,28,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

05.07.2017
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No