

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

**FAO No. 6924 of 2016 (O&M)
Date of Decision:- 28.11.2017**

Gian Chand Gupta

....Appellant

Versus

Sanjay Sood & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjeev Gupta, Advocate, for the appellant.

Mr. Vinod Gupta, Advocate, for respondent No.3.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 21.05.2016 passed by the Motor Accident Claims Tribunal, Panchkula (for short, 'the Tribunal').

Gian Chand, aged 65 years, met with motor vehicular accident on 26.02.2015. He was hit by rashly and negligently driven car bearing registration No. HR-49-B-8691. As a result of the accident he suffered multiple injuries including fracture of left ankle and left shoulder. FIR No. 42 dated 01.03.2015 was registered at Police Station Pinjore.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed. The Tribunal after considering the evidence produced and on appreciation of facts awarded a sum of ₹2,04,759/- along with interest @6% per annum.

The present 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 argued that the Tribunal erred in rejecting the medicines bill worth ₹48,000/-, which were claimed by Ex.P/21, P/26 and P/28. He further argued that a meager amount of ₹20,000/- has been awarded for transportation, special diet and attendant, whereas the appellant remained hospitalised for five days and was operated upon twice. The grievance is that Dr. Vivek Bhatia PW-2 deposed before the Tribunal that steel plates were fitted in the left ankle which will be removed in future by surgery but no compensation has been awarded for that. Learned counsel further contended that the Tribunal has not awarded any amount for loss of income during the period of treatment and nothing has been awarded for pain and suffering.

Learned counsel for the insurance company on the other hand argued that the Tribunal rightly rejected the medicine bill of ₹48,000/- as these were included in Exhibit P/7. He further argued that the appellant was just hospitalised for five days, hence sufficient amounts have been awarded. He resisted any further enhancement.

In the present appeal there is no challenge to the disability compensation awarded by the Tribunal. The only grievance is against the amounts awarded under the various heads and that nothing has been awarded for pain and suffering, loss of income during the period of treatment and for future surgery.

The contention of the learned counsel for the appellant with regard to reimbursement of medical bill Exhibits P/21, P/26 and P/28

deserves acceptance. A perusal of Exhibit P/7 produced by the counsels shows that it is a bill for ₹48,700/- but this bill is only with regard to surgery and surgery charges, it does not include medicines. The Tribunal should have awarded the amount of ₹48,000/- more under the head medical expenses.

A consolidated amount of ₹20,000/- has been awarded for transportation, special diet, attendant and pain & suffering. The amount awarded is on the lower side. There was a fracture of shoulder and the ankle, which ensures that in spite of his discharge from the hospital after five days, he would be needing transportation for a long time. There was a plaster for four weeks and he was advised bed rest for 3-4 months, all this ensures need of transportation. The surgery and the fractures are an indicator that a calcium rich diet as advised by the doctor would have been needed for a speedy recovery. The immobility of the appellant because of the surgery of his leg and his shoulder indicates that the attendant was required even after his discharge from the hospital.

The doctor PW-2 specifically stated that there would be a need of another surgery in future to remove the steel plates. This aspect should have been considered while awarding the compensation.

After Surgery and the plaster on the leg the appellant would not have been able to earn at least for the period of two months as the plaster itself was for four weeks. The pain and suffering amount was consolidated with the other heads, whereas while considering pain and suffering it is the physical pain, trauma, mental agony and the harassment which is to be considered.

The Hon'ble Apex Court in **G.Ravindranath @ R. Chowdary Vs. E. Srinivas & Anr. 2013 (12) SCC 455** has held that in case of non-fatal injuries, pecuniary and non-pecuniary damages should be compensated.

Keeping in view the reasons mentioned above, the amounts awarded by the Tribunal are enhanced and the heads not considered by the Tribunal, compensation is awarded as under:-

	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court.</i>
Medical expenses	₹59,095/-	₹1,07,095
Transportation, Special diet and attendant	₹20,000/-	₹40,000/-
Permanent disability	₹1,25,664/-	₹1,25,664/-
Future Surgery	-----	₹20,000/-
Loss of income during the period of treatment	----	₹15,000/-
Pain and suffering	----	₹50,000/-
Total	₹2,04,759/-	₹3,57,759/-

Accordingly, the award dated 21.05.2016 is modified to the extent that amount awarded of ₹2,04,759/- is enhanced to ₹3,57,759/-.

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

The appeal is partly allowed.

November 28, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No