

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

FAO-9880-2014 (O&M)

Date of decision: 05.12.2017

Saddam and another

.... Appellants

Versus

Rashid Ahmad and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Ashish Gupta, Advocate and
Mr. Barjinder Singh, Advocate
for the appellants.

Mr.M.B.Jain, Advocate
for respondent No.3.

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 16.10.2014 passed by Motor Accidents Claims Tribunal, Mewat (hereinafter referred to as the 'Tribunal').

There was a motor vehicular accident that occurred on 25.04.2012. The appellants, namely, Saddam and Hanif were going on a motorcycle bearing registration No.RJ-02/SD-8258. The said motorcycle was struck by rashly and negligently driven JCB bearing registration No.HR-74/A-0163 (for short, 'the offending vehicle'). As a result of the accident, both the appellants suffered multiple injuries. They were taken to CHC Ferozepur Jhirka and thereafter to Sania Hospital, Alwar and later on to SMS Jaipur.

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

The Tribunal after appreciating the facts and considering the evidence, awarded a sum of Rs.1,37,000/- along with interest @ 9% per annum to Saddam and Rs.4,50,600/- along with interest @ 9% per annum to Hanif.

The present appeal has been filed for enhancement of compensation.

I have heard the learned counsel for the parties and have perused the paper-book and relevant papers produced by the parties.

In case of Saddam, learned counsel for the appellants has argued that he had suffered multiple injuries and as a result of these injuries, there was post traumatic mild restriction of movements at left hip and left knee. It resulted into 15%+5% permanent disability. His grievance is that the Tribunal awarded Rs.2,000/- per percentage of disability but while calculating only 15% disability was taken instead of 20%. He contends that the amount awarded for pain and sufferings is on the lower side and no amount has been awarded for attendant. His further grievance is that the amounts awarded for healthy diet and transportation are on the lower side.

No other issue has been raised by learned counsel for the appellants.

Learned counsel for respondent No.3 defended the award and resisted any enhancement. He contended that the amounts awarded are just and equitable as none of the expenses incurred under the various heads have

been proved.

A 26 years young boy has been permanently disabled because of the injury sustained in the accident. The restricted hip and knee movements will not enable him to lead a normal life.

In such circumstances, the contentions raised by learned counsel for the appellants are very reasonable and deserve acceptance. There may be a deposition by the doctor and there can be one or two percent improvement in permanent disability that itself will not be a ground for not awarding compensation for 20% disability. In the present case, no positive evidence has come on record to show that what is the functional disability. The counsel has restricted his argument that appellant No.1 may be granted another sum of Rs.10,000/- for the balance 5% disability and the same is accepted. The appellant was hospitalised for 8 days. He had suffered fracture and was operated upon twice.

In such circumstances, the amounts awarded for pain and sufferings, healthy diet and transportation are on the lower side. The Tribunal ought to have awarded some compensation for attendant charges. In case of surgery, attendant would have been required in the hospital during the treatment and thereafter also during the recovery period.

Keeping in view the facts of the case, amount awarded of Rs.15,000/- for pain and sufferings is enhanced to Rs.30,000/-. The amount of Rs.15,000/- awarded for healthy diet and transportation is enhanced to Rs.25,000/- and another amount of Rs.10,000/- is awarded for attendant.

The award dated 16.10.2014 is modified qua Saddam to the

extent that the amount awarded by the Tribunal of Rs.1,37,000/- is enhanced to Rs.1,82,000/-.

In case of Hanif, learned counsel for the appellants argued that the Tribunal erred in assessing the income as Rs.4,000/- per month which is less than the minimum wages prevalent at that time. He further argued that appellant has lost his leg below the knee. In such circumstances, 80% disability awarded is on the lower side and its functional effect would be more. He is aggrieved of the amounts awarded under the various heads being on the lower side.

Learned counsel for the Insurance Company relies upon the decision of **Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343.** and states that disability qua limb as it cannot be applied as a multiplier for calculating the compensation for disability.

The Hon'ble Apex court in latest decision of **Sandeep Khanuja Vs. Atul Dande, 2017(3) SCC 351** has held that while calculating the compensation for disability, the percentage qua the limb should not as it is be applied for loss of income.

Both the parties are aggrieved of the percentage of disability and there is no evidence on record to prove the functional disability.

In such circumstances, without expressing any opinion on the merits of the case, it is deemed appropriate that the issue with regard to the awarding compensation to Hanif is remitted back to the Tribunal. The parties would be at liberty to adduce evidence in support of their claims.

The net result is that the compensation awarded to Saddam is

enhanced as per the above terms. He would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount. The case pertaining to Hanif is remitted back to the Tribunal and the parties are directed to appear before the Tribunal on 10.01.2018.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

05.12.2017

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1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes