

202.

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

FAO-313-2003

Date of decision:04.04.2018.

RAMESH CHANDER

... Appellant

Versus

KALA @ SANDEEP & ORS.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: None for the appellant.

Mr. Gopal Mittal, Advocate,
for respondent No.3-Insurance Company.

HARI PAL VERMA, J.(Oral)

Appellant-claimant has filed the present appeal seeking enhancement of compensation over and above the amount of compensation awarded by the Motor Accident Claims Tribunal, Sonapat vide award dated 22.10.2002.

In a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the appellant-claimant has averred that on 25.02.2001 he was pillion rider on his motorcycle, which was being driven by Surinder, from his Village Bohla to Sonapat. When they reached near Government High School, Mohana, the offending tractor dashed against the motorcycle from the front side. The driver of the tractor was driving the tractor in a rash and negligent manner while violating the traffic rules. Due to the impact of this accident, the appellant, who was the pillion rider, fell down and his right leg was crushed by the front wheel of the tractor. For this accident, an FIR

accident, he was taken to Civil Hospital, Sonapat and his right leg was operated and a steel rod was inserted. On account of injuries, the appellant suffered permanent disability.

The issue as regard rash and negligent driving was duly proved. Dr.S.S.Bhogal who was the Member of the Medical Board, examined the appellant-injured and found that he (appellant) suffered disability to the extent of 20% on account of operated case of right femur with stiffness of right knee joint with shortening of right leg by one inch.

Accordingly, the Tribunal awarded an amount of ₹84,064/- which included ₹24,064/- as medical expenses and a consolidated amount of ₹60,000/- for pain and suffering and shortening of leg, as compensation.

Not satisfied with the aforesaid amount of compensation, the appellant-claimant filed the present appeal seeking enhancement of compensation.

No one is present on behalf of appellant. Even on the earlier date, no one had put in appearance on behalf of the appellant.

Mr. Gopal Mittal, learned counsel appearing on behalf of respondent No.3-Insurance Company has argued that considering the nature of injuries so suffered by the appellant-claimant, the Tribunal has awarded adequate compensation.

I have heard learned counsel for respondent No.3 and perused the record.

The accident and liability are not in dispute. What is in dispute is the compensation awardable to the claimant. The record reveals that the appellant-claimant remained admitted in Civil Hospital, Sonapat from

injuries so suffered by the claimant wherein his leg was operated upon and a steel rod was fitted, he must have remained bed-ridden for a substantial period. Moreover, for shortening of leg by one inch in the accident, this Court can take judicial note of the fact that he must not be able to follow his daily/routine pursuits. Therefore, taking into consideration the judgment passed by Hon'ble Supreme Court in **S. Perumal Versus K. Ambika and another-2015(11) SCC 411**, this Court finds that the appellant-claimant deserves to be compensated for his permanent disability which has been assessed as 20%. The relevant extract from the said judgment reads as under:-

“14. The injured claimant is to be compensated for his permanent disability and also for loss of earning due to his inability, the whole idea is to put claimant in the same position as he was prior to the accident. In **2011 (2) R.C.R. (Civil) 101: 2011(1) Recent Apex Judgments (R.A.J.) 571: 2011 ACJ 1 (SC) (Raj Kumar v. Ajay Kumar)**, this Court considered the principles for awarding compensation in injury cases, and held as under:

“The provision of the Motor Vehicles Act, 1988 (‘the Act’, for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries and his inability to earn as much as he used to earn or could have earned...

(5) The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalization,

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 earnings 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.)

In routine personal injury cases, compensation will be awarded only under heads.

(i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence 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.”

18. In **2011(4) R.C.R. (Civil) 817: 2011 (5) Recent Apex Judgments 594: 2012 ACJ 28 (Govind Yadav v. New India Assurance Company Limited)**, this Court held as under:-

“15. In our view, the principles laid down in **Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010 (4) R.C. R. (Civil) 917: 2010 (6) Recent Apex Judgments (R.A.J.) 276: 2010 ACJ 2867 (SC) and Raj Kumar v. Ajay Kumar, 2011 ACJ 1 (SC)**, must be followed by all the tribunal and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.”

15. We shall now consider the question as to what is just and reasonable compensation to be awarded to the claimant. The claimant was a poultry labourer, he would have earned not less than Rs.4,500/- per month. Considering the nature of occupation of the claimant and the 25% disability, in our considered view, lumpsum compensation of Rs.2,00,000/- towards loss of future earnings, on account of permanent

disability, Rs.13,500/- (Rs.4,500 x 3) is awarded for the loss of earning during the period of treatment. Considering the nature of treatment and the medical bills (Exp.5), for which an amount of Rs.1,00,000/- is awarded towards medical expenses; Rs.50,000/- is awarded towards pain and sufferings; Rs.10,000/- is awarded for transport charges and Rs.10,000/- is awarded for attendant charges; Rs.10,000/- is awarded towards extra nourishment and Rs.50,000/- is awarded towards loss of amenities.”

Having recourse to the judgment in **S. Perumal** (supra), this Court finds that the appellant-claimant is entitled for enhancement of compensation and, accordingly, instead of ₹60,000/- awarded towards pain and suffering and for shortening of leg, this amount is enhanced to ₹1,50,000/- i.e. an addition of ₹90,000/- over and above the amount awarded by the Tribunal. The appellant-claimant shall also be entitled for interest @ 7.5% per annum from the date of filing of claim petition till date of its realization.

With the aforesaid modification in the award, present appeal is disposed of.

(HARI PAL VERMA)
JUDGE

04.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No