

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

FAO No. 1839 of 2002

DATE OF DECISION : 12.01.2018

Sonu

.... APPELLANT

Versus

Jagbir and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Simranjeet Kaur, Advocate, for
Mr. Kulvir Narwal, Advocate,
for the appellant.

Mr. Anil Ghangas, Advocate,
for respondent No.2.

Mr. R.C. Kapoor, Advocate,
for respondent No.3.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 15.12.2001 passed by the Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal').

The record of this case was burnt in fire and from the salvaged record of the partially burnt case, the file was reconstructed, subject to all just exceptions and further verification.

In a motor vehicular accident, that occurred on 24.06.1999, appellant Sonu, aged 19 years, suffered injuries. The accident was between

jeep bearing registration No. HR-12P/0263 and truck bearing registration No. HR-19/3165. As a result of the accident, the appellant suffered multiple injuries and remained admitted in Medical College & Hospital, Rohtak, till 28.06.1999. On account of the accident, he suffered 50% permanent disability qua right leg. Certificate was exhibited as Ex.P4 and was proved by the statement of PW.4 Dr. M.K. Bishnoi, SMO, Incharge, General Hospital, Rohtak.

In a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the Tribunal awarded a sum of ₹ 73,262/- along with interest at the rate of 9% per annum.

Aggrieved of the said award, the present appeal has been filed for enhancement of compensation.

Learned counsel for the appellant argued that the Tribunal, while awarding compensation, has not taken into consideration the compensation to be awarded for special diet, transportation, attendant and loss of marriage prospects. Her further grievance is that the amount of ₹ 20,000/- awarded for disability is on lower side.

Learned counsel for the Insurance Company defended the award and resisted any enhancement, but his contention cannot be accepted in view of the fact that a young boy of 19 years of age had suffered 50% permanent disability qua right leg.

The Hon'ble Apex Court in **G. Ravindranath @ V. Gopala Gowda, 2013 (12) SCC 455**, has held that in case of serious cases of injury, pecuniary and non-pecuniary damages should be compensated.

The issue to be considered while awarding compensation in such like cases is that the claimant has suffered not because of wrong done by him but because of an act of a wrong doer. The Hon'ble Apex Court has held that in case of injuries, the endeavour is to put the injured in original position so far as money can.

Though nothing has come on record to prove that to what extent the permanent disability of the appellant reduced his earning capacity. Be that as it may, the Hon'ble Apex Court in **Raj Kumar Vs. Ajay Kumar and another, 2011 (1) SCC 343**, instead of remanding the matter, took the permanent disability of 45% qua limb as 25% permanent functional disability of the whole body and taking the loss of future earning capacity as 20%, multiplier method was applied for calculating the compensation.

The minimum wages for an unskilled labourer at the time of the accident was ₹ 2,000/- per month. The disability of the appellant qua limb is 50%. In view of decision of the Hon'ble Apex Court in **Raj Kumar's case** (supra), loss of earning capacity of the appellant is taken as 22%. By applying the multiplier of 18, compensation for disability is calculated as under :-

$$22\% \text{ of } 2000 \times 12 \times 18 = ₹ 95,040/-$$

The appellant was hospitalised and was operated upon. This ensures that special diet would have been required, as recommended by the Doctor. Furthermore, transportation would have been required even during the period of treatment and thereafter also. With the restricted movement, his normal walking would have been affected which will affect his marriage prospects. The appellant would have needed an attendant during the period

of hospitalisation and thereafter, during the recovery period also.

Keeping in view the facts and circumstances of the case, apart from the amount already awarded by the Tribunal, the following amounts are awarded/enhanced to the appellant :-

Heading	Awarded by the Tribunal	Now awarded by this Court
Compensation for disability	₹ 20,000/-	₹ 95,000/-
Marriage prospects	Nil	₹ 50,000/-
Special diet	Nil	₹ 10,000/-
Transportation	Nil	₹ 10,000/-
Attendant	Nil	₹ 10,000/-

Since the issue of contributory negligence has not been challenged before this Court, the claimant would be entitled to the enhanced amount in the same ratio as ordered by the Tribunal.

Consequently, the award dated 15.12.2001 is modified to the extent that the compensation of ₹ 73,262/- awarded by the Tribunal is enhanced by ₹ 1,55,000/-.

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

The appeal is partly allowed in the aforesaid terms.

January 12, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes