

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

FAO No.834 of 1997
Date of Order: 25.09.2018

Narinder Singh Yadav

....Appellant

Versus

Vijay Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Aditya Yadav, Advocate for the appellant.

Ms. Vandana Malhotra, Advocate
for respondent No.3.

B.S.WALIA, J (ORAL)

1. Prayer is for enhancement of compensation of ₹90,000/- awarded by the Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') on account of injuries sustained by the appellant in an accident which took place on 28.09.1992, on different parts of his body including head as a result of which, the appellant had difficulty in communication, clear formation of words as also in walking.

2. The learned Tribunal on the basis of evidence led before it came to the conclusion that the appellant was entitled to lump sum compensation of ₹90,000/- under pecuniary as well as non-pecuniary heads

on account of injuries suffered, extent of disability besides other relevant facts.

3. Learned counsel for the appellant contended that the appellant was practicing as an Advocate and earning ₹3,000/- per month and the learned Tribunal had ignored the aforementioned aspect of the matter besides had not specified the amount awarded under different heads and lastly that in view of the decision of Hon'ble the Supreme Court in **Yadava Kumar vs. The Divisional Manager, National Insurance Company Ltd. and another 2010 (4) SCC (Civil) 168**, compensation was liable to be awarded by taking into account the monthly income, applying appropriate multiplier and assessing the compensation on the basis of the disablement. Learned counsel contended that in the instant case, the disablement although was assessed at 38.6%, but for all intents and purposes, loss of earning capacity would be 100%, as the disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person suffering from the disability. Learned counsel contended that an Advocate who has difficulty in communicating clear formation of words besides in walking, can no longer practice as an Advocate, therefore loss of earning capacity has to be treated as 100%.

4. Per contra, learned counsel for respondent No.3 contended that income claimed had not been proved, compensation awarded was just and appropriate, therefore, no interference was called for. Learned counsel further contended that the claim was of the year 1992, therefore interest awarded @ 12% per annum was required to be scaled down.

5. I have heard learned counsel for the parties.

6. Admittedly the appellant was practicing as an Advocate at the time he met with an accident on 28.09.1992. Appellant claimed that he was earning ₹3,000/- per month. However, no evidence was led in respect thereto. However, by making a rough guess work, the same is assessed at ₹2,000/- per month. The appellant received head injury resulting in his not being able to communicate properly nor form words clearly, besides having difficulty in walking. Although Disability was assessed at 38.6%, but in the circumstances of the case, loss of earning capacity for an Advocate has to be treated as 100% since an Advocate having difficulty in communicating clear formation of words and walking would not be able to carry on the profession of an Advocate. In **Mohan Soni vs. Ram Avtar Tomar and others 2012 (2) SCC 267** on account of amputation of left leg of a cart puller, Hon'ble the Supreme Court assessed the loss of earning capacity at 100% as the disability was such that it would prevent the cart puller from effectively carrying on with the work of a cart puller. In the present case, I am convinced that having regard to the nature and extent of the injuries, the appellant would not be in a position to practice as an Advocate. Accordingly, the loss of earning capacity is treated as 100%.

7. Hon'ble the Supreme Court in Yadava Kumar's case (supra) by relying on its decision in **Hardeo Kaur and others v. Rajasthan State Transport Corporation and another (1992) 2 SCC 567** held that in determining the quantum of compensation, the Court must be liberal and not niggardly inasmuch as in a free country law must value life and limb on a generous scale. Further by relying on its decision in **Mrs. Helen C. Rebello and others v. Maharashtra State Road Transport Corporation**

and another, 1998 (4) RCR (Civil) 177 it was held that in matters of determination of compensation, the Tribunal as well as Court were statutorily charged with a responsibility of fixing a 'just compensation', that determination of a just compensation required a reasonable approach guided by principles of good conscience so that the ultimate result was just and equitable. Accordingly, by taking into account the income and by applying appropriate multiplier, Hon'ble the Supreme Court worked out the compensation payable after taking into account the percentage of disability. In the instant case, the income has been taken as ₹2,000/- per month. Accordingly, while applying multiplier of '17' on account of the appellant being 30 years of age at the relevant time and taking into account loss of earning capacity as 100%, compensation payable works out to ₹2,000x12x17=₹4,08,000/-. Amount payable under various heads has not been specified by the Tribunal. Accordingly, I am of the view that a sum of ₹25,000/- be awarded on account of pain and suffering, ₹25,000/- on account of loss of amenities of life, ₹1500/- per month for two months on account of attendant charges i.e. ₹3,000/-, ₹2,000/- per month on account of special diet for two months i.e. ₹4,000/- while ₹14,000/- awarded on account of transportation charges and ₹20,500/- awarded on account of medical expenses incurred does not call for any interference.

8. In the circumstances, the compensation payable to the appellant/claimant works out to ₹4,99,500/- less payment if any already made. In view of the decision of Hon'ble the Supreme Court in Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy 2001 (14) SCC 481, rate of interest on the enhanced amount of compensation is

ordered to be paid at the rate of 9% per annum with effect from the date of claim petition till date of realization.

9. Appeal is allowed by modifying the award to the extent noted above.

September 25, 2018

rajesh.k.khurana

**(B.S.WALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No