

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2781 of 2001  
Date of Decision : 27.11.2018

Harish Kumar .....Appellant

Versus

Rohtash and others ....Respondents

**CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Govind Rana, Advocate  
for Mr. Harkesh Manuja, Advocate  
for the appellant.

Mr. Lalit Garg, Advocate  
for respondent no. 3-Insurance Company.

**Surinder Gupta, J.**

This is appeal filed by appellant-Harish Kumar against award dated 23.10.2000 passed by the Motor Accident Claims Tribunal, Panipat (later referred to as ‘the Tribunal’) whereby he was awarded compensation of ₹1,15,515/- for the injuries suffered by him in a motor vehicle accident with truck bearing registration no. HRR-5662 (later referred to as ‘the offending vehicle’). The Tribunal awarded the compensation as follows:-

| <i>Sr.No.</i>       | <i>Heads</i>                                                        | <i>Calculation</i> |
|---------------------|---------------------------------------------------------------------|--------------------|
| (i)                 | Hospitalization, special diet, attendant and transportation charges | ₹7500              |
| (ii)                | Compensation for pain and suffering                                 | ₹15000             |
| (iii)               | Compensation for 40% permanent disability                           | ₹40000             |
| (iv)                | Compensation for medical expenses                                   | ₹47015             |
| (v)                 | Compensation for loss of income for three months                    | ₹6000              |
| <b><i>Total</i></b> |                                                                     | <b>₹115515</b>     |

2. As the appellant is seeking enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. Learned counsel for the appellant has argued that the appellant was 27 years of age. He remained admitted in hospital for his treatment for 77 days and was repeatedly operated. Firstly, he remained admitted in hospital from 13.05.1995 (date of accident) to 06.06.1995, then from 15.10.1996 to 09.11.1996 and again from 07.12.1998 to 02.01.1999. Legs of the appellant got crushed under the offending vehicle. The compensation allowed by the Tribunal under the pecuniary and non-pecuniary heads is quite meagre. The appellant had suffered 40% disability and no compensation for loss of future income was awarded. It was proved on file that the appellant had been getting treatment from the date of accident till 02.01.1999 i.e. for a period of about 43 months. The loss of earning awarded by the Tribunal for three months as ₹6000/- is also on lower side and is inadequate. No compensation was allowed for the loss of future prospects and loss of amenities of life.

4. Learned counsel for respondent no. 3-Insurance Company has argued that the accident had taken place in the year 1995. The Tribunal has awarded compensation as per price index prevailing at that time and the same calls for no enhancement.

5. Appellant while appearing as PW-5 has stated that his legs got crushed by the offending vehicle and he suffered multiple serious injuries. PW-1 Dr. G.S. Gupta of G.C. Gupta Nursing Home, Panipat, where the appellant was got admitted, has corroborated his statement. Appellant has stated that to give original shape to his legs he was operated in G.C. Gupta Nursing Home, Panipat. He had been going there for follow up treatment and also took treatment from PGIMS, Rohtak, where he remained admitted

from 15.10.1996 to 09.11.1996. There he was again operated to give original shape to his legs. To support his contention he has placed on file follow up and discharge card issued by PGIMS Rohtak as Ex. P-38. He further stated that hole used to appear in his right heel and the pus was oozing from it. Despite his operation in PGIMS Rohtak, he did not recover and had to go to All India Institute of Medical Sciences (AIIMS), Delhi, where he was operated and discharged on 02.01.1999.

6. The Tribunal took note of the fact that injuries suffered by the appellant did not cure despite operations in PGIMS Rohtak and then AIIMS, Delhi. Taking note of the evidence on record, the Tribunal observed as follows:-

*“15. ....petitioner categorically stated that he had to undergo operations for setting his legs in original shape. Even a hole used to appear on the right heal. It was not cured even inspite of operations from P.G.I. Rohtak and AIIMS. Petitioner is of the age of 27 years. At such (sic) afore-discussed injuries on both the legs of the petitioner had been a cause of great pain and suffering. At such a young age, the capacity of the petitioner to work has been drained out. For such a long period petitioner remained with un-certainty as to whet her he would be well ultimately or not.....”*

7. Dr. Gulshan Bajaj, who appeared as PW-2 has proved the disability certificate of the appellant. He has stated that the appellant suffered 40% permanent disability on account of post traumatic missing of muscles with multiple scars and with restriction of movements ankle left side with absence of muscle round right heel. He has stated that the appellant will have to live with this disability for whole of his life.

8. Taking note of above facts, the Tribunal awarded compensation of ₹40,000/- on account of permanent disability. The Tribunal awarded compensation of ₹6000/- by taking the period of recovery of appellant as three months. No compensation was awarded for loss of amenities of life and future medical expenses. It was proved on file that the appellant had been taking treatment for about four years, as such, the Tribunal while allowing compensation to him towards loss of income has gone wrong by restricting it only for a period of three months. The compensation awarded by the Tribunal to meet the expenses of hospitalization, special diet, attendant charges and transportation charges as ₹7500/- is also on lower side. It is proved on file that the appellant had to go for repeated follow ups. He remained admitted in hospital for about 77 days. He had to spend while going to Rohtak and then to Delhi on transportation and attendant charges. He suffered pain and suffering for a long period of about four years.

9. Keeping in view above facts and circumstances, compensation for non-pecuniary heads is reassessed as follows:-

| <i>Sr.No.</i>       | <i>Heads</i>                                     | <i>Calculation</i>                 |
|---------------------|--------------------------------------------------|------------------------------------|
| (i)                 | Compensation towards expenses of hospitalization | (77 days x ₹50 per day)<br>= ₹3850 |
| (ii)                | Compensation for special diet                    | ₹5000                              |
| (iii)               | Compensation for attendant charges               | ₹5000                              |
| (iv)                | Compensation for transportation charges          | ₹5000                              |
| (v)                 | Compensation for pain and suffering              | ₹25000                             |
| <b><i>Total</i></b> |                                                  | <b>₹43850</b>                      |

10. The Tribunal has allowed compensation of ₹40,000/- for 40%

permanent disability. As stated by Dr. Gulshan Bajaj, this disability was on

account of post traumatic missing of muscles with multiple scars and with restriction of movements ankle left side with absence of muscle round right heel and the appellant will have to live with this disability for whole of his life. The nature of disability suffered by him shows that this disability resulted in his loss of future avenues and his earning capacity as well. Though, 40% disability is not of whole body still keeping in view the nature of disability as described by Dr. Gulshan Bajaj, loss of future income of claimant can be safely assessed as 20% of his income. The Tribunal took income of the deceased as ₹2000/- per month. By taking this income as base and applying addition of 40% towards future prospects and multiplier of 17, loss of income on account of his permanent disability to which appellant is entitled, works out to be **₹114240/- (2000x20%+40%x12x17)**.

11. The appellant is also awarded compensation of **₹12,000/-** for loss of income during the period he was under recovery by taking the same as six months. For the loss of amenities of life, he is awarded further compensation of **₹40,000/-**. A person, who has suffered injuries of such nature as described by Dr. Gulshan Bajaj, will require constant medical attention and have to spend on medication and physiotherapy treatment. The Tribunal has not awarded any compensation under this head. On this count, appellant is awarded compensation of **₹5000/-**.

12. In view of above discussion, compensation to which appellant is entitled works out to be as follows:-

| <i>Sr.No.</i> | <i>Heads</i>                                | <i>Calculation</i> |
|---------------|---------------------------------------------|--------------------|
| (i)           | Compensation under non-pecuniary heads      | ₹43850             |
| (ii)          | Loss of income on account of 40% disability | ₹114240            |

| <i>Sr.No.</i>       | <i>Heads</i>                                                                                            | <i>Calculation</i>                          |
|---------------------|---------------------------------------------------------------------------------------------------------|---------------------------------------------|
| (iii)               | Compensation for loss of income for the period he was under recovery for six months @ ₹2000/- per month | ₹12000                                      |
| (iv)                | For the loss of amenities of life                                                                       | ₹40000                                      |
| (v)                 | Compensation towards expenses of physiotherapy and medicines                                            | ₹5000                                       |
| (vi)                | Compensation for medical expenses as already awarded by the Tribunal                                    | ₹47015                                      |
| <b><i>Total</i></b> |                                                                                                         | <b>₹262105<br/>(rounded off to ₹262100)</b> |

13. As a sequel of my above discussion, the instant appeal is accepted and the award of the Tribunal is modified. The amount of compensation is enhanced from ₹1,15,515/- to ₹2,62,100/- for the injuries suffered by claimant-appellant. The enhanced amount will carry interest 7% per annum from the date of filing of this appeal till actual realization.

November 27, 2018  
jk

( SURINDER GUPTA)  
JUDGE

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