

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4184 of 2001 (O&M)
Date of decision: 06.09.2018

Tarwinder Singh
....Appellant
Versus
Shri Ishwar Chand Mittal and others
.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Saurabh Arora, Advocate for the appellant.
None for respondent Nos.1 and 2.
Mr. Amit Kundra, Advocate for respondent No.3-Insurance Co.

MAHABIR SINGH SINDHU, J.

The appellant, who was working as Junior Engineer at the relevant time and suffered 85% permanent disability (amputation of right arm) on 17.07.1990 in a motor-vehicle accident, has filed the present appeal under Section 173 of the Motor Vehicles Act (*for short 'the Act'*) for enhancement of compensation.

(2) On 30.05.2001, learned Motor Accident Claims Tribunal, Ambala (*for short 'Tribunal'*) awarded the total compensation amount of ₹ 5,22,900/- under the following heads: -

Loss on account of future earnings	₹ 96,000/-
Pain and suffering	₹ 25,000/-
On account of loss of future enjoyment of limb	₹ 1,00,000/-
On account of humiliation due to amputation	₹ 30,000/-
Compensation on account of permanent disability (due to amputation of his right arm)	₹ 2,30,400/-
On account of attendant charges	₹ 4000/-
Transportation Charges	₹ 5000/-
Future charges for Helper for exam of AMIE	₹ 25,000/-
Total compensation	₹ 5,22,900/-

(3) A claim petition was filed under the provisions of Section 166 of the Act by the claimant-appellant (*for short 'appellant'*) before learned Tribunal with the averments that on 17.07.1990, he was going to village Jubli in Maruti Car bearing registration No.DDC-8217 along with some other officials of his department. He was driving the Car and while returning, when they reached near Surajpur bridge, Kalka (Ambala-Kalka road), one four wheeler i.e. Canter bearing registration No.HR-04-0233 (*for short 'offending vehicle'*), being driven by respondent No.2-Sahib Singh, in a rash and negligent manner on high speed without blowing any horn, came from opposite side and hit the Car. As a result of which, appellant sustained injuries. Thereafter, he shifted to the PGIMS, Chandigarh, where his right arm had to be amputated on account of the accident. Further averred that he was drawing monthly salary of ₹ 3,205/- at the time of accident and spent ₹ 3000/- on medicines and ₹ 4,500/- for special diet. Also averred that due to rash and negligent driving of respondent No.2, he suffered 85% permanent disability and claimed a compensation of ₹ 23 Lakh.

(4) In response to the claim petition, respondent Nos.1 and 2 filed joint written statement and submitted that the offending vehicle was standing in break down condition on left side of the road and appellant was driving his Car in a rash and negligent manner under the influence of liquor and there was no negligence on the part of the driver of the offending vehicle. Also submitted that the claim is highly exaggerated.

Separate written statement has been filed on behalf of respondent No.3-Insurance Company while denying the claim of the appellant and, *inter alia*, submitted that although offending vehicle is insured with the Insurance Company, but it is not liable to pay any compensation as the offending vehicle was being driven in violation of terms and conditions of the Insurance Policy.

(5) On the basis of the pleadings of both sides, learned Tribunal framed the following issues:-

- “1. Whether the claimant suffered injuries in a motor vehicle accident caused by rash and negligent driving of Canter No.HR-04-0233 driven by respondent Sahib Singh?OPP.*
- 2. If issue No.1 is proved to what amount of compensation, the petitioner is entitled to and from whom?OPP.*
- 3. Whether the petition is bad for non-joinder of necessary parties?OPR*
- 4. Whether the insurance company is not liable to pay the claim for the reasons mentioned in the preliminary objections? OPR-3.*
- 5. Relief.*

(6) On an earlier occasion, learned Tribunal while passing the Award dated 07.01.1993 partly allowed the claim petition and awarded ₹ 15,000/- on account of 'No Fault Liability' as the Issue No.1 regarding rash and negligent driving was decided against the appellant. The above Award was challenged in FAO No.815 of 1993, which was allowed by this Court vide order dated 13.03.2001 while observing as under:-

“ In this view of the matter, I reverse the finding of the Tribunal on issue No.1. Since I have reversed the finding of Tribunal on issue No.1, therefore, I allow this appeal and set aside the entire award and the case is remanded to the Court of Tribunal with the direction to give a fresh finding on issue No.2. The finding on issue No.2 be given by the Tribunal within three months from the receipt of the copy of this order. ”

Consequently, the case was remanded back to learned Tribunal for fresh decision and again the matter has been decided while passing the impugned award, thereby granting the compensation of ₹ 5,22,900, referred above. Hence, the present appeal.

(6) It is argued on behalf of the appellant that keeping in view the age and the fact that appellant is a married person, income, qualification, nature of job and permanent disability to the extent of 85%, the compensation awarded by learned Tribunal is insufficient and on lower side and the same deserves to be enhanced.

On the other hand, learned counsel for the Insurance Company has submitted that the amount of compensation, awarded by learned Tribunal, is legal and justified and no interference is required by this Court.

(8) Heard learned counsel for the parties and perused the record.

(9) Since Issue No.1 has already been decided by this Court in FAO No.815 of 1993 in favour of the appellants and learned Tribunal has held all the respondents liable jointly and severally. The findings to that effect have neither been challenged by way of any substantive appeal or any cross-objections, therefore, the same are affirmed. Even the permanent disability of the appellant is also not in dispute. Consequently, the only point for determination in the present appeal is '*as to what should be the just compensation for which the appellant is entitled.*'

Appellant/PW 7 deposed that he had spent an amount of ₹ 3000/- on medicines and ₹ 4500/- for special diet and bills have been produced as Ex.P-10 to Ex.P-19 and which were duly accepted by learned Tribunal. The appellant has duly proved that he was working as a Junior Engineer and his Salary Certificate is produced on record as Ex.P-5, which shows that he was getting salary of ₹ 3205/- per month. As per Service Rules, the retirement age of the appellant for the post of Junior Engineer is 58 years in due course and at the time of accident, he was 36 years of age.

Learned Tribunal has accepted the age of appellant as 35 years and, therefore, the appellant was having the remaining service tenure of 23 years. As per Punjab Service of Engineers, Class-II PWD (Public Health) Rules, 1967 (*for short 'Service Rules'*), for earning the promotion from the post of Junior Engineer, passing of AMIE Examination is pre-requisite and due to the amputation of right arm of the appellant, it will be very difficult for him to clear the said exam. Although, learned Tribunal has observed that an Helper can be provided to take the exam and on that count, ₹ 25,000/- was awarded, but Helper cannot be a substitute for such a technical exam like AMIE and in view of the disability of the appellant, it will be almost impossible for him to successfully cross the hurdle of said examination. Therefore, the chances of promotion for the next post have not only diminished rather almost obliterated.

PW 1/Dr. Vikas, PGI, Chandigarh deposed that appellant was admitted in PGI on 18.07.1990. PW 6- Dr. Dominot, Registrar, Orthopedic Deptt., PGI, Chandigarh deposed that he along with Dr. Nunga and Dr. K.J. Reddy treated the appellant and performed the operation, whereby his right arm was amputated above the elbow and his Disability Certificate is Ex.P-8, which shows the 85% permanent disability.

Consequently, keeping in view the facts and circumstances, discussed hereinabove as well as the law laid down by Hon'ble Supreme Court in '**Raj Kumar Versus Ajay Kumar and another, (2011) 1 SCC 343**', the following amount of compensation would be just compensation, which should be awarded to the appellant on account of his permanent disability:-

Sr. No.	Heads	Calculation
1	Monthly income of appellant	₹ 3205

Sr. No.	Heads	Calculation
2	1/3 rd deduction for personal expenses	₹ 3205 - ₹ 1068 = ₹ 2137
3	Compensation for permanent disability of 85%	₹ 2137 x 85 ÷ 100 = ₹ 1816
4	Annual loss of future earning	₹ 1816 x 12 ₹ 21,792
5	Multiplier	16
6	After applying multiplier, total loss of future earning of the appellant	₹ 21,792 x 16 = ₹ 3,48,672
7	Loss on account of future earnings	₹ 96,000/-
8	Pain and suffering	₹ 25,000/-
9	On account of loss of future enjoyment of limb	₹ 1,00,000/-
10	On account of humiliation due to amputation	₹ 30,000/-
11	Compensation on account of permanent disability (due to amputation of his right arm)	₹ 2,30,400/-
12	On account of attendant charges	₹ 4000/-
13	Transportation Charges	₹ 5000/-
14	Future charges for Helper for exam of AMIE	₹ 25,000/-
	TOTAL COMPENSATION	₹ 8,64,072/-

In view of above, the instant appeal is allowed and the amount of compensation, assessed by learned Tribunal, is modified and enhanced from ₹ 5,22,900/- to ₹ 8,64,072/- for the injuries suffered by the appellant.

Needless to say that amount of compensation already paid to the appellant shall be adjusted and the balance amount of compensation shall be paid within a period of six weeks from the date of receipt of certified copy of this order.

Disposed off in the above terms.

September 6, 2018

(MAHABIR SINGH SINDHU)
JUDGE

naresh.k/Gagan

Whether speaking/reasoned	Yes
Whether Reportable	Yes