

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A. O. No. 3744 of 2004 (O&M)

Date of Decision:15.01.2018

Gulab Singh

.....Appellant

Versus

Rani Gupta and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B.S. Walia, Advocate
for the appellant.

Ms. Shamsheer Kaur, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 17.5.2004 passed by the Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal').

On 11.5.2002 Gulab Singh was travelling in a Matador bearing registration No.HR-38-B-1652. The said vehicle was being driven rashly and negligently, as a result, it turned turtle. Gulab Singh sustained injuries i.e. comminuted fracture upper tibial condyle and fibula left side involving outer tibial condyle mainly, alongwith compartments syndrome symptoms, fracture right calcaneum with abrasions and fracture base of the second and third metatarsal left foot alongwith abrasions. He was hospitalized in Civil Hospital, Karnal, and thereafter in hospital of Dr. Vijay Gupta, City Nursing Home, Karnal. He remained hospitalized from 11.5.2002 to 25.5.2002 and thereafter he was having follow up treatment. The result of the injuries was that he suffered 8% permanent disability qua whole body.

The said disability was proved vide Ex.P4. Dr.Vijay Gupta, was examined as PW2 and Dr.Rajinder Kumar, was examined as PW5. The Doctor proved the disability certificate and the fact that the appellant was operated upon and treated in his Nursing Home.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the Tribunal awarded a sum of Rs.60,000/- along with interest at the rate of 9% per annum.

The present appeal has been filed raising grievance that the Tribunal while awarding the compensation has not considered the compensation to be awarded for special diet, attendant and transportation. Further grievance is that the amount awarded for pain and suffering is on the lower side. No other issue has been raised.

The contention raised by learned counsel for the appellant deserves acceptance inspite of resistance by learned counsel for the Insurance Company.

Hon'ble the Apex Court in case of ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another***, 2013(12)SCC 455, has held that in case of non-fatal injuries, both pecuniary and non-pecuniary damages should be compensated.

In the present case, there is no dispute with regard to the percentage of disability suffered, the period of hospitalization and the treatment undergone has also not been disputed. The nature of injuries and the treatment ensure that an attendant and transportation would have been required during the period of treatment and thereafter also. The surgery undergone and the fracture suffered by the appellant needed special diet for speedy recovery. While awarding compensation for pain and suffering,

it should be considered that pain and suffering would not include only the physical pain but mental agony, trauma and hospitalization suffered. The amount awarded by the Tribunal of Rs.15,000/- for pain and suffering is enhanced to Rs.30,000/-, an amount of Rs.15,000/- is awarded for attendant and Rs.10,000/- for transportation and Rs.5,000/- for special diet.

The award dated 17.5.20004 is modified to the extent that the amount awarded of Rs.60,000/- is enhanced to Rs. 1,05,000/-. The claimant would be entitled to enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is accordingly partly allowed in the aforesaid terms.

15.01.2018

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No