

(101) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5175 of 2005
Date of decision: 17.09.2018

Sunita Kaushik

... Appellant

Versus

Joginder Singh and others

... Respondents

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

Present: Mr. Vivek Suri, Advocate for the appellant.
Mr. Paul S. Saini, Advocate and Mr. Vipul Sharma,
Advocate for the respondent/Insurance Company.

B.S. Walia, J. (Oral)

[1] Appeal has been filed seeking enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') on account of injuries sustained by the appellant in a motor vehicular accident on 05.11.2003. Details of injuries suffered by the appellant are given in paragraph No.17 of the award as per which the appellant lost her four front teeth; besides, suffered head injury and remained admitted in the ICU at PGI, Chandigarh for three days. Appellant further claimed that as a result of head injury, her eye-sight and memory was also affected. Due to uprooting of her four teeth, the appellant claimed that her face had been disfigured and that Dr. Preet Kamal, MDS who had attended on her in Fortis Heart Multi Specialty Hospital, Mohali for implant of permanent teeth, had given estimate of ₹ 1,00,000/- for fixture of permanent teeth.

Likewise, similar estimate was given by one Dr. Sanjay Kalra of Dental Hospital, Sector 7, Panchkula.

[2] MLR (Ex.P10) mentions appellant having received three injuries on her person. As per treatment card (Ex.P7 to Ex.P9), the appellant was treated in PGI, Chandigarh and she spent ₹ 5224/- on her medical treatment, as per details given in Ex.P12 to Ex.P40. Dr. Sanjay Kalra (PW-2) deposed that as per estimate (Ex.P2), cost of entire treatment was approximately ₹1,10,000/- for the four missing teeth for which implant was to be done besides the appellant was required to undergo bone grafting for pre-maxillary region prior to insertion of implants. However, he stated that he did not treat the appellant qua estimate given by him for the treatment of teeth. The learned Tribunal did not rely upon the estimate given by Dr. Sanjay Kalra i.e. (PW-2) on the ground that the same was merely an estimate and said doctor had not treated the appellant but the estimate established that some amount was required to be spent for fixing four teeth of the claimant. However, Doctor from Fortis Hospital i.e. Dr. Preet Kamal who had also given estimate of ₹ 1,00,000/- for fixing uprooted teeth of the appellant was not examined.

[3] On the basis of the admission of the appellant in the ICU at PGI, Chandigarh and the treatment given to her from there as well as on the basis of expenses incurred, the learned Tribunal awarded a sum of ₹ 5224/- on account of medical expenses, ₹ 10,000/- on account of attendant, transportation charges, special diet and loss of income, ₹ 4000/- on account of pain and suffering; besides, ₹ 40,000/- on account of fixture of four teeth.

[4] Learned counsel for the appellant contended that the compensation awarded on account of cost of attendant, transportation charges, special diet and loss of income was very less and a minimum of ₹25,000/- ought to have been awarded for the same. Likewise, compensation for pain and suffering also ought to have been awarded at ₹ 25,000/- while costs for fixture of four teeth ought to have been awarded at ₹ 1,00,000/-.

[5] Per contra, learned counsel for the respondent-Insurance Company contended that the compensation awarded was in accordance with law, therefore, did not warrant any interference.

[6] I have considered the submissions of learned counsel for the parties and am of the view that for the reasons recorded hereunder, the appeal is liable to be allowed, award modified and compensation enhanced.

[7] Admittedly, the appellant, who was then 31 years old, sustained injuries in a motor vehicular accident on 05.11.2003 as a result of which she lost her four front teeth; besides, sustained head injuries for which she remained admitted in the ICU at PGI, Chandigarh for three days.

[8] Obviously, a young lady whose face has been disfigured on account of loss of four front teeth; besides, on account of head injury for which she remained admitted in the ICU at PGI, Chandigarh, would have been in pain and suffering. Therefore, I am of the view that the sum of ₹ 4000/- awarded on account of pain and suffering is grossly inadequate. Accordingly, the same is enhanced to ₹ 20,000/-.

[9] Likewise, once PW-2 had deposed that the estimate for implanting four teeth by making bone-grafting was ₹ 1,00,000/- then in the circumstances, awarding merely ₹ 40,000/- without any evidence to the contrary was also on the lower side.

At least minimum of ₹ 15,000/- per tooth ought to have been awarded. Accordingly, amount awarded for implanting of four teeth is enhanced to ₹ 60,000/-

[10] Likewise, sum of ₹ 10,000/- awarded on account of costs of attendant, transportation charges, special diet and loss of income is also on the lower side. Accordingly, the same is enhanced to ₹ 15,000/-. Likewise interest awarded @ 6% per annum also is on the lower side. Accordingly, the same is enhanced to 9% per annum in view of the decision of Hon'ble the Supreme Court in **Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy and others 2001 (14) SCC 481.**

[11] In the circumstances, apart from the compensation of ₹ 59,224/-, the appellant in the light of discussion made above, is held entitled to compensation of ₹ 41,000/- along with interest @ 9% per annum with effect from the date of claim petition till date of payment, less payment, if any, already made.

[12] Accordingly, the appeal is allowed by modifying the award dated 31.08.2005 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

17.09.2018
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| 1. Whether speaking/reasoned | : | Yes/No. |
| 2. Whether reportable | : | Yes/No. |