

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

FAO No.5443 of 2006 (O&M)

Date of Decision: April 21, 2018

Vandana Sharma

...Appellant

Versus

Swaran Singh and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. Gaurav Mohunta, Advocate for the appellant.

Mr.Deepak Gilotra, Advocate for respondent No.1.

Mr.Naresh Chander, Advocate for
Mr.K.S.Chauhan, Advocate for respondent No.2.

Mr.Vinod Gupta, Advocate for
respondent No.3 - Insurance Company.

HARINDER SINGH SIDHU, J.

This is the claimant's appeal for enhancement.

The claimant aged 31 years was working as a Postal Assistant with the Postal department. On 23.12.2003, after completing her first shift, she was going to her house on a three wheeler bearing registration No.PB-08-AA-9295. When the three wheeler reached near old Sabjimandi Chowk, Jalandhar, a truck bearing registration No.PB-10-AC-9850 which was being driven in a rash and negligent manner struck against the three wheeler. The three wheeler overturned. The claimant received serious multiple injuries on her back and legs. She was admitted in Satyam Hospital, Jalandhar. She had become 100% disabled and besides the pain and agony, she had to incur considerable expenses on her medical treatment. She had to engage attendant

to look after her and her two minor children aged 1 year and 2 years respectively.

The learned Tribunal returned a finding that the accident had been caused due to the rash and negligent driving by the driver of the truck. The truck was insured with respondent no.3-Insurance company which was held jointly and severely liable along with respondents No.1 and 2 i.e. the owner and driver of the truck, to pay the compensation.

The learned Tribunal awarded the compensation as under:-

i)	Permanent disability to the extent of 75%	Rs.2,00,000/-
ii)	Pain and suffering	Rs.1,00,000/-
iii)	Medical expenses (50% of Rs.2,53,035-50 as claimed)	Rs.1,26,517/-
iv)	Attendant charges	Rs.30,000/-
v)	Conveyance charges	Rs.20,000/-
vi)	Special diet charges	Rs.10,000/-
ii)	Future medical expenses	Rs.30,000/-
viii)	Future less of income	Rs.50,000/-
	Total	Rs.5,66,517/-

Mr. Gaurav Mohunta, Ld. counsel for the appellant has argued that the compensation awarded by the Tribunal is wholly inadequate. He argued that it had come in evidence that the appellant was employed as a Postal Assistant with the postal department on a salary of Rs.8144/- per month. After the accident for a period of about 15 months i.e. from June 2004 to September, 2005, the appellant received half salary. From September, 2005 to April 2007, a period of 18 months, she did not receive any salary. He stated that this was proved by PW-7-Joginder Singh, Postal Assistant GPO, Jalandhar, who stated that the retirement age was 60 years.

He also stated that in ordinary course the claimant would have earned promotions from time to time. After April 2007, she was permitted to rejoin work. Mr. Mohunta accordingly, contended that claimant was liable to be compensated for this actual documented loss of earnings.

Mr. Mohunta secondly asserted that the claimant/appellant was liable to be compensated for the expenses incurred on physiotherapy. He explained that the claimant has undergone physiotherapy on the advice of the doctors and it was an essential element of her treatment not only to improve her condition but also to prevent future loss. In this context he referred to the statement of PW-2 Dr.Sunil Panja, Physiotherapist. Dr. Panja stated that he had a clinic under the name of Panja Physiotherapy. He had been referred by Dr. Rajesh Pashricha for performing physiotherapy on the claimant and he used to visit the house of the claimant for physiotherapy twice a day. He proved the original bill books Ex.P-12 to P-15 in respect of payments received by him from the patients. In his cross-examination, he admitted that he charged Rs.300/- from the claimant, whereas, he charged Rs.30/- and Rs.50/- from other patients. The difference in the amount charged was explained by him by stating that he visited the house of the claimant for physiotherapy whereas he did not pay house visit to any other patient. He stated that the claimant was a paraplegic patient. She had zero power in her both limbs, but after the physiotherapy, she has been able to walk with the help of walker and support. He performed physiotherapy on her till February, 2005.

PW-3, Mrs. Shiwani Randeo, Clinical Physiotherapist, Layallpur

Khalsa College for Men Jalandhar stated that she performed physiotherapy

on claimant. The claimant was suffering from spinal cord injury and diagnosed as paraplegic. She had come for treatment from 13.9.2005. Since then, she had been performing physiotherapy on her. At first, she charged Rs.50/- as consultation charges, and had been charging Rs.30/- per visit. She also proved the bills, Ex.P-16 to P-19. She stated that there is no chance of further recovery of the claimant. Treatment was being provided in order to avoid future loss. She stated that the appellant may never be able to walk independently except with the help of callipers and other support. There is complete loss of bladder and bowel sensation.

PW-4, Dr.Rajesh Pashricha, Neurosurgeon, Satyam Hospital Jalandhar stated that the appellant was admitted in Satyam Hospital on 23.12.2003 having suffered spinal injury at L1 causing worst fracture vertebrae. She was operated on 25.12.2003 for spinal instrumentation and decompression. She had become paraplegic because of the accident but had recovered to be able to walk with support. Her ankle power remained 0/5 and her bladder and bowel sensation had not returned. She was operated once again on 6.11.2004 to remove the broken screws and plates which were used to fix the spine during first surgery. She recovered well from the surgery but there has not been any further improvement. He stated that she was given physiotherapy in the hospital after the operation and had also been referred for further physiotherapy after discharge. Considering that she had not shown much recovery in the previous year, no significant improvement in her neurological status was expected. He asserted that she would require support in order to run the daily affairs throughout life. She may also have urinary tract infection in future which would need treatment. He asserted

that there was no treatment for the disease anywhere in the world.

Mr. Mohunta argued that in the face of this evidence the Tribunal ought not to have disallowed the expenses on physiotherapy as claimed.

He further argued that there was no reason for the Tribunal not to award the full amount claimed by way of treatment/medical expenses, which was duly proved by bills. The medical charges claimed were as under:

i)	Satyam hospital chg	Rs.1,28,596.80
ii)	Satyam pharmacy	Rs.27,100.00
iii)	Panja Physiotherapy	Rs.87,000.00
iv)	D.A.V. Institute	Rs.240.00
v)	D.M.C. Ludhiana	Rs.360.00
vi)	Patel hospital	Rs.850.00
vii)	Lyallpur Khalsa College	Rs.2,970.00
viii	S.S.Medical hall	Rs.3,264.50
ix	Bills of Artificial limbs	Rs.7,655.00
	Total	Rs.2,53,035.50.

He further argued that the Tribunal wrongly awarded only Rs.30,000/- as attendant charges when the claimant had examined Smt. Chanchal Devi as PW 6 who stated that she had been employed as a maid servant by Sh. Rajiv Sharma, the husband of the claimant to look after the minor children and perform other household work. She had stated that she had been working whole time since the month of January, 2004 at a monthly salary of Rs.2500/- besides free food and accommodation.

Having heard Ld. Counsel for the parties in my view the award of the Tribunal needs to be significantly modified by including the following:

Half loss of earnings:	Fifty per cent loss of income for 15 months i.e. from June 2004 to September, 2005 = 4072 x15 = 61,080/-
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Total loss of earnings:	For 18 months from September, 2005 to April 2007= 8144x 18 = 1,46,592/-
Total loss of income:	61080+146592 = 2,07,672/-

The claimant was 31 years at the time of the accident. At that time, she had been married only for three years. She had two minor children aged two and one year old. He medical condition has been explained by PW-4, Dr.Rajesh Pashricha, Neurosurgeon, Satyam Hospital Jalandhar who stated that she had spinal injury at L1 causing worst fracture vertebrae. She was operated on 25.12.2003 for spinal instrumentation and decompression. She had become paraplegic because of the accident but had recovered to be able to walk with support. Her ankle power remained 0/5 and her bladder and bowel sensation had not returned. She was again operated on 6.11.2004 to remove the broken screws and plates which were used to fix the spine during first surgery. Though she recovered well from the surgery but there had not been any further improvement. He stated that she was given physiotherapy in the hospital after the operation and had also been referred for further physiotherapy after discharge. Considering that she had not shown much recovery in the previous year, no significant improvement in her neurological status was expected. He asserted that she would require support in order to run the daily affairs throughout life. She may also have urinary tract infection in future which would need treatment. He asserted that there was no treatment for the disease anywhere in the world. She has suffered 100% temporary disability as per disability certificate Ex. P1 and 75% permanent disability as per disability certificate Ex. PW 9/C.

least Rs.2.5 lakh for pain and suffering and trauma and Rs.2.50 lakh for loss of amenities of life. For physiotherapy and future medical expenses she would be entitled to Rs.2.00 lakhs and Rs.1.50 lakhs as attendant charges both for her and her minor children.

Ld. Counsel for the claimant had stated that she had not claimed any reimbursement for the medical treatment and expenses which had been claimed by her. Considering her medical condition and the prolonged treatment the amount claimed for medical expenses and treatment cannot be considered to be exorbitant. Moreover, it is supported by bills and receipts duly proved. There is no reason why she would not be entitled to claim the same. But from this an amount of Rs.87,000/- which is claimed for Panja Physiotherapy would have to be deducted as the expenses on account of physiotherapy are being separately awarded.

Accordingly, the compensation is re-assessed as under:-

Sr.No.	Head of Compensation	Compensation (In rupees)
i)	Permanent disability to the extent of 75%	2,00,000/-
ii)	Pain and suffering	2,50,000/-
iii)	Loss of amenities of life	2,50,000/-
iv)	For physiotherapy and Future treatment	2,00,000/-
v)	Medical expenses	1,66,035/-
vi)	Loss of income	2,07,672/-
vii)	Attendant charges	1,50,000/-
viii)	Conveyance charges	20,000/-
ix)	Special diet charges	10,000/-
	Total	14,53,707/-

Hence, the appeal is allowed. The Award of the Tribunal is

modified to the extent that the appellant is held entitled to compensation of Rs.14,53,707/-, that is, Rs.8,87,190/- (1453707-566517) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

April 21, 2018

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(HARINDER SINGH SIDHU)

JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No