

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

FAO No.5403 of 2009 (O&M)

Date of Decision: May 09, 2018

Tatwinder Singh alias Jatinder Singh @ Janga ...Appellant

Versus

Gulzar Singh and others ...Respondents

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

Present: Mr.Rakesh Kumar, Advocate
for the appellant.

Mr.Vikram Anand, Advocate
for respondents No.1 and 3.

Mr.Pardeep Goyal, Advocate
for respondent No.2 – Insurer.

HARINDER SINGH SIDHU, J.

This appeal is filed by the injured - claimant for enhancement of compensation, as awarded by the Motor Accident Claims Tribunal, Kapurthala (for short 'the Tribunal') vide its award dated 04.11.2008.

Brief facts as disclosed in the claim petition are that on 12.09.2002 at around 11.00 am, in the area of Village Kheeranwali a vehicular accident took place involving Jeep No.MH-06F-5053 (herein for short 'the offending vehicle'), wherein, the claimant – appellant suffered multiple injuries. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered in Police Station Kotwali on the same day.

On a claim petition having been filed by the injured – appellant, the Tribunal awarded the following compensation:-

Compensation on account of medical : Treatment, services of attendant, conveyance, diet money and hospitalization -	Rs.50,000/-
Loss of income during hospitalization and period of recuperation -	Rs.20,000/-
Permanent disability assessed at 45% -	Rs.30,000/-
For physical pain, mental agony and sense of wrong -	Rs.10,000/-
TOTAL	Rs.1,10,000/-

Feeling dissatisfied with the quantum of compensation, the claimant is before this Court. The case of the claimant is that on account of the injuries sustained in the accident, he is not able to move properly and has been rendered totally disabled to take up any job to earn his livelihood. He was also under constant pain. He stated that the claimant had duly proved his disability certificate issued by the office of Civil Surgeon, Kapurthala, which had assessed him as having suffered permanent disability of 45%. The said disability certificate only reflected his physical condition, but did not take note of the fact that the injuries had also affected his cognitive abilities, rendering him totally incapable of undertaking any physical activity to earn his livelihood.

During the course of the hearing, the appellant appeared before the court on 22.8.2017 when noticing his appearance, the Court noted that the disability certificate certifying his disability at 45% did not truly reflect his condition. His physical appearance and lack of physical coordination made it appear that he was incapable of doing any job to earn his livelihood. On

30.8.2017, the Court passed an order requesting the Director, PGIMER, Chandigarh to constitute a Medical Board for an opinion as to whether the injuries sustained in the accident could have resulted in the general condition in which the appellant appeared to be. The relevant extract of the order is as under:-

“As always, when this Court runs into doubt it troubles the Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER) to examine a person medically by its expert doctors to express their opinion on the query of the Court. Tatwinder Singh was involved in a motor accident in 2002 and suffered injuries for which he has been compensated by the claims Tribunal, with a sum of Rs. 1,10,000/-. Appellant is here in an appeal for enhancement of the amount so awarded by the Tribunal.

Appellant has been assessed by board of doctors of Kapurthala, who gave their opinion that Tatwinder Singh has suffered 45% disability. On 03.08.2017, I allowed the appellant to appear before the Court, so that Court shall see his physical condition. In compliance of the order appellant-Tatwinder Singh appeared in the Court on 22.08.2017, on which date the following order was passed:-

“The appellant has appeared before me in Court. His disability though certified at 45% in relation to the whole body does not duly reflect the pitiable condition. The appellant has been duly identified by his counsel in Court which is worse. The accident took place on September 12, 2002. The physical appearance and lack of physical coordination of the body of the appellant leaves no manner of doubt that he is incapable of doing any job to earn his livelihood. He was a labourer and I am convinced that he is not in a position to do any manual work and I think no one would engage him for his services. Due to paucity of time, I would hear counsel for the plaintiff and Insurance Company as well on the next date of hearing. Learned counsel for the appellant would produce a photocopy of the I.D. Card of Tatwinder Singh on the next date of hearing as a proof of identity of the appellant for the Court to match both to leave no room for doubt and to proceed with the arguments.

List on 30.08.2017.”

His appearance and condition speaks for itself and I have no doubt that he is not doing meaningful to support himself. His sister-in-law (Bhabhi) Surinder Kaur accompanied him in Court and submitted that she looks after his well being as his parents are dead and he is unmarried.

What this Court wants in its quest for an expert medical opinion is whether the injuries sustained in the accident as described in the papers to be produced could have resulted in the general condition of the injured.

Mr. Vikram Anand, Advocate, is a counsel for the owner and driver of the offending vehicle, who undertakes to submit all the papers are with him before the PGI team of doctors. Likewise, Mr. Rakesh Kumar, learned counsel for the appellant would also supply all material he relies on to the PGIMER, Chandigarh, to facilitate the examination.

The Court would like to know if the mental and physical status of the appellant could have been likely result of the motor accident. The appellant was plying his by-cycle near his village when he was hit by the

jeep driven and owned by respondent Nos. 1 and 3.

The Director, PGIMER, Chandigarh, is requested to constitute a medical board and submit a report through its panel counsel within a month. The appellant together with his sister-in-law (Bhabhi) Surinder Kaur will report in the office of Medical Superintendent, PGI on 11.09.2017.”

The appellant was initially examined by a Medical Board of the PGIMER, on 18.9.2017, on which date the Board opined that no conclusive opinion could be formulated as the previous record had not been brought by the appellant. Thereafter, the appellant was once again examined by the Medical Board, which submitted its report as under:-

“The patient has a history of road traffic accident around eight years back. The detailed medical records of the patient were not available. The judicial records (2 X ray films) were perused by the Board. No operative records of the patient were available.

The patient is a case of multiple disability. Extent of his permanent physical impairment/ disability has been evaluated as per guidelines for the disabilities as shown below:-

	Disability	Affected part of the body	Diagnosis	Physical/mental disability %
1.	Locomotor disability	Upper Limb	Road Traffic Accident	75%
2.	Locomotor disability	Lower Limb	Road Traffic Accident	59%
3.	Mental retardation/ illness		Post head injury cognitive decline leading to severe functional impairment and disability	82%

In view of the above his overall permanent physical/mental impairment as per guidelines as follows: **In figure 90% percent - In words Ninety percent.”**

The Board has opined that the patient is a case of multiple disability. Locomotor disability of the Upper Limb has been assessed at 75%. Locomotor disability of the Lower Limb has been assessed at 69%.

cognitive decline leading to severe functional impairment and disability”, which has been assessed at 82%. The overall permanent and physical impairment has been assessed at 90%.

The appellant-claimant was engaged in agricultural labour. His physical and mental condition, as reflected in the report of the Medical Board of the PGIMER leaves no manner of doubt that he is totally incapable of carrying on any meaningful activity to earn his livelihood, what to talk of engaging in hard agricultural labour. Thus, it has to be held that as a result of the injuries sustained in the accident, the claimant has suffered total 100% functional disability as far as his earning capacity is concerned and, thus, the compensation has to be assessed accordingly. As he was stated to be doing agriculture labour, his income is liable to be assessed as per the minimum wages, prevalent on the date of accident i.e. 12.9.2002. The claimant at the time of the accident was aged about 30 years. He was not married. As a result of the injuries sustained he has lost the charm of life.

The compensation is reassessed as under :

Sr.No.	Heads	Calculation (In Rs.)
(i)	Monthly Income	2700/-
(ii)	40% of above (i) to be added as future prospects (appellant aged 30 years)	$2700+(2700\times 40/100)$ = 3,780/-
(iii)	Loss of Income (after applying multiplier of 17)	$3780\times 12\times 17=$ 7,71,120/-
(iv)	Compensation for disability	1,00,000/-
(v)	Loss of amenities of life	2,00,000/-
(vi)	Medical Expenses including attendant charges, conveyance, etc. (as awarded by the Tribunal)	50,000/-
(vii)	For pain and sufferings	50,000/-
	Total	11,71,120/-

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.11,71,120/-, that is, Rs.10,61,120/- (1171120-110000) 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.

May 09, 2018

(HARINDER SINGH SIDHU)

JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No