

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 3164 of 2010(O&M)

Date of Decision: September 10 , 2018.

Mehfuj APPELLANT (s)

Versus

Sakir and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Amrita Nagpal, Advocate
for the appellant.

Mr. S.S.Sidhu, Advocate
for respondent No.3 – Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been preferred by the appellant for enhancement of compensation awarded to him vide award dated 22.05.2009 passed by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by him in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that a petition under Section 166 of Motor Vehicles Act was preferred by the appellant seeking compensation on account of the injuries and disability suffered by him in a motor vehicle accident, which took place on 04.02.2006. FIR No.87 dated 04.02.2006

was registered under Sections 279/336/337 IPC at Police Station Nuh against respondent No.1-Sakir. The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of Max Marshal vehicle bearing No. HR-61-HQ-4004 by respondent No.1 – Sakir. The finding of the learned Tribunal in this respect has attained finality.

The learned Tribunal concluded that the appellant sustained injuries in this accident leading to 100% disability. Appellant was aged 13 years at the time of the accident. The learned Tribunal awarded a total compensation of ₹3,92,531/- as under:-

Medical expenses	:	₹1,17,531/-
Disability (100%)	:	₹2,00,000/-
Pain and suffering	:	₹25,000/-
Future treatment	:	₹50,000/-

The present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellant argues that the appellant was a student and helping his father in dairy business at the time of the accident. The appellant has suffered 100% disability and is totally dependant now, even for routine chores. The learned Tribunal, it is submitted, has erred in awarding a meagre amount of compensation. It is thus prayed that compensation awarded to the appellant be enhanced.

Learned counsel for respondent No.3 – Insurance Company however submits that the compensation awarded by the learned Tribunal is reasonable and as per the evidence on record.

I have heard learned counsel for the parties and have gone through the file.

Liability of the Insurance Company in this case is not in dispute and neither is there a dispute regarding the accident being caused by the rash and negligent act of respondent No.1 – Sakir. PW12 Dr. Arun Siroha and PW6 Dr. Akhlaq Ahmad testified that the appellant-claimant remained admitted in Ahmad Hospital, Gurgaon from 04.02.2006 to 28.02.2006. Disability of the appellant-claimant was assessed as 100% in relation to his whole body. PW1 Dr. Mohd. Farooq, Medical Officer, General Hospital, Mandi Khera has proved the disability certificate (Ex.P1). It is not disputed that the appellant was student at the relevant time.

In my considered opinion, it is just and reasonable to assess the notional income of the appellant, in the present case, to be ₹15,000/- per annum. Compensation to the appellant is required to be worked out in terms of the guidelines laid down by the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. Disability suffered by the claimant is proved to be 100% in relation to his body and the disability is permanent. Functional disability of the appellant is, therefore, clearly 100%. Therefore, loss of income is assessed as ₹15,000/- per annum.

While affording an increment at the rate of 40% on account of loss of future income, the amount comes to $[(15,000 + (15,000 \times 40\%)] = ₹21,000/-$ per annum. Age of the appellant was 13 years as on the date of the accident, therefore, multiplier of 18 is to be applied. Loss of earnings is, thus, assessed as

₹3,78,400/- [21,000 x 18].

The appellant is held entitled to a sum of ₹1,00,000/- each on account of pain & suffering (instead of ₹25,000/-), future medical expenses (instead of ₹50,000/-) and attendant charges. ₹50,000/- is awarded towards loss of amenities and ₹15,000/- on account of special diet. Actual medical expenses of ₹1,17,531/- as ordered by the learned Tribunal are maintained.

Appellant is, thus, entitled to compensation detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of earnings	₹3,78,000
2.	Pain and sufferings	₹1,00,000
3.	Loss of amenities	₹50,000
4.	Actual medical expenses	₹1,17,531
5.	Future medical expenses	₹1,00,000
6.	Attendant charges	₹1,00,000
7.	Special diet	₹15,000
Grand Total		₹8,60,531/-

Amount already awarded by the Tribunal to the appellant/claimant under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

September 10 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No