

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 10270 of 2014

Date of decision : 11-05-2018

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Rajinder Kumar

.....Appellant

Versus

Balwinder Singh and others

.....Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Kulwant Singh Dhanora, Advocate for the appellant.

Mr. R.C Kapoor, Advocate for respondent no.3-Insurance Co.

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RITU BAHRI, J

The present appeal has been filed by the appellant-claimant seeking enhancement of compensation amount awarded by the Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') vide award dated 29.1.2014, on account of injuries suffered by the appellant-claimant in a vehicular accident on 7.8.2013.

Briefly stated, the facts of the case are that on 7.8.2013, Rajinder Kumar, appellant-claimant was going on foot from bus-stand of Village Jharoli to the side of his Village Mahduda. He was walking on the *kachcha* portion of the road. When he reached near the turn of his village at about 4:30 p.m, a tractor bearing registration no. **HR-07M-1526** came from behind being driven by Balwinder Singh, respondent no.1. It was drizzling on that day and the road

was slippery. When the tractor reached near turn of village Mahduda, it slipped and bumper of the tractor struck Rajinder Kumar, as a result of which, he fell down and his right leg came under the rear wheel of the tractor and it got badly crushed. After the accident, the appellant-claimant was shifted to PGI, Chandigarh, where his right leg was amputated. In this regard, DDR No. 24, dated 11.5.2013 was registered.

Rajinder Kumar, the injured filed claim petition bearing M.A.C.T Petition No. 97 of 2013, on account of the injuries suffered by him in the accident.

After hearing counsel for the parties and going through the evidence placed on the record, Tribunal arrived at a conclusion that the appellant-claimant suffered injuries in the accident in question which took place out of the use of the tractor bearing registration No. HR-07M-1526.

The age of the petitioner was stated to be 25 years at the time of the accident. There was no dispute regarding the age of the appellant-claimant. The monthly income of the appellant-claimant was taken as Rs.3300/- per month. As per the law laid down by Hon'ble the Apex Court in the case of **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 AIR SC 3104**, the multiplier of 18 was applied in this case. By applying the multiplier of 18, the loss of income came to $\text{Rs.}3300 \times 12 \times 18 = \text{Rs.}7,12,800$. Since the petitioner suffered disability to the extent of 70%, he was held entitled to 70% of the amount which came to Rs.4,98,960/-. Further an amount of Rs.8000/- was granted towards hospitalization, Rs.5000 towards pain and sufferings and Rs.23,480/- towards medical expenses. Thus, in total the appellant-claimant was held entitled to a total compensation of Rs.5,35,440/-.

Feeling dissatisfied with the impugned award, the injured

claimant-appellant came up in this appeal.

Counsel for the appellant-claimant has referred to a judgment in the case of *K. Janardhan vs. M/s. United India Insurance Co. Ltd and another 2008 (3) PLR 757* to contend that in a case where right leg up to knee was amputated, compensation was assessed taking the disability as 100% towards earning capacity. A reference was also made to a recent judgment in the Supreme Court in the case of *Jagdish vs. Mohan and others, JT 2018 (3) SC 112*, where the disability of a self-employed carpenter was assessed as 90% by the Tribunal. It was observed by Hon'ble the Apex Court in this case that the Court must be mindful of the fact that the appellant-claimant had suffered a serious disability in which he suffered a loss of the use of both his hands and it would be a denial of justice to compute the disability at 90%. It was held that the disability was indeed total. Hence, the compensation was assessed by considering the disability as 100%.

I have heard the learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. Applying the ratio of law of the above mentioned cases, the compensation is reassessed by considering the disability of the appellant-claimant as 100%. The compensation is reassessed as follows:

<i>HEAD</i>	<i>COMPENSATION AMOUNT</i>
<i>Loss of earnings (Rs.3300x12x18) (considering the disability as 100%)</i>	<i>Rs. 7,12,800/-</i>
<i>Pain and suffering</i>	<i>Rs. 3,00,000/-</i>
<i>Medical and incidental expenses during the period of hospitalization</i>	<i>Rs. 2,00,000/-</i>

HEAD	COMPENSATION AMOUNT
Special Diet and Transportation Charges	Rs.40,000+Rs.20,000=Rs.60,000/-
TOTAL COMPENSATION AWARDED:-	Rs.12,72,800 /-
ENHANCED AMOUNT OF COMPENSATION	(Rs.12,72,800/-)-(Rs.5,35,440/-) =Rs.7,37,360/-

The enhanced amount of compensation of Rs.7,37,360 /- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of *Shri Nagar Mal and Ors Vs. The Oriental Insurance Company Ltd. and others in Civil Appeal No. 448 of 2018*. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

11-05-2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No