

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

FAO-10354-2014 (O&M)

Date of Decision:03.04.2018

Surat Singh

.....Appellant

Versus

Ramesh Kumar Gujjar and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Ms. Manpreet Kaur, Advocate for
Mr. Chanderhas Yadav, Advocate,
for the appellant.**

**Ms. Shamsheer Kaur, Advocate,
for respondent No.3-Insurance Company.**

HARI PAL VERMA, J.(Oral)

Appellant-Surat Singh has filed the present appeal seeking enhancement of compensation over and above the amount awarded by learned Motor Accident Claims Tribunal, Narnaul (for short “the Tribunal”) vide award dated 20.05.2014.

In a claim-petition filed under Sections 166/140 of the Motor Vehicles Act, 1988, on account of injuries suffered by the appellant in a motor vehicular accident, which took place on 17.12.2011, the Tribunal has awarded a total compensation of ₹2,22,949/- (rounded off to ₹2,23,000/-) along with interest @ 9% from the date of filing the claim-petition till its realization.

On the date of accident, appellant-injured Surat Singh along

with Dinesh was travelling from Kishanpura (Rajasthan) to Jaipur in a

vehicle bearing registration No.RJ-14TA-8082 being driven by Satpal son of Abhay Singh. When they reached near the Jorasi Bandh (DAM), the offending truck bearing registration No.HR-63-A-4840 driven by respondent No.1 in a rash and negligent manner came from the opposite side. It directly collided with the vehicle, in which the claimant was travelling. Due to this collision the vehicle in which the claimant was traveling turned turtle and as a result thereof, the claimant sustained multiple injuries on various parts of the body. After the accident, Satpal who was driving the vehicle bearing registration No.RJ-14TA-8082 called the ambulance and the injured was taken to General Hospital, Narnaul. The matter was reported to the police and an FIR No.497 dated 20.12.2011 (Ex.P3) under Sections 279, 337 IPC was registered at Police Station, City Narnaul, against the driver of the offending vehicle.

The appellant-injured was initially treated in Govt. Hospital, Narnaul, but considering the nature of injuries, he was referred to PGIMS, Rohtak, and thereafter, he was admitted in S.M.S., Hospital, Jaipur. The appellant was about 21 years of age at the time of accident and was doing agricultural work. He was earning ₹10,000/- per month by way of agriculture and dairy farming. The Tribunal has returned a finding that the accident was caused on account of rash and negligent driving on the part of the driver of the offending vehicle. However, for the injuries so suffered, the Tribunal awarded an amount of ₹1,52,949/- on account of medicines and hospitalization charges. As the disability of the injured was assessed at 30% (permanent disability), in view of ratio of law laid down in case **Ram Karan Goyal Versus Sub Divisional Engineer, Mechanical and others,**

2008(2) R.C.R. (Civil) 103, the Tribunal awarded ₹60,000/- towards

permanent disability i.e. @ ₹2,000/- for every percent disability. Another sum of ₹10,000/- was awarded towards pain and sufferings, special diet, transportation and attendant charges. In this manner, a total compensation of ₹2,23,000/- was awarded to the appellant-injured.

Not satisfied with the aforesaid amount of compensation, the appellant-injured has preferred the present appeal seeking enhancement of compensation.

Learned counsel for the appellant has argued that immediately after the accident, the claimant was taken to General Hospital, Narnaul, but considering the nature of injuries suffered by him in the accident, he was referred to PGIMS, Rohtak. Thereafter, he was admitted in S.M.S. Hospital, Jaipur. Since the injured belongs to Rajasthan, he after getting treatment from PGIMS, Rohtak, sought treatment from S.M.S. Hospital, Jaipur. The claimant remained admitted in the hospital from 17.12.2011 to 30.12.2011 i.e. for about 13 days. He suffered 30% permanent disability on account of such injuries. He was not able to immediately revert back to his work. She has further argued that the nature of injuries i.e. permanent disability is such that he cannot perform work, as he otherwise used to perform before the accident. She has referred to the Disability Certificate, Ex.PW2/A issued by the Medical Board, General Hospital, Narnaul. The injuries suffered by the appellant are permanent in nature which have further restricted his ability to perform the agricultural activities, which a person with a normal physique can perform. She has argued that apart from the compensation on account of permanent disability, the consolidated awarded amount of ₹10,000/- towards pain and sufferings, special diet, transportation and attendant charges, is insufficient to meet such expenses.

On the other hand, learned counsel for respondent No.3- Insurance Company has argued that the injury suffered by the claimant is not a functional disability and it is only a permanent disability and therefore, it does not affect the functioning of the injured in any manner. Even otherwise, the Tribunal has already taken note of 30% permanent disability and has awarded ₹60,000/- towards this disability. Since the Tribunal has already awarded adequate compensation, no further enhancement is warranted.

I have heard the learned counsel for the parties.

In support of the claim-petition, the claimant had examined Dr. Dinesh Podar as PW2, who has examined the appellant and assessed his disability as 30% permanent. This Court has the occasion to have a glance at the Disability Certificate issued by the Medical Board. As per Disability Certificate, it is apparent that the claimant has suffered 30% disability. As per the Disability Certificate, the right elbow joint of the claimant has been reduced by 15%. Similarly, other injury had affected right hip joint by 10%. The other injury as referred in the Disability Certificate is dislocation of right MP joint of index finger with deep complication. Thus, 30% disability is not in dispute.

In somewhat similar circumstances, the Hon'ble Apex Court in **S. Perumal Versus K. Ambika and another, 2015(2) R.C.R. (Civil) 228**, has considered a case of a claimant who suffered 25% permanent disability in a motor vehicle accident. In that case, though the Tribunal has awarded compensation of ₹25,300/-, but the Hon'ble Supreme Court enhanced the said amount to the tune of ₹4,43,500/-. In that case, the injured was a poultry labourer, whereas in the case in hand, the claimant is claiming to be

an agriculturist and a dairy farmer. Therefore, this Court finds support from the said judgment in **S. Perumal's case(supra)**, wherein the Hon'ble Apex Court has awarded a lump sum amount of ₹2,00,000/- towards loss of future earnings on account of permanent disability. The Hon'ble Apex Court has held as under:-

“The injured claimant is to be compensated for his permanent disability and also for loss of earning due to his inability, the whole idea is to put claimant in the same position as he was prior to the accident. In 2011 ACJ 1 (SC) ([Raj Kumar v. Ajay Kumar](#)), this Court considered the principles for awarding compensation in injury cases, and held as under:

“The provision of the [Motor Vehicles Act, 1988](#) (‘the Act’, for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries and his inability to earn as much as he used to earn or could have earned...

(5) The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) *Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.*

(ii) *Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :*

(a) *Loss of earnings during the period of treatment;*

(b) *Loss of future earnings on account of permanent disability.*

(iii) *Future medical expenses.*

Non-pecuniary damages (General damages)

(iv) *Damages for pain, suffering and trauma as a consequence of the injuries.*

(v) *Loss of amenities (and/or loss of prospects of marriage).*

(vi) *Loss of expectation of life (shortening of normal longevity.)*

In routine personal injury cases, compensation will be awarded only under heads.

(i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

18. In 2011(4) R.C.R. (Civil) 817 : 2011(5) Recent Apex Judgments 594 : 2012 ACJ 28 ([Govind Yadav v. New India Assurance Company Limited](#)), this Court held as under:-

"15. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd., 2010(4) R.C.R. (Civil) 917 : 2010 (6) Recent Apex Judgments (R.A.J.) 276 : 2010 ACJ 2867 (SC) and Raj Kumar v. Ajay Kumar, 2011 ACJ 1 (SC), must be followed by all the tribunal and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either

permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

We shall now consider the question as to what is just and reasonable compensation to be awarded to the claimant. The claimant was a poultry labourer, he would have earned not less than Rs.4,500/- per month. Considering the nature of occupation of the claimant and the 25% disability, in our considered view, lumpsum compensation of Rs.2,00,000/- towards loss of future earnings, on account of permanent disability, Rs.13,500/- (Rs.4,500 x 3) is awarded for the loss of earning during the period of treatment. Considering the nature of treatment and the medical bills (Exp.5), for which an amount of Rs.1,00,000/- is awarded towards medical expenses; Rs.50,000/- is awarded towards pain and sufferings; Rs.10,000/- is awarded for transport charges and Rs.10,000/- is awarded for attendant charges; Rs.10,000/- is awarded towards extra nourishment and Rs.50,000/- is awarded towards loss of amenities.

As the claimant remained admitted in the hospital for about 13 days, this Court finds that the awarded amount of ₹10,000/- towards pain and sufferings, special diet, transportation and attendant charges also needs modification. The record reveals that the appellant was initially admitted in General Hospital, Narnaul from where he was referred to PGIMS, Rohtak and as the claimant was residing in Rajasthan, he sought treatment from S.M.S. Hospital, Jaipur. Therefore, the amount of ₹10,000/- is increased to ₹25,000/-.

Certificate, this Court finds that instead of awarded amount of ₹60,000/- towards 30% disability, the claimant is held entitled to ₹2,00,000/- for loss of future earnings as he suffered 30% permanent disability as indicated/detailed in the Disability Certificate. Thus, a total of ₹1,55,000/- is enhanced over and above the amount already awarded by the Tribunal. However, as held by the Hon'ble Apex Court in National Insurance Company Limited Versus Pranay Sethi and others, 2017 (4) R.C.R (Civil) 1009, though the Tribunal has awarded interest @ 9% per annum from the date of filing of the claim-petition till its realization, rate of interest is reduced to 7.5% per annum.

With the aforesaid modification in the award, the present appeal stands disposed of.

April 03, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No