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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.10432 of 2014 (O&M)
Date of Decision: 13.11.2018

Chetan ....Appellant

Vs

Jitender Kumar and others ....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Y.P. Khullar, Advocate
for the appellant.

Mr. Suvir Dewan, Advocate
for respondent No.3/Insurance Company.

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RAJ MOHAN SINGH, J. (Oral)

[1]. Appellant has preferred this appeal against inadequacy of amount of compensation awarded vide award dated 10.07.2014 passed by the Motor Accident Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal').

[2]. The accident took place on 12.04.2012, when the injured/appellant was going from Palwal to village Bamnikhera on his motorcycle. The motorcycle was being driven by Pohap Singh, whereas the appellant was a pillion rider. The accident took place with the offending vehicle in the manner as mentioned in the claim petition.

[3]. The Tribunal after assessing the material on record, assessed an amount of Rs.43,137/- towards medical treatment on the basis of bills produced and proved by the appellant on record. In addition to the aforesaid amount, an amount of Rs.15,000/- towards pain and suffering and an amount of Rs.10,000/- towards special diet and attendant charges were assessed by the Tribunal. In this manner, total amount of compensation was assessed to be Rs.68,137/- payable to the injured/appellant along with interest @ 12% per annum.

[4]. Learned counsel for the appellant submitted that the appellant was pursuing B.Tech 6th Semester at the time of accident. His left leg was crushed in the accident and permanent disability as per disability certificate Ex.P-160 was to the tune of 13% in relation to lower limb. The Tribunal has not awarded anything towards loss of income on account of permanent disability.

[5]. Secondly, learned counsel also submitted that nothing was awarded by the Tribunal on the basis of amount to the tune of Rs.2,000/- per percentage towards physical disfigurement of part of body of the appellant.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. In view of law laid down in ***Govind Yadav vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817; K. Suresh vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312; S. Manickam vs. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696; G. Ravindranath @ R. Chowdary vs. E. Srinivas and another, 2013(3) RCR (Civil) 934; Rekha Jain vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996; Neerupam Mohan Mathur vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422*** and ***Yadava Kumar vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** the compensation has to be awarded under two heads i.e. an amount of Rs.2,000/- per percentage for permanent disability and amount for loss of income on account of permanent disability. A distinction has to be drawn between the damages and the compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner as if, injury has not been received. The Court should be liberal in deciding quantum of compensation to be paid to the victim towards future loss of income on account of permanent disability.

[8]. In view of aforecited precedents, the compensation towards the heading of permanent disability has to be assessed independently. The claimant would be entitled to Rs.2000/- per percentage in respect of permanent disability in the present circumstances, wherein he has suffered permanent disability towards a particular limb of his body. Even if the functional disability to the tune of 7% is considered in relation to whole body, the loss of income per percentage would come out to be Rs.14,000/- (2000 x 7).

[9]. Secondly, loss of future income on account of permanent disability has to be separately assessed by multiplier method. The appellant/injured was pursuing B.Tech 6th Semester at the time of accident. The accident took place in the year 2012. Minimum wages as prevailed in the year 2012 can be safely relied in order to ascertain notional income of the student, who was studying in B.Tech 6th Semester. As per Schedule, notional income varies from Rs.5237 to Rs.5617 in case of skilled labourer. Taking mean of the aforesaid schedule, the monthly income of the injured/appellant can be taken to be Rs.5000/-. Since permanent disability to the tune of 13% was in relation to lower limb of body of the appellant, therefore, the same can be slashed down to the extent of 50%. In order to ascertain permanent disability in relation to whole of the body

7% can be taken to be permanent disability qua the whole body. Monthly loss of income on the basis of 7% permanent disability would come to Rs.350/- per month i.e. Rs.4200/- per annum. In view of age of the claimant, multiplier of 18 is to be applied. Therefore, loss of future income on account of permanent disability to the tune of 7% would come out to be Rs.75,600/- (350 x 12 x 18). In this way, the total amount under the permanent disability and loss of future income on account of permanent disability would come to Rs.89,600/- (75,600 + 14,000).

[10]. So far as an amount of Rs.43,137/- towards medical expenses is concerned, this Court is of the opinion that the award is based on material produced by the claimant. The finding qua the aforesaid head is affirmed.

[11]. The Tribunal has granted an amount of Rs.10,000/- towards special diet and attendant charges. In my considered opinion, the same is on lower side which needs to be enhanced to Rs.20,000/-

[12]. Keeping in view the nature of injury suffered by the appellant and duration of his confinement, an amount of Rs.15,000/- towards pain and suffering awarded by the Tribunal is also enhanced to Rs.50,000/- as the appellant had to incur

vagaries, injuries and restricted movements. In this manner manner, the total amount of compensation would come to Rs.2,02,737/- (89,600 + 43,137 + 20,000 + 50,000)

[13]. In this way the total amount of enhanced compensation would come out to be Rs.1,34,600/- (2,02,737 - 68,137). The enhanced amount would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the same.

[14]. In view of aforesaid, the award is modified. Appeal stands disposed of.

November 13, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No