

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.15 of 2014 (O&M)
Date of decision:29.10.2018.

Parvesh

...Appellant

Versus

Amita and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Ekta Thakur, Advocate for the appellant.

Mr. Banni Thomas, Advocate for respondent No.3/Insurance
Company.

LISA GILL, J.

This appeal has been filed by the claimant seeking enhancement of the compensation awarded to her by the learned Motor Accident Claims Tribunal, Chandigarh ('Tribunal' for short) vide award dated 01.04.2013 on account of injuries and disability suffered by her in a motor vehicle accident on 02.03.2009.

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 her. The appellant was involved in a motor vehicle accident on 02.03.2009 when she was going on foot from the side of a park in Sector 37B, Chandigarh towards local bus stand of Sector 37-C, Chandigarh. The appellant was on the correct side of the road. Respondent No.1 came driving his Activa Scooter bearing registration No.CH-03Z-0595 at a very high speed, in a rash and negligent manner. The scooter struck against her. Appellant sustained multiple grievous injuries on various parts of her body including fracture on her both legs on account of the said accident. She was totally disabled. FIR was registered under Sections 279 and 337 IPC against respondent No.1. After the accident, the appellant was taken to General

Hospital, Sector 16, Chandigarh and thereafter referred to PGI, Chandigarh where she remained admitted till 20.03.2009. She was operated upon twice and steel rods were inserted in her both legs and she was discharged on 20.03.2009. As per disability certificate (Ex.P2), the appellant was physically handicapped and had 37% impairment in relation to both her lower limb. It was pleaded that the claimant at the time of accident was a house wife. Compensation was, thus, prayed for.

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 the offending vehicle by its driver. There is no dispute regarding the above said finding of the learned Tribunal on this issue, which has attained finality.

The learned Tribunal assessed the income of the appellant as Rs.4000/- per month being a house wife. Permanent disability of the appellant was taken as 37%. After considering the disability, the monetary loss per year was assessed as Rs.17,760/-. After applying a multiplier of 13, Rs.2,30,880/- was ascertained as the monetary loss suffered on account of the services rendered by appellant to her family. The appellant was also awarded the amount of Rs.10,510/- as medical expenses, which were proved on record from Ex.P4 to P23. A sum of Rs.10,000/- was awarded for attendant charges. Another sum of Rs.10,000/- was awarded on account of pain and sufferings besides Rs.5000/- each for transportation charges and special diet. A sum of Rs.10,000/- was also awarded for loss of amenities of life. Therefore, total compensation of Rs.2,81,390 was awarded to the appellant along with interest at the rate of 7.5% per annum from the date of filing of claim petition till realisation.

Learned counsel for the appellant submits that income of the appellant being a house wife has been wrongly assessed as Rs.4000/- per month by the learned Tribunal. The same cannot be less than Rs.7000/- per month. Increment of 25% is required to be afforded keeping in view the age of the appellant. A meagre compensation has been afforded to the appellant towards loss of income. Less compensation has been afforded on account of pain and sufferings as well as special diet, transportation, loss of amenities and attendant charges. It is thus prayed that compensation awarded to the appellant be enhanced.

Learned counsel for the Insurance Company prays for upholding the compensation being justified in the facts and circumstances of the case.

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

It is a settled position of law that a house wife cannot be equated with a daily wager. Services rendered by her in her multifarious roles in the family do not permit such an equation. In respect to an accident which occurred in the year 2012, assessment of a housewife's income as Rs.9000/- was accepted by this Court in FAO No.9557 of 2014 decided on 30.08.2018 (The New India Assurance Company Ltd. Vs. Satpal and others). Income of the claimant in this case is thus assessed as Rs.7000/- per month. As the claimant was 46 years old at the time of the accident, increment of 25% is required to be afforded taking her income to be Rs.8750/- (7000+1750).

It is proved on record that the claimant suffered serious injuries on the various parts of her body including fracture of both legs. Steel rods were inserted. PW3 Dr. Pebam Sudesh, Associate Professor, Department of Orthopedics, PGI, Chandigarh has proved the disability certificate Ex.P2 wherein it is reflected that the claimant suffered disability to the extent of 37%

of the limb. PW3 specifically stated that as per the hospital record, the appellant was admitted on 04.03.2009 with alleged history of road side accident and was diagnosed with fracture of both bone both legs for which she was operated upon on 17.03.2009 and discharged on 20.03.2009. It is specifically stated that the claimant would be able to walk only with the support of walking stick and shall have difficulty in climbing stairs etc. PW3 specifically stated that the disability of the claimant is not likely to improve with the passage of time.

In the facts and circumstances of the case, functional disability of the claimant/appellant, who is house wife, cannot be less than 50% in any case and is so assessed. Loss of income is thus assessed as $\text{Rs.}7000 \times 50 = \text{Rs.}3500/-$ per month. Compensation to the appellant is required to be reworked 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.

Increase in income on account of future prospects at the rate of 25%, takes the income to $[(3500 + (3500 \times 25\%)) = \text{Rs.}4375/-$ per month i.e., $\text{Rs.}52,500/-$ per annum. Age of the appellant was 46 years at the relevant time, therefore, multiplier of 13 is to be applied. Loss of earnings is, thus, assessed as $\text{Rs.}6,82,500/-$ $[52,500 \times 13]$.

Medical expenses of $\text{Rs.}10,510/-$ as awarded by the learned Tribunal on the basis of evidence produced on record, are maintained. A sum of $\text{Rs.}50,000/-$ instead of $\text{Rs.}10,000/-$ is awarded on account of pain and sufferings. Transportation charges are maintained. Attendant charges is awarded at $\text{Rs.}25,000/-$ instead of $\text{Rs.}10,000/-$ and for special diet, she is entitled to $\text{Rs.}10,000/-$ instead of $\text{Rs.}5000/-$. A sum of $\text{Rs.}50,000/-$ instead of $\text{Rs.}10,000/-$ is awarded for loss of amenities.

Thus, the claimant is entitled to compensation as detailed hereunder: -

Sr.No.	Heads of Claim	Rupee
1.	Loss of amenities	Rs.50,000/-
2.	Attendant charges	Rs.25,000/-
3.	Special diet	Rs.10,000/-
4.	Transportation	Rs.5,000/-
5.	Pain and sufferings	Rs.50,000/-
6.	Loss of earnings	Rs.6,82,500/-
7.	Medical expenses	Rs.10,510/-
Grand Total		Rs.8,33,010/-

The amount of compensation already awarded to the appellant, needless to say, shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per annum on the entire compensation amount from the date of filing of the petition till realization.

With the abovesaid modification in the award dated 01.04.2013, present appeal is disposed of.

(LISA GILL)
JUDGE

October 29, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No