

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O No.350 of 2014

Date of decision:- 17.01.2018

Sharwan Kumar

...Appellant

Versus

Joginder Singh and others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. M.S.Khillan, Advocate,
for the appellants.

Mr. Paul S.Saini, Advocate,
for respondent No. 3.

Mr. Ashwani Tlawar, Advocate,
for respondent No. 6.

RITU BAHRI J. (Oral)

CM No. 1103-CII of 2014

For the reasons mentioned in the application, same are allowed and delay of 114 days in filing the present appeal is condoned.

Accordingly, application stands disposed of.

Main Case:

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide award dated 04.04.2013, on account of injuries sustained by Sharwan Kumar in a motor vehicular accident which took place on 14.06.2010.

FACTS NOT IN DISPUTE

Brief facts of the case are that, on 14.06.2010 Balbir Singh,

Basant Singh and Tejpal (all three since deceased), alongwith Sumer Chand, Nirmal, Sharwan Kumar and Ram Chander had gone to Delhi after loading tomatoes in canter bearing registration No. HR 69A-2358. After selling tomatoes they were returning in the same Canter being driven by respondent No. 5-Surinder Singh on normal speed on the left side of the road when at about 2.30 pm, a bus bearing registration No. PB 65H-9008 being driven by respondent No. 1- Joginder Singh came from behind and hit the canter near new Police Line, GT Road. As a result of which, canter turned turtle and all persons who were traveling in the said canter received multiple, grievous and serious injuries. Balbir Singh, Tejpal and Baswant Singh succumbed to the injuries. The accident in question took place due to rash and negligent driving of bus being driven by respondent No. 1. In this regard FIR No. 320 dated 14.06.2010 under Sections 279 and 337 and 304-A IPC was registered against respondent No. 1 at Police Station Chandni Bagh, Panipat and offence under Section 304-A IPC was added after the death of the said Balbir Singh, Tejpal and Baswant Singh. In the said accident, claimant-Sharwan Kumar had sustained multiple and grievous injuries on various parts of the body including knee joint, head etc .

Consequently, claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of negligent driving of offending vehicle by respondent No.1. Claimant-Sharwan Kumar was 21 years of age at the time of accident/death and earning Rs.25,000/- per month by sowing/planting vegetables and sell the same in

the market. This finding was rightly given on the basis of FIR, and disability certificate of claimant as Ex. PW6/A which is duly proved by PW 6-Dr. Vinod Kumar.

Hence, the Tribunal awarded total amount of Rs. 45,043/- to claimant under the following heads:

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Medicines	Rs. 26043/-
(ii)	Disability	Rs. 15,000/-
(iii)	Pain and Suffering	Rs. 2,000/-
(iii)	Special Diet	Rs. 2,000/-
	Total amount of compensation	Rs. 45,043/-

Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

REASSESSED COMPENSATION

Learned Counsel for the claimant deposed that, in the said accident, claimant has got fracture on his right arm and he is unable to move his arm and unable to sit properly. For assessment of disability Dr. Vinod Kumar (PW6) has examined the claimant-Sharwan Kumar and opined that it is an operated case of right elbow with restriction of right elbow movement partially. The disability was assessed as 15 % vide disability certificate Ex. PW6/A. In his cross-examination he stated that disability is qua the particular limb. If the disability calculated for the whole body, it will reduce to 50%.

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

The fact of accident is admitted and proved. It stands established that the deceased has sustained multiple injuries as a result of

the accident.

Therefore, vide disability certificate Ex. PW/A, disability has been considered to the extent of 7.5% qua the whole body and 15% qua the limb and according to the judgment in case *Ram Kiran Goyal Versus Sub Divisional Engineer, Mechanical and others , 2008(2)* , compensation towards disability should be Rs. 15,000/- which has already been granted by the Tribunal and this court found no reason to interfere in the head of disability. In the peculiar facts and circumstances of the case, to meet the ends of justice, and taking disability qua the whole body is taken as 7.5%, the compensation is hereby reassessed under the heads of pain and suffering and special diet.

Hence, the total compensation has been reassessed by this Court as under :

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Medicines	Rs. 26043/-
(ii)	Disability	Rs. 15,000/-
(iii)	Pain and Suffering	Rs. 10,000/-
(iv)	Special Diet	Rs. 10,000/-
	Total amount of compensation	Rs. 61,043/-
	Enhanced amount of compensation	Rs.61,043-45,043 =Rs.16,000/-

The enhanced amount of compensation of **Rs.16,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% 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 the case of “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539.

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.

17.01.2018

Riya Grover

(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No