

In the High Court of Punjab and Haryana at Chandigarh

FAO- 226 of 2015(O&M)

Date of Decision:14.9.2018

Dev Raj

---Appellant

versus

Rajinder and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Chetan Kapoor, Advocate
for the appellant
Ms. Vandana Malhotra, Advocate,
for the insurance company

Rekha Mittal, J.

Mr. Chetan Kapoor, Advocate, has caused appearance on behalf of the claimant-appellant as earlier counsel has since passed away.

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 29.5.2012.

The Motor Accidents Claims Tribunal, Karnal (in short “the Tribunal”) has awarded compensation of Rs.2,66,645/- (rounded off to Rs. 2,67,000/-), detailed hereunder:-

Medical expenses	Rs.88,645/-
Pain and suffering	Rs. 20,000/-
Transportation, attendant charges and special diet	Rs. 10,000/-
Loss of income during the period of treatment and recovery	Rs. 48,000/-
Loss of future income qua disability	Rs. 1,00,000/-

The plea of the claimant is that he was working as a mason and due to sustaining injuries resulting in permanent disability to the extent of

25%, he is entitled to get compensation qua loss of earning during the period of treatment and recovery as well as future loss.

Counsel for the appellant would urge that compensation allowed by the Tribunal under various heads is on lower side and needs enhancement. It is argued that in view of nature and extent of disability suffered by the victim, he would not be in a position to work as a mason or a labour, therefore, claimant is entitled to loss of future income by treating his disability to the extent of 100%.

Counsel representing the insurance company, on the other hand, has refuted contention of the claimant by contending that testimony of the claimant with regard to his avocation as a mason does not find corroboration from an independent source. The claimant examined Dr. Vinod Kumar PW3 to prove disability certificate Ex.P1 and in his cross examination he has stated that functional disability is to the extent of 12.5% whereas the Tribunal has allowed loss qua permanent disability to the tune of Rs. 1,00,000/- by considering the disability to the tune of 50% @ Rs. 2,000/- per percent.

I have heard counsel for the parties and perused the paper book particularly the award.

The Tribunal has allowed reimbursement of medical expenses (**Rs. 88,645/-**) on the basis of documents Ex. P2, P6 to P30 and the same is affirmed.

The injured remained hospitalized for a period of 9-10 days. He was operated upon, rods, nails and plates were fitted in his legs. Claimant shall be entitled to an amount of **Rs. 25,000/-** for pain and suffering (additional sum of Rs. 5,000/-). The amount of Rs. 10,000/-

awarded on account of transportation, attendant charges and special diet is increased to **Rs. 15,000/-** (additional sum of Rs. 5000/-).

The Tribunal has assessed income of the deceased at Rs. 4800/- per month by treating him as a daily wager. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs. 5000/- per month and accordingly, the claimant shall be entitled to loss of earnings during the period of treatment and recovery to the tune of **Rs. 50,000/-** (additional sum of Rs. 2,000/-).

Dr.Vinod Kumar PW3 has proved disability to the extent of 25% qua left lower limb of the victim. In his cross examination, he has categorically deposed that functional disability can be assessed to the extent of 12.5%. As the victim has suffered functional disability of more than 10%, interest of justice demands that loss of future income is assessed by applying multiplier method. Accordingly, claimant shall be entitled to loss of future income qua disability to the extent of **Rs.1,35,000/-** [5000 x12 x18 x 12.5%].

Total compensation is Rs. 3,13,645/- (88,645 + 25,000 + 15,000 + 50,000 + 1,35,000) and the additional amount is Rs.46,645/- (3,13,645- 2,67,000), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

14.9.2018

PARAMJIT

Whether speaking/reasoned : Yes
Whether reportable : Yes/No