

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

FAO No. 4092 of 2014

Date of decision : March 28. 2018

* * * * *

Master Kartavya

.....Appellant

Versus

Mangat Ram and others

.....Respondents

* * * * *

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Ms. Amandeep Kaur, Advocate for the appellant.

Mr. Deepak Suri, Advocate for the

* * * * *

RITU BAHRI, J.

Appellant-Master Kartavya has come up in appeal against the Award dated 14.11.2013 passed by the Motor Accidents Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal'), whereby in claim petition bearing No. MACP/424/13, he was held entitled to a compensation of Rs.7,61,000.

FACTS NOT IN DISPUTE

Briefly stated, the facts of the case are that on 20.6.2010, at about 6:20 P.M, Manoj Kumar Sharma along with his family and relatives namely, Smt. Manju, Ms. Yashika, Master Kartavya, Smt. Seema, Master Hrithik Sharma, Ms. Shreya Sharma, Sh. Anil Kumar, Master Amit Kumar and Smt. Priyanka were travelling in a Car bearing registration No. HR-03-J-9145 on the road leading from Moonak to Sunam. The car was being driven at a moderate speed and on the due left side of the road. But when they reached near Government High School, Hamirgarh, a Car bearing temporary registration No. HR-99-FS-1396 came at a very high speed from the opposite direction i.e from the side of Sunam and while being driven on the wrong direction of the road, hit against the car of the deceased. The above said car bearing temporary registration No. HR-99-FS-1396 was being driven at a fast speed and in a rash and negligent manner by Babaljit Singh @ Babli. Due to the impact of the accident, all the occupants of the car bearing registration No. HR-03-J-9145 received multiple and grievous injuries and immediately, after the accident, they were shifted to hospital. Smt. Manju, Master Hrihik Sharma and Ms. Shreya Sharma had succumbed to the injuries at the spot. The matter was reported to the police and in this regard, a criminal case arising out of FIR No.95 dated 20.06.2010 under Sections 279/337/338/304-A IPC was registered at Police Station Moonak, District Sangrur against Babli for causing this accident with his rash and negligent driving

Claim Petition No. 424/13 was filed by the claimant-Master Kartavya through her grand mother Smt. Shimla Devi to claim compensation on account of injuries suffered by him in the accident.

COMPENSATION ASSESSED BY MACT

After hearing counsel for the parties and examining the evidence placed on record, Tribunal held that the accident took place because of rash and negligent driving of Babaljit Singh @ Babli being driver of offending Car bearing registration No. HR-59-B-2449.

Keeping in view the 100% disability of Master Kartavya-claimant and in view of the facts and circumstances of the case, notional income of the child was taken as Rs.30,000/- and a multiplier of 15 was applied to it. Thus the claimant was held entitled to a sum of Rs.4,50,000/- as compensation. It was also observed that he also lost the love and affection and guidance of his parents who also died in the same accident and thus required to be compensated under all these heads and thus, additional amount of Rs.50,000/- was also awarded. Another sum of Rs.2,00,000/- was granted for the salary of the attendant. Another sum of Rs. 50,000/- was awarded to him for future transportation including hospitalization, purchase of medicines, special diet, loss of amenities of life and on account of pain and suffering etc. Thus, the claimant was held entitled to a total compensation of Rs.7,61,000/- for the injuries suffered by him in the accident.

Learned counsel for the claimant-appellant contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced.

Learned counsel for the appellant has referred to a judgment of Hon'ble the Supreme Court of India in a case of ***V. Mekala vs. M. Malathi and anr, 2014(11) SCC 178*** wherein in a motor accident, the victim was a

student and bones of her both legs fractured. Hon'ble the Supreme Court assessed her notional monthly income at Rs.10,000/- and awarded her 50% future prospects. She was awarded Rs.3 lacs under the head Loss of enjoyment of life and marriage prospects. She was awarded Rs. 2 lacs under the head pain and suffering and Rs. 2 lacs under the head loss of amenity and attendant charges.

Reference has further been made to a judgment of this Court in a case of ***Priyanka Bhutani vs. Sukh Pal Singh and others, 2011(2) RCR Civil 586***, wherein a girl child suffered brain injuries on her head. The Tribunal awarded Rs.6,32,000 but this Court enhanced the compensation amount to Rs.44,65,000/-. Her income had been assessed at Rs.10,000 per month and she was awarded Rs.21,60,000/- under the head loss of earning capacity. She was awarded Rs.5,00,000/- towards loss of amenities. Rs.1 lac was awarded towards loss of prospect of marriage and Rs.1 lac was awarded towards pain and suffering.

Claimant has referred to a judgment passed by this Court in the case of ***Priyanka Chdiear vs. Gurdev Singh and others (FAO No. 1219 of 2014)*** decided on **27.9.2017**, wherein 8 years old girl Priyanka got injured on account of rash and negligent driving of the offending vehicle and her right foot had to be amputated resulting in 40% permanent disability. In the claim petition, Tribunal awarded her a compensation of Rs.9,63,166/- but the High Court modified the award of the Tribunal and awarded her a total compensation of Rs.29,45,766 resulting into enhancement of Rs.19, 82,000 (rounded off). Her notional income was taken as Rs.10,000/- per month and addition was made toward 50% future prospects. An amount of Rs.2,00,000/- was awarded on account of future treatment. Rs. 2,00,000/-

on account of pain and sufferings, Rs.2,00,000/- on account of loss of amenities, Rs.5,00,000 on account of loss of enjoyment of life and marriage prospects. Rs.2,00,000 on account of silicon cosmetic partial foot and Rs.3,00,000 were awarded on account of future expenses on artificial shoe.

In a *New India Assurance Company Ltd. vs. Aksh, 2016 (3) Law Herald (P&H) 2097*, wherein claimant-injured was a child of five years and had suffered 100 % disability due to injury in spinal cord. His notional income was taken by the Tribunal to be Rs.6000/- per month. The attendant charges were taken at the rate of Rs.5000/- per month. On appeal, this Court upheld the notional income of the claimant at the rate of Rs.6000/- per month. The attendant charges taken by the Tribunal at the rate of Rs.5000/- per month were also held to be reasonable as the claimant had suffered permanent disability on both the lower limbs to the extent of 100% on account of spinal cord injury. However, it was further observed that as the claimant was only a child of 5 years at the time of the accident, therefore, the attendant charges should have been granted by the Tribunal for 25 years instead of 18 years. Thus the amount of compensation under this head came to Rs.15,00,000/- (5000x12x25).

REASSESSED COMPENSATION

The fact that the appellant suffered injuries in the accident is not in dispute. It is also not in dispute that the appellant was 02 years old at the time of accident. The appellant had suffered 100% permanent disability as admitted by the parties.

Applying the ratio of the above mentioned judgments, the compensation is re-assessed as under:

<i>Head</i>	<i>COMPENSATION AMOUNT</i>
Notional Income	Rs. 10,000/- per month
Annual Notional Income	Rs. 1,20,000/-
Future Prospect 50%	Rs.1,20,000/- + Rs.60,000=Rs.1,80,000/-
Loss on account of 100% disability	Rs.1,80,000/-
Multiplier of 15 (Age 02 years)	Rs.1,80,000/- x 15 =27,00,000/-
Future treatment	Rs.2,00,000/-
Pain and sufferings	Rs.2,00,000/-
Loss of amenities	Rs.2,00,000/-
Loss of enjoyment of life and marriage prospects	Rs.5,00,000/-
Attendant charges for 25 years in view of Aksh's case (supra)	Rs.15,00000/-
Total compensation awarded:-	Rs.53,00,000/-
Enhanced amount of compensation	(Rs.53,00,000/-)-(Rs.7,61,000/-)= Rs.45,39,000/-

The enhanced amount of compensation of Rs. 45,39,000/- shall be payable within a period of two months from the date of receipt of a certified copy of this order. Then enhanced amount of compensation shall carry interest @ 7.5% 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 “Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others, Civil Appeal No. 448 of 2018 (decided on 19.01.2018). 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.

28.3.2018

ritu

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No