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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.4903 of 2013 (O&M)
Date of Decision : 20.11.2018

ANIL KUMAR

....APPELLANT

V/S

UMESH KUMAR AND OTHERS

....RESPONDENTS

CORAM : <u>HON'BLE MR. JUSTICE B.S. WALIA</u>

Present: Mr. Pardeep Singh Poonia, Advocate
for the appellant.

Mr. Sanjeev Goyal, Advocate
for respondent No3/*Insurance Company*.

<u>B.S. WALIA, JUDGE (ORAL)</u>

<u>CM No.13598-CII-2018</u>

Allowed, as prayed for.

<u>FAO No.4903 of 2013</u>

[1] Appeal has been filed by the claimants, seeking enhancement of compensation awarded on account of 100% permanent disability and the appellant having gone totally blind, as a result of a motor vehicular accident, which took place on 19.12.2010. The learned Motor Accident Claims Tribunal, Jhajjar (hereinafter referred as the 'Tribunal'), by taking in to account the age of the appellant as 28 years, monthly income as ₹3500/- per month and by applying multiplier of '17', awarded a sum of ₹7,44,000/-, whereafter by imposing a cut of 50% on account of contributory negligence, total compensation of ₹3,72,000/- was awarded, including a sum of

₹15,000/- on account of mental and physical agony, ₹10,000/- on account of expenses incurred on treatment and medicines, ₹5000/- on account of special diet and transportation charges.

[2] Learned counsel for the appellant contended that the income of the appellant had wrongly been assessed at ₹3500/- per month, whereas as per the minimum wages for the relevant period, a sum of ₹ 4348/- was the minimum wages for an unskilled labourer, therefore, the income ought to have been assessed at ₹4348 per month. Secondly, no future prospects had been awarded, despite entitlement. Thirdly, the compensation awarded on account of mental and physical agony at ₹15,000/- was grossly inadequate. Likewise, the compensation awarded on account of special diet and transportation charges was also on the lower side.

[3] *Per contra*, learned counsel for respondent No.3/Insurance Company has reiterated the reasoning for the award and contended that the compensation awarded was just and reasonable and did not warrant interference.

[4] Admittedly, the minimum wages for an unskilled worker during the relevant period were ₹4348/- per month. Notification in respect thereto specifying the minimum wages for the relevant period at ₹4348/- per month, duly signed by learned counsel for the appellant, is taken on record and copy handed over to learned counsel for the respondent-Insurance Company, who does not dispute the minimum wages of the deceased at ₹ 4348/- per month. Accordingly, the income of the appellant is assessed at ₹4348/- rounded off to ₹4350/- per month.

[5] As regards, the claim for award of future prospects, learned counsel for the appellant has relied upon decision dated 06.03.2018, passed by

Hon'ble the Supreme Court in the case of '***Jagdish*** *versus* ***Mohan and others***', *2018 AIR (SC) 1347*, wherein, in the case of a victim of accident, aged 24 years, 40% of the established income minus the tax component was taken into account for the purpose of working out the total compensation payable including loss of future income. Hon'ble the Supreme Court in *Jagdish's case (surpa)*, by relying upon its earlier decision in ***'National Insurance Company Limited*** *versus* ***Pranay Sethi and others'***, *2017(4) RCR (Civil) 1009,* awarded 40% of the established income, where the victim was below 40 years of age. Paragraph No.10 of the decision in *Jagdish's case (supra)* as well as paragraph No.61(iv) of the decision in *Pranay Sethi's case (surpa)* is reproduced as under:-

'***Jagdish*** *versus* ***Mohan and others***'

"10. In the judgment of the Constitution Bench in Pranay Sethi (supra), this Court has held that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40 per cent of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the present case, the appellant would be entitled to an enhancement of ₹2400/-towards loss of future prospects."

'*National Insurance Company Limited* *versus* ***Pranay Sethi and others'***

"61 (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40

> *years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

[6] Since, in the instant case, the appellant was 28 years of age at the time of accident and was self employed, therefore, 40% of the established income of the appellant minus the tax component is to be added on account of future prospects.

[7] Learned counsel has contended that the amount of ₹ 15,000/- awarded on account of mental and physical agony at ₹ 15,000/- is grossly inadequate taking into account the fact of the appellant having gone totally blind at the young age of 28 years.

[8] I find merit in the submission of learned counsel for the appellant. In *Jagdish's case (surpa)* Hon'ble the Supreme Court by taking into account 90% disability on account of loss of use of both hands of the appellant therein resulting in his being unable to perform any function, assessed disability as a complete deprivation of the ability to earn and by observing that award of compensation must reflect a genuine attempt on the part of the law to restore the dignity of a human being awarded ₹ 2,00,000/- on account of pain & suffering and loss of amenities.

[9] Accordingly, in the light of decision of Hon'ble the Supreme Court in *Jagdish's case (supra)*, the appellant is awarded a sum of ₹2,00,000/- on account of mental and physical agony instead of ₹15,000/- awarded by the 'Tribunal' on account of his having suffered 100% disability due to complete

loss of vision in both eyes, as a result of motor vehicular accident on 19.12.2010.

[10] Learned counsel for the appellant further contended that only a sum of ₹10,000/- was awarded on account of treatment and medicine, whereas on account of the appellant having gone totally blind, he would require medical treatment from time to time during his life time, therefore, the compensation of ₹10,000/- is grossly inadequate. In the case of total deprivation of the use of both hands, Hon'ble the Supreme Court in *Jagdish's case (supra)*, awarded an amount of ₹3,00,000/- towards future medical expenses. In the instant case, it would be just and proper to award ₹1,00,000/- towards future medical expenses. Accordingly, in addition to the award of ₹10,000/- for treatement and medicines, the appellant shall be held entitled to an additional sum of ₹ 1,00,000/- towards future medical expenses.

[11] A sum of ₹5000/- was awarded on account of special diet and transportation. Learned counsel contends that the same is also grossly inadequate. Having considered the submission I am of the view that compensation should have been awarded separately for special diet and transportation charges. Accordingly, the appellant is held entitled to award of compensation @ ₹5,000/- per month towards special diet for three months i.e. ₹15000/- and ₹3000/- per month towards transportation charges for three months i.e. ₹9000/-. No amount has been awarded on account of attendant charges. In the facts and circumstances of the case, a sum of ₹5000/- per month is awarded as attendant charges for a period of twelve months. Lastly learned counsel for the appellant contended that the interest awarded @ 6% per annum is also on the lower side for in the case of an accident of 24.11.2011, Hon'ble the Supreme Court in *Jagdish's case (supra)*, awarded interest @ 9%

per annum, while in *'**United India Insurance Co. Ltd**. versus **Sube Singh and others**',* i.e. an accident, pertaining to the year 2009, Hon'ble the Supreme Court awarded interest @ 9% per annum. Learned counsel contends that since in the instant case, the accident was of 19.12.2010, therefore, interest was liable to be enhanced from 6% to 9% per annum.

[12] I find merit in the submission of learned counsel for the appellant and accordingly award interest @ 9% per annum with effect from the date of filing of the claim petition till date of payment.

[13] In the light of the position as noted above, the appellant is held entitled to the following compensation:-

Particulars	Assessed by the Tribunal	Re-assessed
Income assessed	₹3500/-	₹4348/- (rounded of to ₹4350/-)
Add Future Prospects	NIL	40% of ₹4350/- = ₹1740/-
Multiplier	17	17
Dependency	₹42,000/- (per annum) ₹42,000/- x17= ₹7,14,000/-	₹73,080/- (per annum) ₹73,080/- x 17= ₹12,42,360/-
Mental & Physical Agony	₹15,000/-	₹2,00,000/-
Treatment & medicine charges	₹10,000/-	₹10,000/-
Future medical expenses	NIL	₹1,00,000/-
Special Diet & Transportation charges	₹5000/-	i) ₹ 5000/- x 3 months = ₹15,000 for special diet ii) ₹ 3000 x 3 months = ₹9000/- for transportation charges
Attendant charges	NIL	₹5000/-x12 months= ₹60,000/-
Total compensation	₹7,44,000/-	₹16,36,360/-
Deduction on account of contributory negligence	50%	50%
Interest	6%	9%
TOTAL	₹3,72,000/-	₹8,18,180/- (rounded of to ₹8,18,200/-)

[14] Accordingly, as against the compensation of ₹3,72,000/- awarded by the learned Tribunal, Jhajjar, the appellant is held entitled to award of ₹ 8,18,200/- alongwith interest @ 9% per annum with effect from date of claim petition till date of payment less payment if any, already made. Needless to mention Insurance Company shall make deduction of tax liability if any, *qua* the future prospects before making payment of compensation in accordance with the decision in *Pranay Sethi's case* *(surpa)*.

[15] Appeal is allowed**,** award is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

November 20, 2018
'rajneesh'

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