

FAO No.5324 of 2013 (O&M)
Date of decision: 29.05.2018

... Appellant

... Respondents

Mr. D.K. Dogra, Advocate for respondent No.3.

REKHA MITTAL, J.

The Tribunal has awarded compensation of Rs.7,81,000/-,
detailed hereunder:-

1. Medical expenses	Rs.6,30,300/-
2. Pain and sufferings	Rs.15,000/-
3. Special diet, Services of attendant and Transportation	Rs.10,000/-
4. Compensation qua disability	Rs.76,000/-
5. Loss of future income on account of disability	Rs.50,000/-

Counsel for the claimant would urge that compensation

awarded by the Tribunal needs enhancement, in the light of material on record.

Counsel for the insurance company has supported assessment made by the Tribunal with the submission that adequate compensation has been awarded under various heads including disability to the extent of 38% to right upper limb. It is further argued that the injured was 58 years old retiree as Agriculture Inspector on 10.11.2009, therefore, there is no justification for enhancement of compensation on any count whatever.

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

Indisputably, the injured remained hospitalised on four occasions namely 27.08.2010 to 11.09.2010; 12.09.2010 to 21.09.2010; 16.10.2010 to 27.10.2010; 01.12.2011 to 06.12.2011 and total period is more than one month. The injured suffered crush injury on right upper limb and fracture of both bones of right forearm with fracture right lateral condyle and implants were inserted and skin grafting was done.

The Tribunal, in para 19 of the award, has noticed that the injured was operated four times during his hospitalization in different hospitals. Taking into consideration nature of injuries sustained coupled with period of treatment as an indoor patient and four operations performed, compensation awarded by the Tribunal for pain and sufferings to the tune of Rs.15,000/- is on lower side and ordered to be enhanced to Rs.30,000/- (additional amount of Rs.15,000/-).

The Tribunal has awarded a sum of Rs.10,000/- on account of expenses on special diet, services of attendant and transportation. In view of the above, claimant shall be entitled to a sum of Rs.30,000/- under the aforesaid heads (additional amount of Rs.20,000/-).

The Tribunal has allowed reimbursement of medical expenses to the tune of Rs.6,30,300/- on the basis of bills valuing Rs.6,21,300/-, the same is ordered to be affirmed.

This brings the Court to assessment of compensation qua permanent disability to the extent of 38% to right upper limb. With regard to disability, the Tribunal has awarded a sum of Rs.50,000/- towards loss of income and Rs.76,000/- for loss of amenities of life.

The injured is a 58 years old retiree. The disability has been caused to upper limb. There is no medical opinion as to how disability of 38% to right upper limb can be assessed qua functional disability to the whole body. As per plea of the claimant, after his retirement as Agriculture Inspector, he was employed as Horticulture Supervisor in Sanskar Bharti Public School at salary of Rs.10,000/- per month. The claimant examined Ram Singh, Administrator Officer of the aforesaid school to prove his employment and salary. Ram Singh PW5 has deposed that due to long absence of Hari Singh, his services were terminated by the Sanskar Bharti Public School, Nangli Bihali, Tehsil Behror, District Alwar. There is nothing on record suggestive of the fact that as to what duties were assigned to the injured while working as Horticulture Supervisor in the

aforesaid school much less that he is rendered unable to perform those duties owing to disability of 38% to the right upper limb. There is no material on record that nature and extent of disability suffered by the victim would render him unable to take up any other assignment for all the times to come.

Hon'ble the Supreme Court in **Mr. R.D. Hattangadi Vs. M/S Pest Control (India) Pvt. Ltd. and ors., AIR 1995 SC 755**, has laid down in para 9, reproduced hereinbelow for ready reference:-

“9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

Taking a cumulative view of the facts on record coupled with some guess work to be applied by the Court, functional disability is assessed at 10%. Indisputably, the victim retired as Agriculture Inspector. His income is assessed at Rs.10,000/- per month. Admissible multiplier in the given circumstances is 9. In this manner, loss of future income comes to Rs.1,08,000/- (Rs.10,000 x 12 x 9 x 10/100). An amount of Rs.50,000/- under this head, allowed by the Tribunal, shall be liable for adjustment.

The Tribunal has awarded an amount of Rs.76,000/- for compensation qua disability @ Rs.2000/- per percent. There would be no compensation qua disability. However, claimant shall be entitled to Rs.30,000/- for loss of amenities of life. In view of the above, total compensation comes to Rs.8,28,300/- and the additional amount of Rs.47,300/- (8,28,300 – 7,81,000) shall be payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

29.05.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No