

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 5189 of 2015 (O&M)

Date of Decision: 02.11.2018

Billu Singh

.....Appellant

Versus

Sanjeev Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajbir Singh, Advocate
for the appellant.

Mr. R.C. Kapoor, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.(oral)

The present appeal is against the award dated 07.04.2015 passed by the Motor Accident Claims Tribunal, Sangrur, (for short 'the Tribunal').

2. The driver of the Car bearing registration No. HR-05-E-0899 (for short 'the offending vehicle'); owner and insurer of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively in the present appeal.

3. The brief facts necessary for adjudication of the present appeal are that a motor vehicle accident took place on 20.11.2013. The appellant was on his rickshaw rehri and was coming from Nursery at Dhuri Road after loading flower pots and when he reached over bridge, he was hit by a rashly and negligently driven offending vehicle. As a result of the impact, he suffered injuries and was taken to Civil Hospital, Sangrur, from there he was referred to Patiala, but he was admitted in Life Line Multi Specialty

Hospital, Sangrur. FIR No. 370 dated 24.11.2013 was registered. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed. The Tribunal awarded a sum of Rs.11,51,000/- as compensation along with interest at the rate of 7.5% per annum.

4. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident occurred due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally held liable to pay the compensation. As a result of the accident, right leg of the appellant was amputated below knee. He suffered 70% permanent disability. The disability certificate Ex.C28 was produced and CW8-Prabsimran Singh deposed before the Tribunal to prove the disability certificate. The appellant was hospitalized for nine days.

5. The Tribunal after considering that the deceased was 50 years of age and was a rickshaw rehri pullar, took 70% permanent disability qua limb as 100% qua whole body. Further, the monthly income of the deceased was assessed as Rs.6000/- and by applying a multiplier of 13, loss of income was assessed as Rs.9,36,000/-.

6. Learned counsel for the appellant argued that no future prospects have been awarded, the amount awarded for pain and suffering is on lower side and no amount has been awarded for loss of amenities of life and loss of social status.

7. Learned counsel for the insurer vehemently resisted any further enhancement. He stated that the Tribunal considered the facts and inspite of 70% permanent disability qua limb, the appellant would not sit idle and would be earning something and hence, no future prospects should be

awarded.

8. The contention raised by learned counsel for the appellant deserves acceptance.

9. In view of the decision of Hon'ble the Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi and others*, 2017 AIR (SC) 5157 and *Hem Raj Versus Oriental Insurance Company Ltd.* 2018(2) PLR 480, future prospects are to be awarded. The Tribunal had considered the age of the injured above 50 and hence, 10% future prospects are to be awarded.

10. The contention raised by learned counsel for the insurer lacks merit. Merely because it cannot be assumed that the injured would be sitting idle, it would not be a ground for not awarding future prospects. The fact remains that he was 50 years of age; a labourer; plying rickshaw rehri. With an amputated leg he was bound to lose his employment as he was working in a Nursery as rickshaw pullar. There is no error in the award of the Tribunal whereby 70% disability qua the limb has been treated as 100% functional disability. There cannot be any dispute on the proposition that percentage of permanent disability qua limb cannot be accepted as it is qua whole body.

11. In the present case, the age of the injured and the occupation of the injured has to be considered. The appellant has to lead rest of his life with an amputated leg. He was hospitalized and was operated upon. In such circumstances, the amount awarded on account of pain and suffering of Rs.20,000/- is enhanced to Rs.40,000/-. He lost amenities of life because of loss of limb and Rs.25,000/- is awarded for loss of amenities of life and another Rs.20,000/- is awarded for loss of social status. Since, there is no

dispute with regard to loss of income calculated by the Tribunal, 10% of the same i.e. Rs.93,600/- is awarded as future prospects. The compensation awarded for special diet and attendant of Rs.10,000/-, expenses for artificial limb of Rs.1,00,000/- and expenditure on treatment i.e. Rs. 85,000/- shall remain intact.

In view of the above discussion, the compensation is recalculated as under:-

Details	Amount
Loss of income	Rs.9,36,000/-
Future Prospects 10%	Rs.93,600/-
Expenditure on treatment	Rs.85,000/-
Pain and sufferings	Rs.40,000/-
Loss of Amenities	Rs.25,000/-
Loss of social status	Rs.20,000/-
Spl.Diet and attendant	Rs.10,000/-
Artificial limb	Rs.1,00,000/-
Total:	Rs.13,09,600/-

12. The award dated is 07.04.2015 is modified to the extent that the amount awarded of Rs.11,51,000/- is enhanced to Rs. 13,09,600/-.

13. The claimant would be entitled to enhanced amount alongwith interest at the rate as awarded by the Tribunal from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

02.11.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No