

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

FAO No. 5331 of 2015 (O&M)

Date of decision : July 05, 2018

Rashi Srivastava

.....Appellant

Versus

Sahil Kumar and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashwani Arora, Advocate
for the appellant.

Mr. Puneet Sharma, Advocate with
Mr. Veerinder Jit Singh, Advocate
for insurance company - respondent No. 3.

LISA GILL, J.

This appeal has been preferred by the appellant – Rashi Srivastava for enhancement of compensation awarded to her vide award dated 17.03.2015 passed by the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by her in the motor vehicle accident, which took place on 28.06.2012.

Brief facts necessary for adjudication of the case are that the appellant was involved in a motor vehicle accident on 28.06.2012 at about 6.25 p.m. when she was proceeding towards Sector 38, Chandigarh on a Kinetic scooter, which was being driven by her daughter at a slow speed. The appellant was riding pillion. When they were crossing the traffic light points of Section 38, Chandigarh, offending scorpio car bearing registration No. HP-12B-7787 struck against the scooter on which the appellant was riding pillion. They received injuries and were taken to the hospital. The offending vehicle was being driven in a rash and negligent manner. The

appellant received serious injuries in the accident including head injury, fracture in the right leg and other multiple injuries. The appellant was admitted at PGI, Chandigarh on 29.06.2012 and her right leg was operated upon on 09.07.2012. Two rods, seven screws and spiral blade were inserted in her right leg. She was discharged from PGI, Chandigarh on 16.07.2012. Thereafter, she was taking treatment at the OPD as well as physiotherapy centre. Her disability was assessed as 38% as reflected in the disability certificate (Ex. P11). Claim petition under Section 166 of Motor Vehicles Act was preferred by the appellant seeking compensation on account of the injuries and disability suffered by her.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to rash and negligent driving of scorpio car bearing registration No. HP-12B-7787 driven by respondent No. 1. This finding of the learned Tribunal has attained finality. The learned Tribunal concluded that the appellant sustained injuries in this accident leading to 20% functional disability. Multiplier of 13 was applied. A total amount of ₹4,12,955/- was awarded by the learned Tribunal as compensation.

Present appeal has been filed seeking enhancement of the compensation awarded.

Learned counsel for the appellant while referring to the statement of PW3 - Dr. Sudesh Pebam, who proved the disability certificate (Ex. P11) as well as her treatment at PGI, submits that functional disability of the appellant was not less than 38%, therefore, the learned Tribunal has wrongly assessed the same as 20%. Learned counsel appellant relies on the judgment of the Hon'ble Supreme Court in Sayed Sadiq etc. versus

Divisional Manager, United India Insurance Company 2014 (1) R.C.R.

(Civil) 765 to submit that functional disability may even be more than the disability assessed by the medical board. It is further submitted that no compensation has been afforded for loss of amenities and that awarded on account of pain and suffering is meagre. He prays for enhancement for the same.

Learned counsel for the respondent - insurance company while refuting the arguments raised submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed and the impugned award dated 17.03.2015 be upheld.

I have heard learned counsel for the parties and have gone through the file as well as record produced in Court today.

There is no dispute regarding the appellant having suffered injuries as mentioned in the motor vehicle accident caused by the rash and negligent driving of the offending scorpio vehicle by respondent No. 1 on 28.06.2012. Liability of the insurance company is also not denied.

PW3 Dr. Sudesh Pebam, Department of Orthopaedics Surgery, Member, Special Medical Board, PGI, Chandigarh has proved admission of the appellant at PGI as well as operation conducted upon her right leg. Insertion of two rods, seven screws and spiral blade upon her right leg is not disputed. It is specifically stated by PW3 that disability of the claimant is permanent and assessed as functional disability.

Relevant part of his testimony reads as under:-

“ Patient Rashi Srivastava was examined by Medical Board, PGI, Chandigarh on 19.09.2014 for assessment of permanent physical disability. I have seen Ex. P11 this is the

disability certificate issued by the PGI, Chandigarh and bears my signatures and signatures of other members of Board. The disability assessed is functional disability. The disability suffered by the claimant is permanent in nature and reassessment is not recommended. The claimant have difficulty in cross leg sitting, squatting, stairs climbing, walking and standing without support.”

In the cross examination, PW3 has denied the suggestion that the appellant can walk easily without help or any assistance. The appellant was 46 years old at the time of the accident. She is a housewife, was earning some amount from tuition work. There is no dispute that the appellant had completed her MA B.Ed. Disability suffered by her has been categorised as permanent and functional.

It has been held by the Hon'ble Supreme Court in Sayed Sadiq's case (supra), that the Court should be sensitive about the functional disability suffered by the claimant and award compensation accordingly. The claimant's functional disability can be safely assessed as 38%. She is entitled to 30% increment on account of loss of future prospects in view of her age i.e. 46 years at the time of accident. A multiplier of 13 has been correctly applied.

As per the guidelines laid down by the Hon'ble Supreme Court in Sayed Sadiq's case (supra), the appellant would be entitled to loss of future income of ₹6,16,512 $[(₹8000 \times 38/100) + (38/100 \times 30/100 \times ₹8000) \times 12 \times 13]$. Sum of ₹25,000/- awarded on account of pain and suffering is enhanced to ₹1,00,000/-. ₹50,000/- is afforded to the claimant on account of loss of amenities. Needless to say, the appellant shall be entitled to a sum of ₹20,000/- for special diet, ₹10,000 for transportation charges, ₹8,475/- on

account of medical bills and ₹25,000/- for assistance as already awarded to the learned Tribunal.

The appellant is, thus, entitled to compensation detailed as under:-

Loss of future income	₹6,16,512/-
Pain and suffering	₹1,00,000/-
Loss of amenities	₹50,000/-
Special diet	₹20,000/-
Transportation charges	₹10,000/-
Attendant	₹25,000/-
Medical Bills	₹8,475/-
Total	₹829987/-

Amount of compensation already awarded to the appellant shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realisation.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

July 05, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No