

In the High Court of Punjab and Haryana at Chandigarh

FAO-5892 of 2015(O&M)
Date of Decision: 13.12.2018

Ramesh Kumar

---Appellant

versus

Parminder Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Amandeep Kaur, Advocate
for the appellant
None for respondents No. 1 and 2
Ms. Shamsher Kaur, Advocate,
for respondent No. 3

Rekha Mittal, J.

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 24.1.2011.

The Motor Accidents Claims Tribunal, Chandigarh (in short “the Tribunal”) has awarded compensation of Rs.1,95,300/-,detailed hereunder:-

Medical expenses	Rs. 85,068/- (rounded off to Rs. 85,500/-
Loss of income during period of treatment and recovery	Rs. 19,800/-(Rs. 3300/- per month for six months
Loss of future income qua disability @ 25%	Rs. 50,000/-
Pain and suffering, special diet, transportation, attendants, mental agony and enjoyment of life etc.	Rs. 40,000/-

Counsel for the appellant has produced original disability certificate dated 27.4.2018 whereby a Board of doctors of Post Graduate Institute of Medical Education and Research, Chandigarh has assessed his disability to the extent of 23% of left lower limb termed as locomotor disability on account of fracture left shaft of femur (ORIF-Platina).

Counsel for the appellant would contend that in view of nature and extent of disability suffered by the victim coupled with that income has been assessed at Rs. 3300/- per month by treating him as a casual worker, loss of future income may be assessed by applying multiplier method and extending benefit of addition in income for future prospects. It is argued that injured-victim remained hospitalized in PGI, Chandigarh from 24.1.2011 till 15.2.2011 and had undergone two operations, as deposed by Dr. Aditya Aggarwal, Additional Professor, Department of Orthopedics, PGI, Chandigarh, as such, compensation allowed by the Tribunal to the tune of Rs. 40,000/- under various heads is grossly inadequate. It is further submitted that the Tribunal has allowed loss of income for a period of six months with regard to period of treatment and recovery but the same should be at least for a period of one year, in view of statement of Dr. Aditya Aggarwal PW2, taken note of by the Tribunal in para 16 of the award. In support of her contention, she has relied upon judgment of Hon'ble the Supreme Court **Syed Sadiq and others vs. Divisional Manager, United India Insurance Company, 2014(1) RCR (Civil) 765** and **Vijay Kumar Rastogi vs. Uttar Pradesh State Roadways Transport Corporation AIR 2018 SC 819.**

Counsel for the insurance company has supported assessment

made by the Tribunal with the submission that the claimant has been adequately compensated.

The Tribunal has allowed reimbursement of medical expenses on the basis of bills Exs. P-6 to P-44, amounting to Rs. 85,068/- but compensation has been allowed to the tune of **Rs. 85,500/-** and the same is affirmed.

The Tribunal has allowed a sum of Rs. 19,800/- on account of total loss of income @ Rs. 3300/- per month for a period of six months. Dr. Aditya Aggarwal PW2 has deposed that fracture usually takes 6 to 9 months to unite and patient required help of an attendant during treatment and hospitalization and subsequently at home about 6-9 months. Taking into consideration the medical opinion of Dr. Aditya Aggarwal, claimant is held entitle to loss of income during the period of treatment and recovery for nine months and the same is calculated at **Rs. 29,700/-**(3300 x 9).

The injured has suffered disability to the extent of 23% with respect to left lower limb. There is no medical opinion on record as to how disability can be treated for the purpose of assessing functional disability. The claimant has not adduced clear and satisfactory evidence with regard to his avocation and income prior to the accident. However, the Tribunal has assessed his income at Rs. 3300/- per month on the basis of plea raised by the claimant that he was doing private job. In the given scenario, it cannot be said that the claimant was a daily wage earner or was doing labour work at the relevant time. Taking into consideration the judgments in **Syed Sadiq and others' case (supra)** and **Vijay Kumar Rastogi's case (supra)** and in the light of discussion made hereinbefore, I am of the considered opinion

that interest of justice would be served if functional disability is assessed @ 15%. Accordingly, loss of future income qua disability is assessed at **Rs. 95,040/-** [3300x12x16x15%].

The Tribunal has allowed a sum of Rs. 40,000/- under various heads. Taking a cumulative view of the facts and circumstances discussed hereinbefore, claimant is awarded a sum of **Rs. 75,000/-** towards special diet, transportation, attendant charges, pain and suffering and loss of enjoyment of life (Additional amount of Rs. 35000/-).

Total compensation is Rs. 2,85,240/-(85,500 +29,700 +95,040+ 75000) and the additional amount is Rs. 89,940/- (2,85,240-1,95,300), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

13.12.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No