

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-645-2015 (O&M)

Date of decision: 17.05.2018

Harjit Singh @ Hardeep Singh

..... Appellant

Versus

Balwinder Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Pankaj Katia, Advocate for the appellant.

Mr. Sunil Kumar, Advocate for respondent No. 1.

Mr. Suvir Dewan, Advocate
for respondent No. 2-Insurance Company.

RAMENDRA JAIN, J. (ORAL)

CM-10126-CII-2018

Allowed as prayed for.

CM-10127-CII-2018

Through this application under Order 41 Rule 27 read with Section 151 CPC, prayer has been made for placing on record the school record/report cards (Annexure A-1, Colly) by way of additional evidence.

Heard.

Taking on record, the above documents Annexure A-1 (Colly), no prejudice is going to be caused to either side, inasmuch, as it simply proves as on date status of the appellant-claimant as a student studying in 11th class. Therefore, the application is allowed, subject to all just

exceptions. The documents Annexure A-1 (Colly), filed along with the application are taken on record.

FAO-645-2015 (O&M)

1. Through this appeal injured-claimant (appellant herein) has sought enhancement of compensation, modifying the impugned Award dated 01.10.2014 of the Motor Accident Claims Tribunal, SAS Nagar (Mohali) (for short-'the Tribunal') in his claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as-'the Act'), awarding him compensation of ₹5,15,300/-.

2. In nutshell, on 21.03.2012, the appellant-injured, a student of 4th class at the age of 12 years, received multiple grievous injuries including fracture of his both legs in a motor vehicular accident caused by car bearing registration No. DL-4CP-0074 owned and driven by respondent No. 1 and insured by respondent No. 2.

3. Learned counsel for appellant-claimant relying upon judgment of Hon'ble the Supreme Court in **V. Mekala Vs. M. Malathi and another, 2014(11) SCC 178**, contends that in a similar situation, Hon'ble the Apex Court has taken the income of a student of 11th class at ₹10,000/- per month. Therefore, the learned Tribunal ought to have taken the notional income of the appellant at least ₹ 10,000/- ore more for awarding just and fair compensation, keeping in view fractures in both of his legs at such a tender age, rendering him incapable for his entire life. Learned Tribunal has also erred in not granting any compensation towards pain and sufferings and future prospects, despite specific deposition of PW-2 Dr. Sanjeev Kamboj, Orthopedic Surgeon, as a member of the Disability Board, to assess

disability of the appellant-claimant that the appellant would be needing attendant for daily routine work and for walking also for his whole life. A negligible sum of ₹50,000/- has been awarded towards attendant charges to the appellant, ignoring the above statement of PW-2 Dr. Sanjeev Kamboj.

4. On the other hand, learned counsel for respondents vehemently opposing the above submissions of learned counsel for the appellant-claimant, pleaded the legality and validity of the impugned Award, urging that compensation has already been granted in excess to the appellant-claimant by the Tribunal. Therefore, there is no scope of any enhancement.

5. Having given considerable thought to the rival submissions made by learned counsel for both the sides and law laid down by Hon'ble the Apex Court in V. Mekala's case (supra), the notional income of the appellant is taken at ₹10,000/- per month, inasmuch, as he suffered fracture in both of his legs in his tender age. His fractures would definitely affect his normal life, career, future prospects and various other things, like loss of prospects of marriage, reduction in life expectancy and loss of amenities for the entire life.

6. Relying upon the judgment in V. Mekala's case (supra), 50% is added to the above notional income of the appellant towards future prospects. The learned Tribunal has erred in not granting any compensation towards pain and sufferings to the appellant-claimant inasmuch, as losing sight of the fact that appellant has suffered two fractures in his both legs and remained hospitalized for 9 days, rendering him incapable to act like an ordinary man. Therefore, a sum of ₹50,000/- is awarded to the appellant-claimant towards pain and sufferings.

7. PW-2 Dr. Sanjeev Kabmoj, in his cross-examination has clarified that appellant would be needing attendant for his entire life. Therefore, the attendant charges awarded to the appellant by learned Tribunal are increased from ₹50,000/- to ₹ 2,00,000/-, in view of above referred judgment, wherein also similar amount of compensation was granted under the said head.

8. On calculation of compensation on the basis of notional income of ₹10,000/- per month and adding 50% towards future prospects, besides enhancements, as discussed above, without disturbing the multiplier of 15 applied by the learned Tribunal below in view of Schedule-II of the Act, wherein for a person having age around 12 years, multiplier of 15 has been prescribed, the compensation of the appellant-claimant, is reassessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹10,000/- per month
(ii)	50% of above (i) to be added as future prospects	(10,000+5,000)= ₹15,000/-
(iii)	25% towards permanent disability	(15000x25/100)=₹3750/-
(iv)	Compensation after applying multiplier of 15	(3750x12x15)=₹6,75,000/-
(v)	Attendant charges	₹2,00,000/-
(vi)	Pain and sufferings	₹50,000/-
(vii)	Loss of prospects of marriage	₹75,000/- already granted by the learned Tribunal.
(viii)	Loss of amenities	₹75,000/- already granted by the learned Tribunal.
	Total	₹10,75,000/-

9. As a sequel of my discussion above, the impugned Award dated 01.10.2014 is modified. The compensation is enhanced from ₹5,15,300/- to ₹ 10,75,000/-. The enhanced amount of compensation i.e.

₹ 5,59,700/- rounded off ₹ 5,60,000/- will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realisation. The appellant-Insurance Company shall deposit the aforesaid amount of compensation within 2 months from today, for onward disbursement of the same to the appellant-claimant, in accordance with law.

10. The instant appeal stands disposed of, accordingly.

May 17, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No