

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 813 of 2014

Date of Decision : 27.02.2018

Kapil Sehgal

....Appellant

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. Kapil Bansal, DAG, Haryana for respondents no. 1 to 3.

Mr. R.M. Suri, Advocate for respondent no. 4.

Surinder Gupta, J.

Appellant-Kapil Sehgal seeks enhancement of compensation for injuries suffered by him on 23.01.2010 in a motor vehicle accident with Haryana Roadways bus bearing registration no. HR-57-1390 (later referred to as 'the offending vehicle'), which was insured with respondent no. 4- ICICI Lombard General Insurance Company Ltd. The Motor Accident Claims Tribunal, Chandigarh (later referred to as 'the Tribunal') awarded compensation of ₹1,77,321/-, which was computed as follows:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Compensation towards medical bills	₹45821
(ii)	Compensation towards special diet	₹10000
(iii)	Compensation for transportation	₹15000
(iv)	Compensation for attendant charges	-
(v)	Compensation for loss of future income	₹45000
(vi)	Compensation for pain and suffering	₹37500
(vii)	Compensation for loss of earning during treatment of six months	₹24000
Total		₹177321

2. Learned counsel for the appellant has argued that the claimant-appellant had suffered grievous injuries and even the Tribunal has accepted this fact that he remained on bed for about six months. Appellant was employed as computer operator. Due to injuries and disabilities he is not in a position to perform his job with full vigor and has suffered loss of future prospects. Amount of compensation of ₹45000/- for 30% disability suffered by the appellant is also on lower side and calls for upward revision. The Tribunal has not allowed any compensation towards expenses of attendant, who took care of the appellant for a period of about six months. Under the heads of loss of amenities of life and future medical treatment, no compensation was allowed. The Tribunal had also to adopt multiplier method while computing amount of compensation for the disability suffered by the appellant. Dr. Kishan R. Bhagwat while appearing as PW-2 has stated that the appellant, who was unmarried at the time of accident, might have difficulty in normal sexual activities and no compensation on this score was allowed.

3. Learned DAG, Haryana and learned counsel for respondent no. 4-Insurance Company have argued that the Tribunal has examined case of appellant minutely and awarded adequate and reasonable amount of compensation. Though, appellant had suffered 30% disability, but the Tribunal has taken it as 15% functional disability as it pertained to lower limb, which in no manner affects the job of appellant, who was employed as a computer operator. The Tribunal has allowed compensation of ₹37,500/- under the head of pain and suffering by taking care of each injury suffered by the appellant and this amount is adequate. No evidence was produced

before the Tribunal to prove that any attendant was engaged to look after the appellant, as such non-grant of any compensation on this score is immaterial.

4. The Tribunal while awarding amount of compensation has taken note of testimony of Dr. Kishan R. Bhagwat, who appeared as PW-2, which was elaborately discussed in para 21 of the award and to have a look on the type of injuries and restrictions suffered by the appellant because of disability, the testimony of Dr. Kishan R. Bhagwat as referred by the Tribunal, is reproduced as follows:-

“21. PW-2 Dr. Kishan R. Bhagwat, Sr. Resident, Department of Orthopedics, PGI, Chandigarh brought the record of the claimant who was admitted in the hospital with history of road side accident on 23.1.2010. He stated that he was found to have suffered fracture pelvis and fracture right supracondylar femur open Grade III-B and blunt trauma abdomen. He was operated on 25.1.2010 with K-Wire fixation plus TA fixator and external fixator for pelvis. He was also operated for blunt trauma abdomen. He was operated with repair mesorectal and mesosigmoid tear on the same day. In total, three procedures were conducted. He was discharged from the hospital on 28.1.2010 with advise to follow up in the OPD. As per record, he last visited the hospital on 4.8.2010. Even on that day, he had not fully recovered from the injuries as he had numbness on the right foot

*and restriction of movement of right lower limb. He stated that as per record, Ex. P-2 to Ex. P-5, he suffered problem of Phimosi*s* i.e. loss of ability of prepu*ci*al skin to retract and was advised circumcision by the Department of General Surgery on 7.5.12, which could be an off-shoot of the initial pelvic trauma suffered by him on 23.1.2010. He brought on record OPD Card Ex. P-63, Ex. P64 issued by PGI, Chandigarh and stated that as per record, circumcision was done on 5.6.12 with advise of follow up treatment in the OPD in the Department of Surgery. Because of all these pelvic problems, the patient might have difficulty in normal sexual activity. The patient was examined by the Disability Board on 12.8.11. On examination, he was found to have loss of mobility 15% at right hip and 6% at right knee amounting to total loss of 30% disability in relation to right lower limb. The disability was permanent in nature as it was non progressive and re-assessment of disability was not recommended. He proved disability certificate Ex. P-65 and stated that the patient was in prolonged sitting job. He might have difficulty in performing job as he cannot sit for a long time due to injuries to the pelvis and right lower limb. He could also have difficulty in normal weight bearing of the lower limbs and squatting, apart from walking and*

climbing up and down the stairs. The pelvic injury might also hinder in normal sexual activities.”

5. Some of the facts, which emerge from the testimony of PW-2 Dr. Kishan R. Bhagwat are as follows:-

The appellant had undergone three operations. He remained admitted in hospital from 23.01.2010 to 28.01.2010 and even thereafter, he had been visiting the hospital as outdoor patient for follow up treatment. As per record brought by the doctor, he last visited the hospital on 04.08.2010 and on that day he had not fully recovered from the injuries as he had numbness on the right foot and restriction of movement of right lower limb. He was advised circumcision by the Department of General Surgery on 07.05.2012, which was done on 05.06.2012. Because of pelvic problem, the appellant might have difficulty in normal sexual activity. He may face difficulty in performing his job as he cannot sit for a long time and also face difficulty in normal weight bearing of the lower limbs and while squatting, walking, climbing and coming downstairs.

6. The question, which arises for consideration here is whether while assessing compensation for the disability suffered by the appellant, a lump sum amount of ₹3000/- per percent of disability as awarded by the Tribunal by taking his functional disability as 15% is adequate or he should be allowed compensation by applying the multiplier method. So far as observation of the Tribunal assessing functional disability of the appellant

as 15% is concerned, I find no reason to interfere with the same. However, keeping in view facts and circumstances of this case, I am of the opinion that the multiplier method can be suitably adopted in this case while assessing compensation for the disability. The Tribunal has assessed income of the appellant as ₹4000/-. Age of the appellant at the time of accident was about 24 years, which attracts multiplier of 18. The amount of compensation under this head works out to be {₹4000/15% (disability) X 12 X 18=₹1,29,600/-} rounded off to ₹1,30,000/- . The Tribunal while awarding compensation for loss of income has taken the period, during which the appellant could not perform his job, as six months. The compensation for attendant was declined with the observation that the appellant has not engaged any attendant or incurred expenses of attendant. During the period the appellant remained admitted in hospital and when he was on bed at home, he always required assistance of attendant. Even if some family member had attended him, he (attendant) has done so at the cost of his job, profession, studies etc. The compensation for the attendant cannot be denied to an injured on the mere ground that a paid attendant was not engaged or bills of payment to attendant were not produced on record. A compensation of ₹10,000/- is allowed on this score.

7. The doctor has categorically stated that pelvic injury might hinder normal sexual activity of the appellant. The Tribunal has declined compensation on this score with the observation that the doctor has not stated with certainty that fracture of pelvic will incapacitate the appellant sexually and as such, it cannot be accepted that appellant has suffered loss of marriage prospects or has become impotent. PW-2 Dr. Kishan R.

Bhagwat has stated that because of pelvic problem the appellant might have difficulty in normal sexual activities. The appellant has suffered 30% permanent disability and this has certainly effected his marriage prospects. The opinion of doctor is very clear and unambiguous and the Tribunal was not correct in denying the compensation on this score.

8. Keeping in view the nature of injuries, permanent disability suffered by claimant-appellant and statement of Dr. Kishan R. Bhagwat, appellant is awarded compensation of ₹50,000/- on this score. For the loss of future prospects and amenities of life and future medical treatment, he is also entitled to compensation of ₹50,000/-. The compensation awarded by the Tribunal under other heads is reasonable and adequate and calls for no interference.

9. Keeping in view above facts, compensation to which claimant is entitled is reassessed as follows:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Compensation towards medical bills	₹45821
(ii)	Compensation towards special diet	₹10000
(iii)	Compensation for transportation	₹15000
(iv)	Compensation for attendant charges	₹10000
(v)	Compensation for loss of future income	₹130000
(vi)	Compensation for pain and suffering	₹37500
(vii)	Compensation for loss of earning during treatment of six months	₹24000
(viii)	Compensation for loss of marriage prospects and disability/difficulty in normal sexual activities	₹50000
(ix)	Compensation for future prospects, amenities of life and future medical treatment	₹50000
<i>Total</i>		₹372321 (rounded off to ₹372300)

10. As a sequel of my above discussion, the instant appeal is accepted and the award of the Tribunal is modified. The amount of compensation is enhanced from ₹1,77,321/- to ₹3,72,300/- for the injuries suffered by claimant-appellant. The enhanced amount will carry interest 7% per annum from the date of filing of this appeal till actual realization.

February 27, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No