IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.6813 of 2015 (O&M)
Date of Decision: February 07, 2018.

Jagjot Singh

..........APPELLANT(s).

VERSUS

Kaka Singh and another

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Arora, Advocate
for the appellant (s).

Mr. S.S. Sidhu, Advocate
for respondent No.2-insurance company.

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SURINDER GUPTA, J.

Motor Accident Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as 'the tribunal') vide award dated 27.04.2015 allowed compensation of ₹38,68,377/- to the appellant-claimant for the injuries suffered by him, in a motor vehicle accident with Truck bearing registration No.PB-23E-3531.

Appellant-claimant Jagjot Singh on 15.02.2014 was returning from a marriage party in Innova Car bearing registration No.PB-11-AV-7914 being driven by Gagandeep Singh, since deceased. When they reached near village Chorwala situated on Patiala-Sirhind Road at about 2.00 a.m., offending vehicle i.e. truck bearing registration No.PB-23E-3531 was found parked in the middle of the road without any indicator, parking light, reflector or bushes. It was raining and pitch dark. Driver of Innova car could not notice the said truck and the vehicle of the claimant hit the back side of the truck, resulting in serious grievous injuries to claimant and Gagandeep Singh, who were taken to Civil Hospital, Fatehgarh Sahib from where he was referred to PGI, Chandigarh. On 16.02.2014, claimant was taken to Landmark Hospital Sector 33, Chandigarh from where he was referred to D.M.C. Ludhiana. He remained admitted there from 17.02.2014 to 24.02.2014 and was operated. Due to his deteriorating condition, he was put on ventilator support and was taken to Indian Spinal Injuries Centre, New Delhi, where he remained admitted from 25.02.2014 to 01.04.2014 and again from 08.04.2014 to 06.05.2014. He was operated on 26.02.2014 and his tracheotomy was done, whereby a tube was inserted in his lungs and he was operated for spine stabilisation and decompression on 12.03.2014. Now, the treatment of the claimant is still going on from Guru Harkrishan Hospital, Sohana for physiotherapy and he has spent about ₹30 lakhs on his treatment so far. Both his lower limbs have lost sensation and movement and the injuries suffered by him had made him totally crippled and bed ridden. The claimant was pursuing his B.Sc.(Agriculture) from Mata Gujri College Fategarh Sahib. He had to discontinued his studies and has lost his earning capacity. He is unable to perform his routine jobs like brushing teeth and answering the call of nature without help and is undergoing tremendous pain and suffering.

Respondent No.1-Kaka Singh, driver and owner of the offending vehicle denied the accident and pleaded their false implication.

Respondent No.2-insurer of the offending vehicle contested the claim petition with the plea that the accident occurred due to sole negligence of Innova Car which hit the truck from the back side.

The issue raised in this appeal is regarding enhancement of compensation as awarded to the appellant-claimant.

The tribunal awarded compensation of ₹38,68,377/- to the claimant, which was computed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Medical expenses	₹18,10,377/-
(ii)	Pain and sufferings	₹1,00,000/-
(iii)	Loss of income due to 90% disability	₹14,58,000/-
(iv)	Attendant charges	₹2,00,000/-
(v)	Loss of enjoyment of life and marriage prospects	₹3,00,000/-
Total		₹38,68,377/-

Learned counsel for the appellants has argued that though the appellant had suffered 90% disability but the tribunal has not looked into the nature of disability suffered by the appellant-claimant, who has been totally crippled. In fact, it is 100% disability. The tribunal while assessing the income of the deceased, has not even taken the minimum wages prescribed for the skilled workers by the State of Punjab. The claimant is leading life of a crippled person and required services of an attendant throughout his life. He is virtually in vegetative State and compensation allowed towards expenses of attendant is on lower side. The claimant also required constant medical care throughout his life but no compensation has been allowed towards medical expenses. He has relied on the observations of a Co-ordinate Bench of this Court in the case of ***National Insurance Company Limited Vs. Pushpa Singh Chauhan and others (FAO No.1502 of 2015 decided on 20.03.2015); Amarjeet Kaur and another Vs. Salinder***

Singh and others (FAO No.6944 of 2015 decided on 18.09.2017); The New India Assurance Co. Ltd. Vs. Smt. Gurmeet Kaur and others (FAO No.5579 of 2015 decided on 12.01.2018); and by Hon'ble Apex Court in case of ***V. Mekala Vs. M. Malathi & Anr. 2014(2) RCR (Civil) 880,*** wherein, in case of death of a student in a motor vehicle accident, his notional income was taken as ₹10,000/- per month.

Learned counsel for insurance company has argued that in the citations referred by learned counsel for the appellant-claimant deceased were students of professional colleges while in this case, claimant was a student of B.Sc. (Agriculture) and was not in a professional college. The tribunal has already allowed adequate compensation under conventional heads which call for no further enhancement.

About the physical condition and status of appellant, Dr. Rakesh Kumar, Medical Officer, who proved his disability certificate, has stated in his statement as follows:-

> "The patient is unable to move bilateral lower limb since his accident. I have also seen medical treatment record already on record file Ex-P268 to Ex.P273 and as per the same, the patient was diagnosed with fracture dislocation D4-D5 with code Contusion extended upto D6 with left 4^{th} rib fracture, bilateral lung contusion and haemothorax with bladder and bowel involvement and depressed fracture frontal bone (head injury) with Pneumocephalus and spinal injury with paraplegia. I have also seen the other medical treatment and bills of the patient and the same relates to the treatment given to the patient and also post operative treatment. The disability of the patient is functional disability and will effect earning capacity of the patient as the patient cannot stand on its own. **The**

> **patient can only sit with support. The patient cannot move or walk even with support as the patient is unable to move bilateral lower limb. The patient requires round the clock attendant as he cannot do daily routine jobs and even requires help in answering call of the nature.**"

Testimony of Dr. Rakesh Kumar reveals that claimant is not in a position to move, walk or even sit without support and he required round the clock attendant to do his routine jobs. Now, the question is as to whether permanent disability of the appellant as declared by the medical board i.e. 90% be taken as 90% functional disability or 100% functional disability. A person, who cannot walk, move or sit without support, falls in the category of 100% disabled person. The tribunal has relied on the certificate of the medical board while taking the disability but has not looked into this aspect that the functional disability of the appellant-claimant is 100%. I agree with the submission of learned counsel for the appellant that functional disability of the claimant should be taken as 100%.

The appellant-claimant was a student of B.Sc.(Agriculture) Mata Gujri College, Fatehgarh Sahib and by all means, he was a skilled worker. Minimum wages prescribed by the Labour Commissioner, Punjab vide letter dated 29.05.2014, w.e.f. 01.03.2014 for a skilled labourer was ₹8124.75p. In the citation referred by learned counsel for the appellant, income of the deceased, who were students, was taken as ₹10,000/- per month. Even in the case of ***V. Mekala Vs. M. Malathi & Anr (supra)***, income of the deceased, who was student of 11th standard, was assessed by the Apex Court as ₹10,000/-. The appellant has to spend his whole live and face the effect of inflation. He is unable to earn anything. Keeping in view all these facts, I assess the income of the appellant as ₹10,000/- per month.

The appellant being 100% disabled also require assistance of an attendant for whole life. The tribunal has allowed compensation of ₹2 lakhs on this score, which keeping in view the condition of the appellant-claimant and his expected life span, appears to be not sufficient amount. Even if, appellant-claimant is allowed a meagre amount of ₹2000/- per month for the attendant, annual expenses works out to be ₹24,000/-. Keeping in view the age of the claimant, I am of the opinion that an amount of ₹5 lakh should be allowed under this head.

As per statement of Dr. Rakesh Kumar and medical record on file, the appellant is suffering from fracture frontal bone, spinal injury with paraplegia. For the injuries suffered by him, he requires continuous medical care, physiotherapy etc. but the tribunal has not awarded any compensation to the appellant-claimant on this score. The appellant is allowed a compensation of ₹1 lakh towards future medical expenses.

However, addition of 50% in the income of the claimant allowed by the tribunal is to be reduced to 40% as per the observations of Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***. The compensation allowed on the other conventional heads by the tribunal is adequate and reasonable and I find no reason to enhance the same.

Keeping in view the above facts, the amount of compensation awarded to the claimant is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Medical expenses	₹18,10,377/-

(ii)	Pain and sufferings	₹2,00,000/-
(iii)	Future medical expenses	₹1,00,000/-
(iv)	Attendant charges	₹5,00,000/-
(v)	Loss of enjoyment of life and marriage prospects	₹3,00,000/-
(vi)	Loss of income due to disability (monthly income+40%X12X(multiplier of18)	₹10000+4000X12X18= ₹30,24,000
Total		₹59,34,377/-

As a sequel of my above discussion, this appeal has merits and is allowed and the compensation allowed to the appellant-claimant by the tribunal is enhanced from ₹38,68,377/- to ₹59,34,377/-. Keeping in view the fact that appellant-claimant will require money throughout his life, as such, I am of the opinion that instead of making payment of the enhanced amount of compensation in one instalment, the same be withheld for some period as the appellant-claimant has already been allowed compensation of ₹38,68,377/- with interest under the order of the tribunal. I believe that appellant or his care taker must have invested the amount prudently so that appellant may not face any financial problem at any stage of life. The amount already allowed by the tribunal may be utilised for the maintenance of the appellant-claimant for a considerable long period. As such, entire enhanced amount of compensation is ordered to be deposited as follows:-

(i) ₹4.5 lakh will be deposited in monthly income scheme with post office;

(ii) Remaining amount will be deposited in the shape of fixed deposit for a period of one year, to be revised annually for a period of another 9 years.

However, option will be available to the appellant-claimant to withdraw part of this amount, if he intends to invest the same in any Government or private sector bank scheme like PPF, mutual funds etc., where also the bar will apply that he will not withdraw amount for a period of 9 years. He will, however, be at liberty to utilise interest amount of such deposit. The appellant-claimant is also entitled to costs of this appeal, which is assessed as ₹20,000/-.

(SURINDER GUPTA)
JUDGE

February 07, 2018.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***