In the High Court of Punjab and Haryana at Chandigarh

FAO- 8477 of 2014(O&M)
Date of Decision:19.2.2018

Sahid Khan

---Appellant

vs.

Bheem Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Ashish Gupta, Advocate
for the appellant

Mr. A.S.Sidhu, Advocate
for the insurance company

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<u>Rekha Mittal, J.</u>

Sahid Khan, the injured-victim is in appeal seeking enhancement of compensation in respect of injuries sustained by him in a motor vehicular accident dated 22.2.2009 due to rash and negligent driving of vehicle No. MP-08K-0237 by Bheem Singh, its driver.

To prove quantum of compensation liable to be paid to the injured, claimant examined Dr. Farukh, Medical Officer PW1. The Motor Accidents Claims Tribunal, Nuh at Mewat (in short "the Tribunal") held that the present is a case of contributory negligence, therefore, 75% compensation shall be payable by the driver, owner and insurer of the aforesaid vehicle and the remaining 25% shall be attributed to negligence of the victim. However, the Tribunal assessed compensation of

Rs. 8,16,370/-, detailed hereunder:-

Loss of income	Rs. 7,14,000/-
Expenses on medical treatment	Rs. 82,370/-
Pain and suffering	Rs. 10,000/-
Transportation	Rs. 10,000/-

Counsel for the appellant would urge that the injured was driving vehicle No. HR-55D-1762 when the accident in question took place due to rash and negligent driving of the offending vehicle, sufficient to prove that he was driver by profession. It is further argued that he suffered disability of 70% on account of post traumatic, amputation of right leg below right knee. It is argued with vehemence that as right leg of the injured has been amputated, he would not be able to work as a driver, therefore, he is entitled to loss of income by treating his disability to 100%.

Another submission made by counsel is that the Tribunal has not allowed benefit of increase in income for future prospects and the same may be allowed @ 40% as the injured was 26 years old at the time of occurrence. In support of his contention, he has placed reliance upon judgment of Hon'ble the Supreme Court **Raj Kumar vs. Ajay Kumar and another 2011(2) RCR (Civil) 101** Reference has also been made to judgment **Ankush vs. Hanmanta and others AIR 2017 SC 3431.**

It is further argued that compensation awarded by the Tribunal for pain and sufferings is liable to be enhanced. The claimant should be allowed compensation for special diet, attendant charges, loss of amenities of life and price of artificial limb.

Counsel representing the insurance company has supported the award with the submission that adequate compensation has been given. It is further argued that the Tribunal was magnanimous in assessing loss of earning while taking into consideration disability to the extent of 70% though the same was of a particular limb and not of whole body.

Before adverting to the submissions made by counsel for the parties, it is appropriate to note that the legislature has cast an onerous obligation upon the Tribunal to assess just and reasonable compensation in the light of facts and circumstances obtaining in a case. Counsel for the appellant has relied upon judgment of Hon'ble the Supreme Court in **Raj Kumar's case (supra)**. It is appropriate to recapitulate detailed guidelines laid down by Hon'ble the Apex Court in **Raj Kumar's case (supra).** The relevant paragraphs are extracted hereinbelow:-

> "6. The heads under which compensation is awarded in personal injury cases are the following:
> Pecuniary damages (Special damages)
> (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
> (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
> (a) Loss of earning during the period of treatment;
> (b) Loss of future earnings on account of permanent disability.
> (iii) Future medical expenses.
> Non-pecuniary damages (General damages)
> (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
> (v) Loss of amenities (and/or loss of prospects of marriage).
> (vi) Loss of expectation of life (shortening of normal longevity).
> In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases

of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses Item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non pecuniary damages Items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability Item (ii)(a).

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was

earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood……"

Hon'ble the Supreme Court in **R.D.Hattangadi vs. M/s Pest Control (India) Private Limited AIR 1995 (SC) 755** has laid down in para 9, reproduced hereinbelow for ready reference:-

> "9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

A reading of the aforesaid extract particularly para 10 would make it evident that in **Raj Kumar's case (supra)**, Hon'ble the Supreme

Court has held "what requires to be assessed by the Tribunal is the effect of permanent disability on earning capacity of the injured; and after assessing the loss of earning capacity in terms of percentage of the income, it has to be quantified in terms of money to arrive at the future loss of earnings by applying the standard multiplier method used to determine loss of dependency.

Reverting to the case at hand, the injured suffered 70% disability on account of amputation of his right leg below knee. It is almost certain that he would not be able to work as a driver by profession but at the same time, there is nothing on record suggestive of the fact that the claimant is rendered disable to do any other job/work. Dr. Farukh examined by the claimant to prove disability has nowhere opined that nature and extent of disability suffered by the injured would render him totally useless or incapable of performing some other job. Under the circumstances, contention raised by counsel for the appellant that loss of income qua disability is liable to be assessed by treating it to be a case of 100% disability is not tenable. However, in view of nature and extent of disability coupled with age of the victim, it is expedient in the interest of justice that the claimant is extended benefit of increase in income for future prospects @ 40%. In this manner, compensation payable to the appellant for loss of future income/disability comes to Rs. 9,99,600/-(2,85,600 +7,14,000).

The Tribunal has awarded an amount of Rs. 10,000/- for pain and suffering. The injured remained hospitalized for a period of 18 days. He was operated upon for amputation of his right lower limb. In view of the above, he shall be entitled to **Rs. 20,000/-** for pain and suffering. He is awarded an amount of **Rs. 10,000/-** for special diet and attendant charges. The claimant shall be entitled to an amount of **Rs. 1,00,000/-** for loss of amenities of life. The claimant has not adduced any evidence with regard to his having purchased an artificial limb or proved cost thereof but in view of nature of disability, he is awarded an amount of **Rs. 30,000/-** towards price of artificial limb. Hence, compensation payable to the claimant comes to **Rs.12,41,970/-** and the additional amount is **Rs.4,25,600/-** (12,41,970-8,16,370), payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

19.2.2018
paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes/No