IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8661of 2014
Date of Decision: 08.10.2018

Ashok Kumar
...Appellant

Versus

Manjit Singh and others
....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. S.K. Biriwal, Advocate for the appellant.

None for respondent Nos.1 and 2.

Mr. Vinod Gupta, Advocate for respondent No.3.

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B.S.WALIA, J. (Oral)

1. Appeal has been filed seeking enhancement of lump sum compensation of ₹3,00,000/- awarded by the learned Motor Accidents Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'), on account of amputation of right leg of the appellant below the knee besides other injuries sustained by him in a motor vehicular accident on 19.06.2011.

2. Learned counsel for the appellant contended that the compensation awarded was on the lower side and was liable to be enhanced as a labourer whose leg had been amputated below the knee would not be able to work as a labourer.

3. Learned counsel for respondent No.3-Insurance Company contended that the amount of compensation paid to the appellant was just

and proper and did not warrant interference as the disability was assessed only at 60% qua limb and not the entire body. Learned counsel while placing reliance on the decision of Hon'ble the Supreme Court in Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343, contended that even if it be presumed that the appellant was working as a labourer, he could do an alternative job and thereby earn his livelihood. Secondly, assessment of compensation under the head of loss of future earning, would depend upon the effect and the impact of such permanent disability on his earning capacity and the percentage of permanent disability qua loss of limb could not be treated as the percentage of economic loss or loss of earning capacity. Learned counsel contended that it was necessary to assess the effect of the permanent disability on the earning capacity of the appellant and after assessing the loss of earning capacity in terms of a percentage of the income, the same would have 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 and further that effect of permanent disability on the actual earning capacity would require an ascertainment of whether the appellant could carry on the same activity as was earlier carried on by him and what he could not do as a result of the permanent disability. Further, it would be necessary to ascertain the avocation, profession and nature of work of the appellant before the accident as also his age. Thirdly, it would be necessary to ascertain whether the appellant was totally disabled from earning any kind of livelihood or whether in spite of permanent disability, the appellant could still effectively carry on the activities and function which he was earlier carrying on or whether he was prevented or restricted from discharging his previous activities and functions but could carry on some activities and functions on lesser scale so that he continues to earn or can continue to earn his livelihood and that in the circumstances the matter was required to be remanded to the learned Tribunal to assess the compensation payable in the light of the law laid down in Raj Kumar's case (supra).At the same time, learned counsel for respondent No.3-Insurance Company made an offer for enhancement of compensation by ₹75,000/-.

4. I have heard learned counsel for the parties.

5. As against the income of ₹12,000/- claimed to be monthly earning of the appellant as labourer in a hosiery, the Tribunal awarded a lump sum compensation of ₹3,00,000/- on account of medical expenses, special diet, costs of nursing/attendant, loss of earning upto the date of trial, loss of earning capacity in future, mental and physical shock, pain and suffering already suffered by the appellant or likely to be suffered and costs of artificial limb. However, it needs mentioning that income claimed by the appellant while working as a labourer in hosiery was not proved before the Tribunal. In the circumstances, the only recourse for assessing the income of the appellant is to take into account the minimum wages payable to an unskilled labourer during the relevant period in the State of Punjab.

6. Learned counsel for the appellant referred to notification issued by the Government of Punjab, as per which, minimum wages payable to an unskilled labourer during the year 2010 was ₹4500/- per month. The Tribunal awarded lump sum compensation of ₹3,00,000/- on various heads. There is no evidence with regard to expenses incurred on

treatment but the fact remains that the appellant's right leg was amputated below the knee for which he had to undergo surgery besides remained hospitalized from 19.06.2011 to 25.06.2011 and was eventually fitted with an artificial leg, for which he had to spend money on account of hospitalization, medication, treatment, special diet, transportation etc. in CMC Ludhiana.

7. Learned counsel for the appellant contended that on account of loss of right leg below the knee, the appellant who was working as labourer would not be able to work as such, therefore, permanent disability would have to be treated as 100% functional disability in the light of the decision in Raj Kumar's case (supra) and further that the appellant being illiterate and working as a labourer at the relevant time could not carry on any other activity so as to earn his livelihood. Learned counsel further contended that the appellant had already been paid compensation of ₹3,00,000/- along with interest awarded by the Tribunal but in the circumstances, the compensation awarded be enhanced by treating the functional disability as 100%.

8. Having heard learned counsel for the parties, I am of the view that in the facts and circumstances, it would be appropriate to remand the case to the learned Motor Accidents Claims Tribunal, Ludhiana to determine the amount of compensation payable to the appellant in the light of decision in Raj Kumar's case (supra) by giving opportunity to the parties to lead evidence in respect thereto. Accordingly, the impugned award is set aside and matter remanded to the Tribunal to consider and decide the matter afresh in the manner as indicated in Raj Kumar's case (supra).

Needless to mention that the amount of compensation payable to the appellant would be subject to the outcome of the award to be passed by the Tribunal but in any case not less than ₹3,75,000/- along with interest in terms of offer made by learned counsel for respondent No.3-Insurance Company. Parties through learned counsel are directed to put in appearance before the learned Tribunal on 01.11.2018. Record be transmitted to the learned MACT, Ludhiana, well before the date fixed.

(B.S.WALIA)
JUDGE

08.10.2018
rajesh.k.khurana

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No