

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 6682 of 2016

Date of decision : 08.05.2018

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Amritpal Singh

.....Appellant

Versus

Mishra Singh and others

.....Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. P.S Dhaliwal, Advocate for the appellant.

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

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RITU BAHRI, J

The present appeal has been filed by the appellant-claimant seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Barnala (hereinafter referred to as 'the Tribunal') vide award dated 11.5.2016, on account of injuries suffered by the appellant-claimant in a vehicular accident on 24.9.2014.

Briefly stated, the facts of the case are that on 24.9.2014 at about 7:00 P.M, appellant-claimant Amritpal Singh was coming back from village Jodhpur to his residence at Barnala, District Barnala on motor cycle bearing No. PB 19J/8802. After crossing village Jodhpur, he was on the link road to Barnala and was to take the main road to Barnala. Suddenly a Ford Figo Car No. PB-32L/0611 came from the main road at a high speed in a rash and negligent manner and, hit the motor cycle of the claimant by coming to the wrong side. As a result of the said accident, the appellant-claimant sustained grievous injuries in which he lost his leg and the motor cycle No. PB-19J/8802 was also badly damaged. Driver-respondent no.1 fled away from the spot leaving behind his car. After the accident, the appellant-claimant was

rushed to Civil Hospital, Barnala from where, he was referred to Civil Hospital, Patiala and further he was referred to PGI, Chandigarh. In this background, FIR No.120 dated 26.9.2014 was registered under Sections 337, 338, 427 IPC at Police Station Barnala.

Amritpal Singh, the injured, filed claim petition bearing M.A.C.T No. 56 dated 31.10.2015, on account of the injuries suffered by him in the accident. As per the claimant, he was 28 years of age at the time of the accident and was doing the labour work at Qatar.

After hearing counsel for the parties and going through the evidence placed on the record, Tribunal arrived at a conclusion that the appellant-claimant suffered injuries in the accident which had taken place on account of rash and negligent driving of offending car No. PB-32 L/0611 being driven by Mishra Singh-respondent no.1.

The age of the petitioner was stated to be 28 years at the time of the accident. There was no dispute regarding the age of the appellant-claimant. Dr. Rama Krishanan and Dr. Avinash Chander Gupta proved that right leg of Amritpal Singh, below the knee, had to be amputated and he had become 50% disabled. This disability is permanent in nature. Report regarding 50% disability of the claimant has been proved on the file as Ex.PW4/A in which it is clearly mentioned that the claimant has become 50% disabled and this disability is permanent. It has also been proved on file that the claimant was working as labourer at the time of the accident and due to amputation of his right leg below the knee, he had become permanently disabled to do the work of labourer. The income of the appellant-claimant was taken as Rs.7000/- per month. As per the law laid down by Hon'ble the

Apex Court in the case of **Sarla Verma and others vs. Delhi Transport**

Corporation and another, 2009 AIR SC 3104, the multiplier of 17 was applied in this case. By applying the multiplier of 17, the loss of income came to Rs.7000x12x17=Rs.14,28,000. Since the appellant-claimant suffered disability to the extent of 50%, he was held entitled to 50% of this amount, which came to Rs.7,14,000/-. Further an amount of Rs.3000/- was granted towards hospitalization, Rs.10,000 towards pain and sufferings and Rs.20,000/- towards medical expenses. Thus, in total the appellant-claimant was held entitled to a total compensation of Rs.7,47,000/-.

Feeling dissatisfied with the impugned award, the injured claimant-appellant came up in this appeal.

Counsel for the appellant-claimant has referred to a judgment in the case of ***K. Janardhan vs. M/s. United India Insurance Co. Ltd and another 2008 (3) PLR 757*** to contend that in a case where right leg up to knee was amputated, compensation was assessed taking the disability as 100% towards earning capacity. Reference was also made to a recent judgment passed by Hon'ble the Supreme Court in the case of ***Jagdish vs. Mohan and others, JT 2018 (3) SC 112***, where the disability of a self-employed carpenter was assessed as 90% by the Tribunal. It was observed by Hon'ble the Apex Court that the Court must be mindful of the fact that the appellant-claimant had suffered a serious disability in which he suffered a loss of the use of both of his hands and it would be a denial of justice to compute the disability at 90%. It was held that the disability was indeed total. Hence, the compensation was assessed by considering the disability as 100%.

Counsel for the appellant-claimant has also made a reference to a judgment by Hon'ble the Supreme Court of India in the case of ***Sanjay Kumar vs. Ashok Kumar and another 2014(1) RCR (Civil) 875***, wherein the

claimant who was earning Rs.4500/- per month suffered 70% permanent disability in motor accident. It was held that '*Loss of future prospects*' should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment. In that case keeping in mind the young age of victim he was held entitled to 50% increase towards his future income. Reference has also been made to a judgment of this Court in the case of ***Parveen vs. Vikram and others 2016(2) RCR (Civil) 717***. In this case claimant suffered 70% permanent disability which was taken as 100% functional disability. Age of the claimant was 20 years at the time of accident. Multiplier of 18 was applied. 50% of his income was added towards prospectuses of increase.

I have heard the learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. The claimant was working as a labourer at Qatar and now on account of disability because of amputation of right leg below knee, he will never be able to do the work of a labourer. Applying the ratio of law of the above mentioned judgments, the compensation is reassessed by considering the functional disability of the appellant-claimant as 70%. Moreover keeping in view that he would never be able to do the work of labourer throughout his life, 40% increase is given towards future prospects. Thus, the compensation under the head 'Loss of future earning on account of permanent disability' is hereby calculated after applying multiplier of 17 at $7000+2800 \times 12 \times 17 = \text{Rs.},578,200/-$. Seventy percent of this amount would be taken as Rs.4,04,740/-. The compensation is reassessed as follows:

HEAD	COMPENSATION AMOUNT
Loss of future earnings on account of permanent disability (considering the functional disability as 70%)	Rs. 4,04,740/-
Pain and suffering	Rs. 3,00,000/-
Medical and incidental expenses during the period of hospitalization	Rs. 1,00,000/-
Loss of amenities and loss of expectation of life	Rs.3,00,000/-
Special Diet and Transportation Charges	Rs.40,000+Rs.20,000=Rs.60,000/ -
TOTAL COMPENSATION AWARDED:-	Rs.11,64,740 /-
ENHANCED AMOUNT OF COMPENSATION	(Rs.11,64,740/-)-(Rs.7,47,000/-) =Rs.4,17,740/-

The enhanced amount of compensation of Rs.4,17,740 /- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Shri Nagar Mal and Ors Vs. The Oriental Insurance Company Ltd. and others in Civil Appeal No. 448 of 2018**. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

08-05-2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No