

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.9314 of 2014 (O&M)

Date of decision: 11.01.2018

Shiv Shankar

...Appellant

Versus

Soni Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vikram Bali, Advocate
for the appellant.

Ms. Vandana Malhotra, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.25868-CII of 2014

Heard.

Allowed as prayed for. Delay of 48 days in re-filing the appeal
is condoned.

CM No.25869-CII of 2014

Heard.

Allowed as prayed for. Delay of 53 days in filing the appeal is
condoned.

Main Case

The injured claimant is in appeal seeking enhancement of
compensation on account of injuries sustained by him in a motor vehicular

accident that took place on 28.08.2011.

The Tribunal has awarded compensation to the tune of Rs.1,10,000/-, detailed hereunder:-

1. Medical expenses	Rs.46,000/-
2. Loss of income during period of treatment as well as in future	Rs.50,000/-
3. Pain and sufferings, Special Diet, Transportation etc. and loss of amenities of life	Rs.14,000/-

Counsel for the appellant has submitted that compensation awarded by the Tribunal in respect of loss of income is on lower side and needs enhancement. It is argued that as the claimant suffered permanent disability to the extent of 30% on account of compound fracture lateral condyle right femur resulting in stiffness of hip, inability to squat and sit cross legs, compensation for future loss of income may be allowed by applying multiplier method. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Raj Kumar Vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101**. Another submission made by counsel is that consolidated sum of Rs.14,000/- under various heads awarded by the Tribunal needs enhancement. It is argued that the injured remained hospitalised for a period of 14 days.

Counsel representing the insurance company, on the contrary, has supported the assessment made by the Tribunal with the plea that adequate compensation has been awarded.

The Tribunal has awarded an amount of Rs.46,000/- towards expenses on treatment including hospitalisation. Counsel for the appellant has not made any submission to assail correctness of compensation under this head. Accordingly, compensation allowed by the Tribunal to the extent of Rs.46,000/- on account of medical expenses is affirmed.

Dr. Umesh Modi, Senior Medical Officer was examined to prove disability. He deposed that the claimant suffered disability of 30% in relation to functional impairment of the limb of the body on account of compound fracture lateral condyle right femur with complain of pain, stiffness of hip, inability to squat and sit cross legs as per disability certificate Ex.P52. There is no denial that the claimant was 25 years old at the time of occurrence. The Tribunal has held in para 20 that disability to the whole body will not be more than 15% in total. There is no clear evidence available on record with regard to avocation and income of the injured victim. Taking into consideration minimum wage fixed by the State of Haryana and available at the relevant time to an unskilled worker, income of the victim is assessed at Rs.4650/- per month. The observations made by the Tribunal assessing functional disability to the extent of 15% appear to be correct. Under the circumstances, the claimant shall be entitled to Rs.1,50,660/- i.e. $\text{Rs.4650} \times 12 \times 18 \times 15\%$, towards loss of future income.

The injured remained hospitalised for a period of 14 days. He suffered fracture of right femur that left him disabled to the extent of 30%.

The claimant is entitled to loss of income for the period of treatment and recovery for a period of 2 months and accordingly Rs.4650 x 2 = Rs.9300/- is allowed for loss of income under this head.

As has been noticed hereinbefore, the Tribunal has allowed consolidated sum of Rs.14,000/- under various heads. Taking a reasonable view in the light of circumstances discussed hereinbefore, claimant shall be entitled to an amount of Rs.40,000/- in all on account of pain and sufferings, special diet, transportation, services of an attendant and loss of amenities of life.

In view of the above, total compensation comes to Rs.2,45,960/- and the additional amount is Rs.1,35,960/- (2,45,960 – 1,10,000), payable with interest @7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

11.01.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No