

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

FAO No. 8147 of 2015
Date of decision : September 18, 2018

Ashok Kumar

..... Appellant

v.

Sunil Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. KS Dhanora, Advocate
for the appellant.

Mr. Gopal Mittal, Advocate
for respondent No.2.

Ajay Tewari, J (Oral)

This appeal has been filed by the injured/appellant for enhancement of compensation.

Brief facts are that on 14.2.2013, while the appellant and Sandeep Kumar were going to village Amin from Bhadson on their motor cycle, a Bolero car came from Indri side and hit the motor cycle. As a result of this accident, the appellant fell down and the offending vehicle crushed his right leg. Hence, the claim petition was filed.

The Tribunal held the driver of the offending vehicle responsible for causing the accident. Permanent disability of the appellant was assessed as 70%. The Tribunal took the monthly income of the appellant as ₹ 8700/- treating him as a skilled labourer and awarded

₹12,42,360/- for loss of future earnings, ₹24,795/- for expenses incurred on the treatment, ₹25,000/- for loss of amenities of life, and ₹ 26,000/- for loss of earning.

Counsel for the appellant has argued that the right leg of the appellant was amputated at the thigh and since he was a mason, that would result in 100% functional disability. Counsel for respondent No.2 states that there is no proof that the appellant was a mason.

Be that as it may, even if the appellant is a labourer, and amputation was made at the thigh, his functional disability has to be taken as 100% and I hold so.

Counsel for the Insurance Company has further pointed out that even if the appellant was to be taken as skilled labourer, income had to be taken as per the minimum wages and not as per the DC rates. I find this argument to be correct. In the year 2013 in the State of Haryana, as per the schedule wages of a skilled labourer were ₹5617/-, and I take that amount in this case.

Counsel for the appellant has further argued that nothing has been awarded towards future prospects. Counsel for the Insurance Company is not in a position to dispute this. Consequently, I grant 40% as future prospects.

Counsel for the appellant has further argued that under the heads of pain and suffering and loss of amenities of life, only a sum of ₹ 50,000/- has been awarded. He has further argued that in Rajinder Kumar v. Balwinder Singh and others, FAO No.10270 of 2014, decided on 11.5.2018, which was also a case of 100% functional disability, a sum of ₹ 3 lakhs was awarded under the heads of pain and suffering and a sum of ₹ 60,000/- was

awarded for special diet and transportation charges. Counsel for the Insurance Company has, however, pointed out that once the appellant has relied upon Rajinder Singh's (supra), the amount of ₹ 3 lakhs should be deemed to have been awarded under pain and suffering including compensation for loss of amenities of life. In these circumstances, I grant ₹ 3.10 lakhs more under the heads of pain and suffering, loss of amenities of life and special diet and transportation charges.

Counsel for the appellant has further argued that in Anish Kumar v. Ajit Singh and others, FAO No.5785 of 2012, decided on 7.2.2014, a sum of ₹ 2 lakhs was awarded for purchase of artificial limb. I award the same amount in this case also.

Counsel for the Insurance Company has further pointed out that the interest @ 9% awarded by the Tribunal is excessive. I find some merit in this argument and direct that the enhanced amount would carry interest @ 7.5% from the date of filing the application till the date of payment. With these modifications in the Award, this appeal stands disposed of.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

September 18, 2018
'kk'

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No