

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4801-2017

Date of decision: 18.05.2018

Deepak Kumar

...Appellant

V/s.

Jagdish and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. V.B. Aggarwal, Advocate for the appellant.

Mr. Vinod Gupta, Advocate for
respondent No. 3-insurance co.

RITU BAHRI, J. (Oral).

The claimant has come up in appeal against the award dated 10.10.2016 passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal') whereby he has been awarded a compensation of Rs.12,85,000/- on account of suffering injuries (amputation of right leg-70% disability) in a road accident that took place on 11.12.2013.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 11.12.2013, Deepak Kumar was going from Yamuna Nagar to Bawal while driving truck No. HR-45A-6097. He was followed by Prem Chand son of Purshotam Lal, who was driving another truck No.HR-58A-9197. On the morning of 12.12.2013 at about 5:00 am when he reached near village Gudda on Rohtak-Jhajjar Road, the offending truck driven by respondent No. 1 in a rash and negligent manner came from opposite side and hit against the truck driven by claimant by coming on wrong side of the road, as a result of which the claimant sustained multiple grievous injuries.

With regard to the alleged accident, an FIR No. 808 dated 13.12.2013 (Ex.P1) under Sections 279, 337 and 338 IPC at Police Station Jhajjar was registered against respondent No. 1-Jagdish. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

The parties are not in dispute with regard to finding on issue No. 1 that the accident took place on account of rash and negligent driving by respondent No. 1. This finding has been rightly given keeping in view that the FIR No. 808 dated 13.12.2013 (Ex.P1) under Sections 279, 337 and 338 IPC at Police Station Jhajjar was registered against the driver. The driver was challaned (Ex.P81) and he was charge-sheeted (Ex.P87). Ex.P84 is the copy of recovery memo vide which the offending truck was taken in police possession from the spot after the accident.

The Tribunal has assessed the compensation as under:-

HEADS	CALCULATIONS
Age of the injured	24 years
Income assessed as Rs. 7,000 however, can earn Rs. 2,500 PM in a sitting job.	7,000-2,500=4,500/- PM
Medical expenses	1,43,000/-
Conveyance charges	8,000/-
Special diet and special attendant	10,000/-
Loss of earning for a period of six months (7000 X 6)	42,000
Future loss of earning (4500 X 12 X 18)	9,72,000/-
Pain and suffering& operation	40,000/-
Loss of amenities of life	70,000/-
Future medical expenses	Nil
Total	12,85,000/-

Hence, the claimant was found entitled to total compensation of Rs.12,85,000/- on account of injuries suffered by the appellant along with interest @ 8% per annum from the date of filing of the petition till

realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

The fact of accident is admitted and proved. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account. The claimant was 24 years of age and as per the disability certificate Ex.PW4/A, he suffered 70% disability on account of amputation of right leg upto knee. As per the testimony of PW4 Dr. Depender Sindhu who deposed that claimant cannot stand, walk, sit cross leg. Hence, he suffered 100% functional disability. To meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed by Hon'ble the Supreme Court in *Sarla Verma and others vs. Delhi Transport Corporation and another*, 2009 (3) RCR (Civil) Page 77, *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

HEADS	CALCULATIONS
Income	7,000
40% future prospects	7,000+2,800=9,800
Compensation after multiplier of 18 applied	9,800 X 12 X 18=21,16,800
100% disability	21,16,800 X 100%=21,16,800
Medical expenses	1,43,000
Conveyance charges	8,000
Special diet and special attendant	10000
Loss of earning	42,000
Pain and suffering and operation	40,000
Loss of amenities of life	70,000
TOTAL COMPENSATION AWARDED	Rs. 24,29,800/-
ENHANCED AMOUNT OF COMPENSATION	Rs.24,29,800-12,85,000= Rs.11,44,800/-

The enhanced amount of compensation of **Rs.11,44,800/-** shall be payable within a period of two months 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 the case of “*Shri Nagar Mal and others V/s. 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 allowed.

(RITU BAHRI)
JUDGE

May 18, 2018
Divyanshi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No