

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

FAO-1194-2002 (O&M)

Date of decision: 07th February 2019

MUNISH GUPTA

...Appellant

Versus

JASWANT SINGH AND ORS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- None for the appellant.

Mr. Pawan Kumar Jangra, Additional A.G. Haryana.

Mr.R.C. Gupta , Advocate
for respondent No.3-National Insurance Company.

JAISHREE THAKUR, J. (Oral)

This is the claimant appeal seeking enhancement of compensation as assessed by the Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal').

In brief the facts are that the appellant-claimant was going to his house from the Railway Station at Ambala City on his Kinetic bearing registration No. HR-013-4983 on 20.03.2000 at about 7.30 A.M when he was hit by Haryana Roadways bus bearing registration No. HR-45-2483 which was being driven in rash and negligent manner. On account of the impact he suffered multiple and grievous injuries which included injuries on his private part. He was taken to Civil Hospital, Ambala City and thereafter, to PGI, Chandigarh. At the time of accident he was 19 years old and

earning ₹ 8,000/- per month by doing embroidery and tailoring work with M/s. Garg Textile and Embroidery House, Ambala. On account of the injury suffered a claim petition was filed on notice to respondent and they resisted the claim.

Respondent No.1 namely the driver of the offending vehicle resisted the petition by taking a preliminary objection that no accident took place, while submitting that it was the claimant who was crossing the road without looking and fell as he could not control the scooter. The Insurance Company took the plea that the driver did not hold an effective and valid driving licence at the time of the accident. The claimant in support of his plea examined himself as PW-1 as well as examined PW-2 Mahesh Garg, PW-3 Inderpal Singh and PW-4 Dr. A.K. Mandal and thereafter tenders his evidence the Respondent No.1 examined Sham Sundri as RW-1 and Jaswant Singh as RW-2 and closed his evidence whereas the Respondent No.3 tender into evidence insurance policy/Ex. R-2.

On appreciation of the evidence, the Tribunal while relying upon the fact that an FIR had been registered and the driver was arrested, concluded that the accident in question had been caused due to the negligence on the part of Respondent No.1. While deciding issue No.2 the Tribunal taking into account the fact that the claimant suffered grievous injuries and had remained admitted at PGI, Chandigarh awarded him compensation to the tune of ₹2,84,000/- (rupees two lakhs eighty four thousand only) which amount would be payable along with interest @ 9% per annum from the date of filing of the claim petition till realization.

Aggrieved against the said award being wholly inadequate the instant appeal has been filed in which notice has been issued and

appearance has been caused on behalf of the Insurance Company who has not independently challenged the award. This matter has been pending in this Court since year 2002 and no one has been putting an appearance on behalf of the appellant and was taken up for hearing on 03.07.2018 and thereafter it has remained on the board of this Court and has been taking up for hearing today. No one has put on appearance on behalf of the appellant.

Learned counsel for the Insurance Company contends that adequate compensation has already been awarded by the Tribunal and prays for dismissal of the appeal.

I have heard learned counsel for the Insurance Company and perused the record/pleadings in the appeal and find that the compensation that has been awarded is wholly inadequate and the same deserves to be enhanced. It cannot be lost sight that on 20.03.2000 the appellant herein was a young boy of 19 years old who while driving his scooter was hit by the bus bearing registration No. HR-45-2483. He was subsequently referred to the Civil Hospital but on account of the grievous injuries that he had suffered (which included injuries on his private part) he had to be referred for further treatment to PGI, Chandigarh under the Department of Urology. He remained admitted at PGI, Chandigarh from 22.03.2000 to 31.03.2000.

The Tribunal assessed the loss of income @ ₹1,29,000/- (rupees one lakh and twenty nine thousand only), keeping in view the fact that he was doing job of a tailor and he found it difficult to sit to do his work ₹35,000/- (rupees thirty five thousand only) for medicines, ₹10,000/- (rupees ten thousand only) for transportation, ₹10,000/- for balanced diet (rupees ten thousand only) and ₹25,000/- (rupees twenty five thousand only) for pain and suffering and ₹75,000/- (rupees seventy five thousand only) for

In the judgment rendered in **Raj Kumar Vs. Ajay Kumar and anothers (SC) 2011(1) SCC 343.**, a formula has been prescribed for assessing compensation to be paid to a claimant who had suffered injuries in a motor accident resulting in permanent disability wherein, it was held that he is to be awarded compensation under the following heads namely:-

Pecuniary damages (Special Damages)

(ii) *Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :*

(a) *Loss of earning during the period of treatment;*

(b) *Loss of future earnings on account of permanent disability.*

(iii) *Future medical expenses.*

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) *Loss of amenities (and/or loss of prospects of marriage).*

(vi) *Loss of expectation of life (shortening of normal longevity)''.*

In para 14 of the judgment calculation of compensation for loss of future earning was also illustrated by illustration 'A'. But in the instant case the nature of the injuries are such that it would not amount to permanent disability nor could it be said that the nature of his disability would hamper his job performance or that there would be loss of future earnings. The nature of the injury suffered by him has made him permanently sterile. Resultantly, he would not be able to father a child. The injury caused by the accident would unnecessarily cause him great mental trauma apart from pain and suffering which would in turn would also affect his marriage prospects, the chance of leading a family life for which there is no separate formula that can be adhered to.

The stipulated reference may be made to Para 13 and 14 of the said judgement wherein it has also been held that all injuries did not lead to a permanent disability and even if there is a disability such disability may not hamper his ability to perform his job. But in the instant case the nature of the injuries that have been suffered no doubt are on his private part and might not be called as a physical disability in the strict sense that it would hamper his job performance but the nature of the injury suffered have made him permanently sterile.

Therefore this Court is of the opinion that damages that have been awarded to him on account of loss of marriage prospects and for pain and suffering are wholly inadequate. Upholding the loss of income @ ₹1,29,000/- (rupees one lakh and twenty nine thousand only), ₹35,000/- (rupees thirty five thousand only) for medicines, the compensation for loss of marriage prospects and pain and suffering is enhanced to a sum of ₹2,00,000/- (two lakhs only), sum for transportation is enhanced to a sum of ₹15,000/-

(rupees fifteen thousand only) and sum for balanced diet is enhanced to a sum of ₹21,000/-. resultantly the appellant would be entitled to a sum of ₹4,00,000/-

The enhanced amount would be payable @ 7.5% from the date of institution of this appeal till the date of payment. The award is modified and the appeal is allowed to the above extent.

However, while allowing the present appeal this Court has taken note of the fact that there is no representation on behalf of the appellant, therefor let the amount so enhanced be deposited in the Executing Court which will be in an interest bearing Fixed Deposit with the direction to the Executing Court to issue notice to the claimant regarding deposit of the said amount, under due information to this court.

07.02.2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No