

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

FAO No.471 of 1991(O&M)

Date of decision: 14.1.2019

Sat Parkash

.....Appellant

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ajay Pal Singh, Advocate for
Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate for the appellant.

Ms. Ambika Sood, DAG, Punjab.

REKHA MITTAL, J.

The claimant is in appeal seeking enhancement of compensation in respect of injuries sustained by him in a motor vehicular accident that took place on 05.02.1987.

The Motor Accidents Claims Tribunal, Patiala (in short 'the Tribunal') has awarded compensation of Rs.1,52,000/- detailed hereunder:-

Mental agony, shock, pain and suffering	Rs.60,000/-
Damages for permanent disability	Rs.60,000/-
Travelling expenses	Rs.6,000/-
Medical expenses	Rs.26,000/-

Counsel for the appellant would argue that compensation awarded by the Tribunal under various heads is insufficient and merits enhancement. It is further argued that in view of extent and nature of disability suffered by the victim coupled with his income from 8 firms of

which he was a partner, proved on record in view of testimony of Sanjiv Kaushal son of Sat Parkash PW-13, Sat Parkash injured victim PW-16 and Ram Lal, Taxation Assistant, Income Tax Office, Sangrur PW-15, claimant is entitle to future loss of income by applying multiplier method.

Counsel representing the respondent has supported assessment made by the Tribunal with the submission that claimant has been adequately compensated by allowing a sum of Rs.1,52,000/- when examined in the light of fact that occurrence in question pertains to 05.02.1987.

I have heard counsel for the parties, perused the paper-book and records.

Dr. Avnash Chander Gupta, Registrar, Department of Orthopedics, Government Medical College, Patiala PW-14 has deposed that on 05.02.1987, Sat Parkash was admitted with multiple injuries. The patient was in shock and diagnosed as a case of fracture shaft femur right with fracture both bones right leg. He was given treatment for shock in the form of blood transfusions and other fluids and then he was given POP cast for fracture both bones right leg and steinman pin was inserted for fracture shaft femur right side. On 07.02.1987, patient developed oligurea, his blood urea was 93 mg. On 08.02.1987, patient was discharged on request. Discharge slip is Ex.PW14/A.

Dr. H.C. Ahuja, Professor and Head of Department, Orthopedics, Dayanand Medical College, Ludhiana PW-12 was examined. He would state that claimant was admitted in Dayanand Medical College, Ludhiana from 30.08.1987 to 14.09.1987. He was operated on 03.09.1987 for bone drafting and examined in OPD on 16.10.1987, 26.10.1987,

30.11.1987, 04.11.1987, 29.02.1988 and 08.03.1988. Documents namely discharge card is Ex.PW12/A and Ex.PW7/B is the bill qua hospital charges for the period from 30.08.1987 to 14.09.1987.

Taking into consideration the nature of injuries sustained coupled with the period of treatment as an indoor patient it can safely be held that compensation allowed by the Tribunal to the tune of Rs.60,000/- for mental pain, suffering etc. is more than sufficient to compensate the victim under this head.

The claimant has been awarded a sum of Rs.26,000/- for medical expenses on the basis of documents produced on record. Counsel for the claimant has not made any submissions that the appellant has not been reimbursed on the basis of documents and testimony of the witnesses for medical expenses. That being so, compensation allowed for medical expenses is affirmed.

The Tribunal has awarded a sum of Rs.6,000/- for travelling expenses. The claimant produced on record a large number of receipts marked as A-1 to A-30. In his cross examination, the claimant has not denied that these receipts have been prepared in one go. The claimant has not examined Sh. Ashwani Kumar who has issued receipts with regard to payment of travelling expenses etc. In the given circumstances, the Tribunal has rightly refused to rely upon the documents mark A-1 to A-30 with regard to entitlement of the claimant to seek reimbursement of transportation expenses on the basis of aforesaid receipts. Indisputably, the claimant got treatment from Rajindra Hospital, Patiala, Dayanand Medical College, Ludhiana and Dr. J.S. Sachdeva, Consultant Medicines. The claimant was a resident of New Bagh Colony, Patiala. Sat Parkash in his

statement has deposed that he also got treatment from Ganga Ram Hospital and a Private Orthopedic Specialist Dr. Havit. The outdoor slip of Ganga Ram Hospital is Ex.AW16/B but the same was objected to by the contesting party. On due consideration of materials on record and taking a cumulative view of the matter, interest of justice would be served if the claimant is awarded a sum of Rs.10,000/- for transportation expenses (additional amount of Rs.4000).

The injured victim sustained serious injuries in the form of fracture of lower limbs. He got treatment from different doctors. He was requiring the services of an attendant during the period of treatment and recovery. He must have spent some money on special diet etc. The claimant is awarded an amount of Rs.6000/- qua services of an attendant and special diet etc.

The Tribunal has awarded a sum of Rs.60,000/- in respect of permanent disability suffered by the victim. There is no report/disability certificate issued by a Medical Board. Dr. Avnash Chander Gupta PW-14 has deposed that he had seen the outdoor chit dated 11.08.1988. As per OPD chit he examined the case on 11.08.1988 and advised x-ray right thigh with hip and x-ray right leg with knee. On the same day, as per x-ray report, he diagnosed the case as old case of mal-union fracture shaft femur right with non-union fracture of upper 1/3rd right tibia. There was reduction of right lower limb by 1½ inches, limitation of movement of right knee and hip, unnatural mobility was present on the upper 1/3rd of right leg. He has further stated that as per diagnosis in the slip dated 11.08.1988 Ex.PW14/B, patient's disability is 60% but the same was objected to by contesting party. In his cross examination, Dr. Avinash

Chander Gupta has stated that he has not examined the patient before disclosing his opinion on the disability but he has based his opinion on the basis of findings given in the OPD slip dated 11.08.1988 which has been shown to him in the Court. He has not mentioned about disability of patient in Ex.PW14/B.

Dr. H.C. Ahuja, PW-12 has also made a statement with regard to disability suffered by the victim. A relevant extract from his examination in chief, in this regard, reads as follows:-

"There is shortening of 1¼ inches of the right lower limb of the claimant and the disability is permanent and it is 15%. There is another 35% disability regarding limitation of the right knee movement, and the total disability is 50% in this case. The disability certificate Ex.PW12/B was issued by me after examining the patient in OPD in the hospital on 08.03.1988 and the same is signed by me and is also counter signed by the Medical Superintendent of the Dayanand Medical College, Ludhiana. At this age, the disability is likely to remain as such on the permanent basis which will be 35% of the right lower limb."

In his cross examination, the witness has deposed that temporary disability was 35% of right lower limb. In Ex.PW12/B, he has mentioned that it is likely to improve in future which means 50% chances of improvement and equal chances against improvement.

On careful and due consideration of testimonies of Dr. H.C. Ahuja and Dr. Avnash Chander Gupta, no clear picture has emerged with

regard to the extent of disability suffered by the victim. Dr. Avnash Chander Gupta did not assess disability of patient and deposed about disability only on the basis of findings given in OPD slip dated 11.08.1988 Ex.PW14/B but the said slip does not contain percentage of disability suffered by the victim. No medical opinion is available on record as to how the disability suffered by the victim can be treated as functional disability in the context of his avocation.

Ram Lal, Taxation Assistant, Income Tax Office, Sangrur was examined to prove that Sat Parkash injured was working partner in 8 firms involved in construction activities etc. He has deposed about the profit share of Sat Parkash as per the Income Tax Return of the said firms for the financial year 1985-86 and assessment year 1986-87. In his examination in chief, witness has deposed that Sh. Sat Parkash was a working partner in those 8 firms but in the concluding lines of his cross examination he had stated that in the record from which he has quoted profit shares of the claimant, it has nowhere been mentioned if Sat Parkash was a working partner.

With regard to loss of income on account of sustaining injuries and disability, Sat Parkash in his cross examination has deposed that construction work of 8 firms came to standstill after the accident. Again said, only work at Ambala stopped on account of accident. There are 4/5 partners in the firm executing the work at Ambala. They resumed that work 1½ years after the accident. In the concluding lines of cross examination, his deposition is to the following effect:-

"My construction of the firm which was going on at Ambala was resumed 1½ years after the accident. It is wrong that the

work at Ambala was resumed normally. In fact I completed that work with difficulty. The other firms work normally but with difficulty."

The claimant did not produce any document as to whether 8 firms remained in existence and continued to do its business nor he has produced any documents that those firms were dissolved because of the claimant having sustained injuries resulting in disability. There is no clear evidence on record even with regard to loss of income on account of injuries and disability suffered by the victim.

The claimant examined Havildar Clerk Jagir Singh, Garrison Engineer, Air Force, Ambala Cantt. He had stated that claimant was given contract for construction of Tarmic and connected services in technical area at Ambala, Air Force, Ambala on 22.10.1986, to be completed up to 09.08.1987. The work was still incomplete when he appeared in the witness box in April 1988. He has further deposed that claimant requested to their office for extension of period to complete the contract. His office can impose penalty at the rate of 10% of the total amount on the Contractor if he failed to complete the work within the prescribed period. Out of construction material lying at the spot at the time of accident, about 90% materials have been removed by the public. The claimant had engaged three watchmen at the spot. The claimant did not produce any evidence if the office of Garrison Engineer, Air Force, Ambala Cantt had actually imposed any penalty for failure of the firm to complete the work within the prescribed period. There is no clear evidence on record as to what was the value of material lying at the spot out of which 90% is stated to be removed by the public. The testimony of Havildar Clerk Jagir Singh PW-

11 with regard to removal of material does not find corroboration from any other evidence. In the given circumstances, the claimant cannot derive any advantage to his contention from the testimony of PW-11 to prove that he has suffered financial loss in respect of contract at Ambala on account of sustaining injuries. Since the claimant has failed to lead clear and cogent evidence on record with regard to financial loss to his firms on account of injuries suffered rendering him disable to some extent, I find it difficult to accept contention of the appellant that compensation allowed by the Tribunal to the tune of Rs.60,000/- on account of disability is inadequate or merits enhancement. However, taking a sympathetic view that the claimant had suffered fracture of his legs and there was mal-union/non-union of bones at the fracture site, claimant is awarded a sum of Rs.10,000/- for loss of amenities etc. The additional amount of Rs.20000/- is payable with interest at the rate of 7.5% per annum from the date of petition till realization.

In view of what has been discussed hereinabove, the appeal is disposed of in the aforesaid terms.

JANUARY 14, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no