

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

**FAO No.969 of 1996 (O&M)
Date of Decision: January 17, 2019.**

Deepika

.....APPELLANT(s).

VERSUS

Harjit Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikram Bali, Advocate
for the appellant (s).

Mr. Suvir Dewan, Advocate
for respondent No.3-insurance company.

SURINDER GUPTA, J.

This is appeal by claimant Deepika (minor) through her father (Mahesh Chand Sharma) against the award dated 03.08.1995 passed by Motor Accident Claims Tribunal, Ropar (later referred to as 'the tribunal').

The facts relating to the accident as incorporated in para 24 of the claim petition are reproduced as follows:-

“That on dated 29.08.1992 at 1.00 pm, Shri Mahesh Chander Sharma was driving his scooter No.CHH-8468 and was going to his residence at Panchkula, his wife was sitting on the pillion seat of the scooter and the petitioner (minor daughter) was sitting in the lap of her mother. He was on the road of Chandigarh-Ambala Road and when he reached a tea-stall near Petrol pump of Zirakpur, the scooterist was on the left side of the road

and the speed of the scooter was very slow then a truck came from the Chandigarh side and hit the scooter of Mahesh Chander Sharma. The speed of the truck was very fast and its R.C. number was CH-01-F-6845, with the impact the scooterist along with his wife and the petitioner (minor child/daughter) fell down on the road and sustained various injuries on her/his body. The mother of the petitioner died on the spot and the father (Mahesh Chander) along with the minor daughter, petitioner were removed to Civil Hospital. The petitioner's right foot below knee (was) amputated by the doctors attended (attending) on her. The accident has been (had) taken place because of the rash and negligent driving of Shri Harjit Singh, Respondent No.1."

As the finding of the tribunal that accident was caused due to rash and negligent driving of the truck No.CH-01-F-6845, has attained finality and the only plea raised in this appeal is regarding quantum of compensation, detailed facts of the case are being skipped for the sake of brevity.

It is admitted fact that right leg of the claimants, who was about 4 years of age at the time of accident, was amputated, rendering her crippled for whole of her life. The tribunal has taken note of the fact that amputation of right leg below knee has badly affected the future career and matrimonial prospects of the claimant. The observations of the tribunal to this effect in para 16 of the award are as follows:-

"I hold that with the amputation of the right leg below knee of Deepika Sharma, her future carrier (sic career) including matrimonial chances have become bleak. She has to suffer from pain and depression in her future life. She has to replace her artificial limb once in two years.

She has suffered permanent disability to the extent of 50 to 55%. The family back-ground of the father of Deepika has also to be kept into view. He is simply a mechanic. Keeping in view the nature of the injury, permanent disability, future sufferings both in pain and carrier (career) and her family background, I allow her a sum of Rs.1,50,000/-.”

Learned counsel for the appellant-claimant has argued that claimant Deepika was 4 years of age and the amputation of her right leg and injury on the other leg have made her crippled for whole of her life. This has not only resulted in monetary loss to her but has also made her whole of the life miserable. Even if, she goes for an artificial limb, she will have to get it replaced after a duration of 2/3 years. The medical treatment will go throughout her life and the tribunal while awarding lump sum compensation of ₹1,50,000/- has not looked into this aspect.

Learned counsel for the respondent-insurance company has argued that the accident took place in the year 1992 and keeping in view the price index at the relevant time, the compensation allowed by the tribunal is quite reasonable and adequate.

In order to prove the disability and amputation of her leg, the claimant examined Dr. B. Murti, Senior Resident, Department of Plastic Surgery PGI, Chandigarh as PW3, who has stated about the admission, treatment, amputation of leg and disability of the claimant as follows:-

“I have brought the record relating to this case. According to the record the name of the patient was Deepika Sharma CR No.079034. She was admitted on 29.08.92. She was having traumatic amputation of right leg with avulsion of right leg. She underwent revision

amputation of right leg (below knee amputation) and split thickness skin crafting of right leg on 30.8.92. She was discharged on 21st September, 1992. The patient who is present today in the court is the same and I identify her. According to my opinion she has suffered permanent disability to the extent of 50 to 55%. This is loss of earning capacity. We are not making any surgery regarding the growing bone and only one surgery is needed at the age of 19 years. She has to change artificial limb once in two years. The costs of replacing limb in India is approximately between Rs.3 to 4000/-. She can suffer pain only after the surgery for about one month. If the patient has to walk for long distance, she has to suffer pain because there are no muscles and there is only skin and bones.”

As per statement of PW3 Dr. B. Murti, the claimant required one surgery at the age of 19 years. She has to change the artificial limb, once in two years. At that time, costs of replacement of limb in India was approximately ₹3,000/- to ₹4,000/-, which has increased many times by now. Dr. B. Murti PW3 has stated that the claimant will suffer pain on walking long distances as there are no muscles of her amputated leg. He also tried to show this fact in diagram placed on file as Ex.A4.

While allowing lump sum compensation of ₹1,50,000/-, the tribunal has not looked into the aspect of future medical treatment required by the claimant, expenses of replacement of artificial limb, her attendant charges etc. The claimant remained admitted in PGI Chandigarh from 29.08.1992 to 21.09.1992. Even thereafter, she had to remain on bed for recovery of her injury for a long period. She has suffered not only physically but also towards her future prospects, matrimonial aspects,

amenities of life and loss of income throughout her life.

Being a child, income of the claimant cannot be assessed but after attaining the age of majority, she could certainly earn. I am conscious of the fact that accident had taken place in the year 1992 but this fact is to be kept in mind that the loss of income is for her entire life. She had to go to school, college etc. for education and required transportation, assistance/attendant throughout her life and this is where her parents had to spend a lot of money. Keeping in view all these facts and circumstances, I assess monthly income of the claimant as ₹2,500/-. Though the multiplier as per the law settled by Hon'ble Apex Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121***, is prescribed as 15 in case of death of a person of the age upto 15 years but in this case, claimant has to survive for whole of her life, I am of the opinion that in this case multiplier should be applied as 18 as the claimant has to live with this disability resulting in loss of income throughout her life. She is also allowed 40% addition in her income towards loss of future prospects.

Though, no bills of medical expenses had come on record but keeping in view the fact that during her treatment and post operative care, the parents of claimant had to spend on her medicines, transportation, attendant, a sum of ₹10,000/- is allowed on this score. For the pain and suffering, she is allowed compensation of ₹10,000/-. She had to go for post-operative medical check up, treatment, physiotherapy, replacement of artificial limb and on this score, she is allowed a lump sum compensation of ₹1,50,000/-. For loss of amenities of life and loss of marriage prospects, she is entitled to compensation of ₹50,000/-.

which the claimant is entitled, is reassessed as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the claimant	₹2500 per month
(ii)	40% of above (i) to be added as future prospects	(₹2500+₹1000)= ₹3500 per month
(iii)	Compensation after multiplier of 18 is applied	(₹3500X12X18)= ₹7,56,000
(iv)	For medical treatment, transportation and attendant charges	₹10000
(v)	Pain and suffering	₹10000
(vi)	Future medical check up, treatment, physiotherapy, medical expenses and costs of artificial limb.	₹150000
(vii)	For loss of amenities of life and loss of marriage prospects	₹50000
<i>Total</i>		₹9,76,000/-

The appeal is accordingly allowed. Compensation amount of the claimant is enhanced from ₹1,50,000/- to ₹9,76,000/-. The claimant shall be entitled to the interest on the enhanced compensation amount @ 7.5% per annum, from the date of filing of the claim petition till its realisation. The liability to pay the enhanced amount of compensation shall be as per the award. Claimant must have become major by now, as such, respondent No.3-insurance company will deposit the enhanced amount of compensation in her bank account or pay the same through demand draft. She is also entitled to the costs of this appeal. Counsel fee is assessed at ₹10,000/-.

January 17, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*