IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2426 of 2001 (O&M)
Date of Decision : 21.01.2019

Subhash Chander through LRs

....Appellant

VERSUS

Davinder Singh & ors. ...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Sanjeev Sharma, Advocate for the appellant through LRs.

None for respondent No.3.

Mr.Suvir Diwan, Advocate for respondent No.6-Insurance Company.

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B.S. WALIA, JUDGE (ORAL)

1. Appeal has been filed for enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal), on account of injuries sustained by the appellant (since deceased) in a motor vehicular accident on 04.10.1998.

2. Mr. Suvir Dewan, learned counsel appearing on behalf of respondent No.6 states that the contesting respondent is respondent No.3, represented by Shri Sumeet Goel, Advocate.

3. Mr. Sumeet Goel, Advocate is not present on behalf of respondent No.3. For that matter, none was present on behalf of respondent No.3 on 11.01.2019 and 15.01.2019 whereupon while adjourning the matter for

today, Registry was directed to inform Shri Sumeet Goel, Advocate of the case having been adjourned for 21.01.2019 and to ensure representation. However, despite message having been sent through email by the Registry to Shri Sumeet Goel, Advocate informing of the listing of the case for today, none has turned up on behalf of respondent No. 3. Since the accident is of the year 1998 while appeal is of the year 2001, therefore, I am not inclined to adjourn the case any further. Accordingly, respondent No. 3 is proceeded ex-parte and with the able assistance of learned counsel for the appellant (since deceased) and respondent No.6, I have gone over the record.

4. Learned counsel for the appellant (since deceased) contended that although in the MLR the age of the appellant (since deceased) was mentioned as 52 years but in the claim petition the same was mentioned as 50 years, therefore the same be treated as 50 years and multiplier applied accordingly for award of appropriate compensation. Learned counsel further contended that the appellant (since deceased) was carrying on business as cloth merchant, besides had filed ITR for the assessment year 1998-99 and 1999-2000 reflecting returned income of ₹ 57,000 /- and ₹ 72,360/- respectively and that in the light of injuries noticed in paragraph Nos.36 and 37 of the award, the Tribunal awarded total compensation of ₹8,00,000/- i.e. ₹2.5 lakh on account of 100% permanent disability, pain and suffering, transportation, special diet and attendant charges, ₹5 lakh's on account of medical expenses, ₹50,000/- on account of loss of earning and other sundry charges. Learned counsel contended that the appeal is liable to be allowed, award modified and compensation enhanced on account of the appellant (since deceased) having suffered 100% permanent disability on account of injuries including injury to the spine on account of which he had became a paraplegic, consequentially bed ridden. Learned Counsel further

contended that as against the requirement to award appropriate compensation under each head i.e. pain and suffering, special diet, attendant charges and transportation charges, a consolidated amount had been awarded which was legally unsustainable. Besides, no compensation had been awarded on account of future prospects.

5. I have considered the submissions of learned counsel and perused the record.

6. Admittedly, the appellant (since deceased) was carrying on business as a cloth merchant. He suffered a fracture in the spinal cord as well as fracture in skull resulting in reduction of his mental faculties, remained under treatment at Civil Hospital, Panipat whereafter, he was referred to PGIMS, Rohtak from where he was shifted to Apollo Hospital, Delhi where he remained admitted for one and a half month. Thereafter, the appellant (since deceased) was sent to the Indian Spinal Injuries Centre, Vasant Kunj, New Delhi, where he remained admitted for four months. A sum of ₹5 lakh was spent on his treatment. As per disability certificate Ex.P-131 referred to in paragraph No.36 of the award, the appellant (since deceased) suffered 100% permanent disability on account of complete paraplegia with total sensory loss below umbilicus with bedsore gluteal region and left trochanteric area with bladder involvement. The same was proved by PW-7 Dr. Sandeep Gupta, from the Orthopaedic Department, PGIMS, Rohtak. As per PW-10 Subhash Chander, Record Keeper, PGIMS Rohtak, who produced the summoned record, the appellant (since deceased) was diagnosed with fracture D1 with paraplegia and bedsore (spinal cord injury) which remained status quo for three months and that in a spinal cord injury, the patient was likely to suffer implications like lung infection, urinary track bladder infection and bed sore and that neurological damage was not likely

to improve throughout the life of the appellant (since deceased) and that the appellant (since deceased) had been put on certain drugs for his future treatment at the time of discharge. Although injuries to the skull had healed but his spinal cord did not show any sign of improvement. Thus, for all intents and purposes, the appellant (since deceased) was bed ridden after the accident and was unable to move.

7. During the pendency of the appeal, the appellant died on 10.05.2007 whereafter his LR's were impleaded. Since the appellant (since deceased) sustained 100% permanent disability and was bed ridden on account of having suffered from complete paraplegia and loss of sensation below the umbilicus, therefore, the effect of permanent disability on earning capacity of the injured appellant (since deceased) has to be assessed in order to arrive at future loss of earning by applying the standard multiplier used to determine loss of dependency whereas the tribunal erred in awarding a meagre amount of Rs. 50,000/- on account of loss of earnings and sundry charges. In view of the nature of the injuries referred to above which go to show that the appellant (since deceased) was completely bed ridden and could not move and was assessed as having suffered 100% permanent disability, the loss of earning has to be worked out accordingly. The appellant (since deceased) is proved to have filed Income Tax Return for the year's 1998-1999 and 1999-2000 reflecting returned income of ₹57,000/- and ₹72360/- i.e. Ex.130 and Ex. 129 respectively.

8. Learned counsel for the parties are agreed that although the claim petition mentions the age of the appellant (since deceased) as 50 years, yet in the MLR, the age of the appellant (since deceased) is mentioned as 52 years. In the absence of exact date of birth of deceased having been produced on record, multiplier applicable shall be as per the age recorded in the MLR. As

per the decision of Hon'ble the Supreme Court in **Sarla Verma Vs. Delhi Transport Corp. and another, 2009 (3) RCR (Civil) 77** in the case of age group 51 to 55, multiplier of 11 is applicable. Accordingly, multiplier of 11 shall be applied for the purpose of working out compensation payable.

9. In addition to the income of the appellant (since deceased) as per Income Tax Return, 10% of his established income minus tax component is liable to be added to the established income towards future prospects in accordance with paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, 2017 (4) RCR (Civil) 2009** read with paragraph No.15 of the decision of Hon'ble the Supreme Court in the case of **Sanjay Verma versus Haryana Roadways 2014 (3) SCC 210** since the appellant (since deceased) was 52 years of age and self employed. Accordingly, the appellant (since deceased) is held entitled to addition of 10% of his established income minus the tax component towards future prospects while computing compensation payable.

10. In addition to the aforementioned amount, learned counsel contends that the appellant (since deceased) is entitled to award of compensation under the head of special diet, attendant charges, transportation charges, pain and suffering, loss of amenities of life and future medical expenses.

11. Admittedly, the appellant (since deceased) sustained serious injuries as a result of which he became a complete paraplegic after suffering 100% permanent disability and loss of sensation below the umbilicus besides becoming bed ridden. The appellant (since deceased) sustained injuries in the accident on 04.10.1998 and died on 10.05.2007. In Sanjay Verma's case involving fracture of the spinal cord resulting in paralysis of the entire body of the claimant, Hon'ble the Supreme Court considering the injuries

sustained by the claimant therein which had left him paralyzed for life awarded ₹3,00,000/- on account of pain and suffering by observing that monetary compensation for pain and suffering was at best a palliative, the correct dose of which, in the last analysis, would have to be determined on a case to case basis.

12. In the case in hand, the appellant (since deceased) on account of injuries to his spine became a complete paraplegic and suffered loss of sensation beneath the umbilicus. The case of the appellant (since deceased) can be treated at par with the case of Sanjay Verma's case (supra). However, since the appellant unfortunately died on 10.05.2007 i.e. after 92 months therefore ₹2,00,000/- is liable to be awarded on account of pain and suffering. No separate amount has been awarded on account of attendant charges. Taking into account the injuries sustained by the appellant (since deceased) as also of his remaining bed ridden from the date of accident till his death, i.e. from 04.10.1998 to 10.05.2007, it is deemed just and proper to award a sum of ₹2 lakhs on account of attendant charges.

13. Likewise the appellant (since deceased) is also entitled to award of compensation towards special diet separately. Taking into account the period during which the appellant (since deceased) remained bed ridden, it is deemed just and appropriate to award a sum of ₹1,000/- per month as compensation towards special diet. Accordingly, the appellant (since deceased) is held entitled to award of ₹92,000/- on account of special diet for the period 04.10.1998 till date of his death i.e. 10.05.2007. The appellant (since deceased) would also be entitled to some amount on account of transportation charges and future medical expenses. In **Sanjay Verma's** case (supra), sum of ₹3,00,000/- was awarded under the head of future

treatment. In the instant case, since the appellant (since deceased) died on 10.05.2007, I am of the view that award of ₹1,00,000/- on account of future treatment expenses would meet the ends of justice. Accordingly, a sum of ₹1,00,000/- is awarded on account of future treatment expenses besides lumpsum amount of ₹25,000/- towards transportation charges.

14. Hon'ble the Supreme Court in **Kavita versus Deepak and others 2012 (8) SCC 604**, while taking into account that the appellant therein had suffered 75% permanent disability and there seemed to be no probability of recovery as she had lost her capacity for hearing, understanding, speaking and establishing interaction, awarded a sum of ₹3,00,000/- on account of loss of amenities and loss of expectation of life. In the instant case, the appellant (since deceased) sustained injuries as a result of which he became a complete paraplegic with total sensory loss beneath the umbilicus, besides, he remained bed ridden for a period of 92 months from 04.10.1998 till 10.05.2007 when he died. In the circumstances, I am of the view that a sum of ₹2,00,000/- would be just compensation to award on account of loss of amenities and loss of expectation of life.

15. Accordingly, in the light of the position as noted above, the LR's of the deceased appellant are held entitled to the following compensation:

Sr. No.	Head	Amount assessed by Tribunal in ₹	Amount assessed by this Court in ₹
1	Income assessed	72,360/- per annum	72,360/- per annum
2	Future prospects	Nil	10%=7236/- 72,360/-+7236/-=79,596/-
4	Multiplier applied	Nil	11

5	Compensation for loss of future earnings on account of permanent disability	50,000	79,596/-x11=8,75,556/-
6	Pain and suffering, attendant charges, special diet, transportation charges and loss of amenities of life.	2,50,000/-	Pain and suffering 2 lakhs Attendant charges 2 lakhs Special diet 92,000/- Transportation charges 25,000/- Loss of amenities of life 2 lakhs Future medical expenses 1 lakh till date of death.
7	Medical treatment including operation	5 lakh	5 lakh
8	Total	8,00,000/-	21,92,556/-

16. Accordingly, in the light of the position as noted above, the appellant (since deceased) is held entitled to the award of compensation of ₹21,92,556/- as against compensation of ₹8,00,000/- awarded by the learned Tribunal along with interest @ 9% per annum on the enhanced amount with effect from the date of claim petition till date of realization less amount, if any, already paid. Needless to mention, the Insurance Company shall deduct tax liability if any from the compensation on account of future prospects in accordance with the decision in Pranay Sethi's case (supra).

17. Accordingly, appeal is allowed. Award dated 03.04.2001 passed by the learned Motor Accidents Claims Tribunal, Rohtak is modified to the extent as noted above.

(B.S. WALIA)
JUDGE

January 21, 2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No