

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 3854 of 2003 (O&M)
Date of Decision: 01.04.2019

Satbir Singh

..... Appellant.

VERSUS

Yasdev and others

..... Respondents.

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.Robin Lohan, Advocate,
for the appellant.

Mr.Pawan Jangra, Addl. A.G., Haryana.

Mr. Aseem Aggarwal, Advocate
for respondent No.4.

JAISHREE THAKUR, J.

1. This is an appeal that has been filed by the claimant/ appellant herein for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as the 'Tribunal') by judgment dated 02.06.2003 whereby he was awarded a sum of ₹ 3,87,000/- on account of the injuries received by him in the motor vehicular accident.

2. In brief the facts are that the claimant-appellant herein, had preferred a claim petition under section 166 of the Motor Vehicles Act, 1988 (in short the 'Act') against the respondents alleging that on 12.04.2000 he along with Satyawan was going on scooter No. HR-51E-5870 from village Mundhal to Hansi. The scooter was being driven by Satyawan whereas he was pillion.

When they reached about 2 kilometers away from village Mundhal towards Hansi, a bus of Haryana Roadways No. HR-12PAQ-0219 being driven in rash and negligent manner came from the Hansi side and struck against the scooter, due to which they fell on the road and sustained injuries. He was taken to City Hospital Hisar where his right leg was amputated as it was badly crushed. A case FIR No. 60 dated 13.04.2000 under Sections 279/337 IPC came to be registered at Police Station Sadar Hansi. It was claimed that he took treatment from Dr. Rajiv Aggarwal of City Hospital, Hisar. A sum of Rs. One lakh was spent by him on his treatment.

3. The claim petition was contested by respondent No.1-State of Haryana by filing written statement wherein preliminary objections of cause of action, maintainability, locus standi, were taken while further alleging that no accident was caused with bus No. HR-12PA-0219. On merits, the age, employment income, injuries and the amount spent by the claimant on the treatment were denied.

4. A separate written statement was filed by respondent Nos. 2 & 3 while taking the similar objections. On merits, contents of the petition were denied while stating that the said bus had not met with any accident on 12.04.2000 and that a false statement was registered only to get compensation from the State of Haryana. It was alleged that on 12.4.2000, the bus was in route from Rohtak to Delhi and Yashdev was the driver. The bus after completing its scheduled trip, took night halt at Delhi. No complaint regarding any accident caused by the said bus was received in the office.

5. A separate written statement was filed by respondent No.4 Insurance

Company while taking preliminary objections of cause of action, locus standi, fitness of Bus No. HR-12PA-0219 had expired. No accident had taken place with the bus. A false case has been registered against respondent No.1. The amount claimed is highly exaggerated. It was admitted that the bus was insured with it. The accident, if proved, was due to the negligence of the scooter rider. Additional pleas were also taken and dismissal of the petition was prayed for.

6. No replication was filed. Thereafter, issues were framed and the claimant-appellant Satbir Singh himself stepped into the witness box as PW-5 and also examined PW-1 Dr. Rajiv Aggarwal, City Hospital, Hisar, who proved MLR Ex. P-1 and bills Ex. P-2 to P-30. PW-2 Dr. J.S. Bhatia as PW-2, who proved disability certificate Ex. P-31. PW-3 Neeraj Jain, Ahlmad, who proved FIR Ex. P-32. PW-4 Rajinder Kumar, who proved the bill Ex. P-33 and the opinion Ex. P-34. PW-6 G.K. Verma, owner of Bhavshya Tourist Service, Tours and Travels Service, NIT Faridabad, who proved bills Ex. P-35 to P-39. On the other hand, respondent No.1 himself stepped into the witness box as RW-1 and proved copy of driving license Ex. R-1. No evidence was led by respondents No. 2 & 3 whereas Insurance Company-respondent No.4 tendered in evidence Insurance Policy Ex. R-2 and closed the evidence.

7. On appreciation of evidence, the Tribunal held that claimant Satbir Singh sustained injuries in the accident which occurred with Bus No. HR-12PAQ-0219 at the instance of the driver, who was driving rashly and negligently. He was held entitled to compensation on account of injuries received by him as follows :

1	General damages	₹ 1,80,000/-
2	Special damages	₹ 2,07,000/-
	Total	₹ 3,87,000/-

8. Learned counsel for the appellant has argued that the compensation awarded by the Tribunal is on the lower side. The learned Tribunal has not taken into consideration that he has suffered 70% disability and he was working as a Mechanic at the time of accident and due to this accident his promotion avenues have stopped as his right leg was imputed above knee. Because of his physical disability he could not be promoted in future. It is argued that on account of future prospects he should be granted compensation.

9. Per contra, learned counsel appearing on behalf of the Insurance Company urges that adequate compensation has been allowed while contending that there is nothing on the record to show that on account of his disability he is not able to work. It is further submitted that as per the statement of the claimant himself he has stated that he is working in the factory on the same pay and, therefore, would not be entitled to any further enhancement of compensation. In this regard, learned counsel for the Insurance Company relies upon a judgment rendered by Hon'ble the Apex Court in *Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343* wherein the principles of assessment of compensation in an injury case have been enumerated. It is argued that all injuries do not result in loss of earning capacity.

10. I have heard learned counsel for the parties and have also perused the award of the Tribunal.

11. The appellant herein suffered an accident on 12.04.2000 which resulted in the amputation of his right leg above knee. He remained admitted in the hospital from 12.04.2000 and was ultimately discharged on 03.05.2000. As per the disability certificate available on the record, the Medical Board assessed his permanent disability at 70% on account of amputation of his right leg above knee and the said disability certificate is available on the record as Ex. P-31. The Tribunal while taking into account various bills and medical expenses incurred, allowed an amount of ₹ 2,07,000/- as special damages which would be inclusive of ₹ 65,525/- towards medical expenses and ₹ 1,31,580/- towards an Endolite prosthesis which was fitted upon the appellant, a sum of ₹ 5,000/- as special diet and a sum of ₹ 5,000/- towards transportation. Over all compensation termed as general compensation was allowed at ₹1,80,000/-. Aggrieved against this amount, the claimant submits that on account of amputation of his right leg above knee, he has suffered a 70% permanent disability and being a Mechanic which is physical handicap, he would not get any chance of promotion or any increment in future. He was working with Yamaha Motors Company, Faridabad at the time of accident. It is submitted that the compensation awarded by the Tribunal is on the lower side as the claimant was only 37 years of age at the time of accident.

12. The question for deciding whether the claimant is entitled to further enhancement of compensation has to be decided in the light of his permanent disability which has been assessed at 70%.

13. In the judgment rendered in ***Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343***, the Supreme Court has held that before

compensation can be awarded the Tribunal must decide whether there is any permanent disability and if so the extent of such permanent disability. Meaning thereby, evidence has to be considered (i) whether the disablement is permanent or temporary; (ii) if the disability is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) If the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. It was also held that the Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability. In the instant case, the claimant was working as a Mechanic with Yamaha Motors Company, Faridabad and suffered 70% permanent disability of his right leg since the same was amputated above the knee. If the claimant had been a Typist working in a firm, such disability may not have affected his capacity of working, but in a case when a leg of a driver or a gardner or a daily-wager like a mason, a carpenter is amputated, his capacity of doing normal work would be hampered. In the instant case, the claimant-appellant herein is a mechanic and amputation of his right leg above knee, in all circumstances would affect his capacity of working. Even though there is a statement that he is continuing to work in the said Company after his accident, in likelihood his future prospects of advancement would surely be hampered on account of his efficiency.

14. In view of the above and as per the dictum that has been stipulated in ***Raj Kumar*** case (supra), the calculation for compensation in the instant case

would be as follows :-

- (a) Annual income before the accident : ₹ 10,500 x12=₹ 1,26,000/-
- (b) Loss of future earnings per annum : ₹ 18,900/-
(15% of the prior annual income)
- (c) Multiplier applicable with reference to age (36-40): 15
- (d) Loss of future earnings: ₹ 2,83,500/-
(₹ 18,900/- x 15) :

In additional to above, this Court enhances the transportation expenses from ₹ 5,000/- to ₹ 10,000/-, Special diet expenses are enhanced from ₹ 5,000/- to ₹ 10,000/-, pains and suffering is enhanced from ₹ 5,000/- to ₹ 30,000/- and attendant charges are allowed at ₹ 12,000/-.

The compensation, as such, would work out as under :-

- (i) Expenditure on treatment : ₹ 65,525/-
- (ii) Expenditure on artificial limb : ₹ 1,31,500/-
- (ii) Loss of future earnings(₹ 18,900/- x 15): ₹ 2,83,500/-
- (iii) Pains and suffering : ₹ 30,000/-
- (iii) Special diet : ₹ 10,000/-
- (iii) Transportation : ₹ 10,000/-
- (iv) Attendant Charges : ₹ 12,000/-

Total : ₹ 5,42,525/-
(round off to ₹ 5,42,500/-)

15. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 3,87,000/- to ₹ 5,42,500/-.

16. The Insurance Company is directed to release the enhanced compensation in favour of the claimant-appellant with interest @ 7.5% per

annum from the date of the appeal till realization.

17. Appeal is allowed in the aforesaid terms.

01.04.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No