

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

**FAO No. 2428 of 2004
Date of decision: 28.03.2019**

Amit Kumar

....Appellant

Versus

Mohinder Singh and others

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. Kamlesh, Advocate for Mr. Parminder Singh, Advocate for the appellant.

Mr. D.P. Gupta, Advocate for the respondent-Insurance Company.

B.S. Walia, J.,

1. Appeal has been filed by the claimant seeking enhancement of compensation of ₹68,500/- awarded by the learned Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal) vide award dated 09.12.2003 on account of injuries sustained in a motor vehicular accident on 30.05.2001.
2. Learned counsel for the appellant contends that the appeal is liable to be allowed, award modified and compensation payable enhanced inter alia
 - i) By applying multiplier of 18 ;
 - ii) By enhancing compensation payable on account of pain and suffering ;
 - iii) By enhancing lump sum compensation awarded by the Tribunal on account of medical expenses, transportation charges, special diet etc. ;
 - iv) By awarding compensation on account of loss of one year of studies.

3. Learned counsel for the appellant further contended that the appellant-claimant remained admitted as an indoor patient in Haryana Nursing Home, Karnal twice, initially from 30.05.2001 to 17.6.2001 during which period he underwent surgery qua fracture of the right foot, besides insertion of wires in the foot and secondly from 02.07.2001 till 06.07.2001 as an indoor patient during which period he again underwent surgery besides skin grafting. Learned Counsel further contended that the appellant had passed Class-10 examination and was scheduled to get admission in 10+1 class but due to the accident and injuries sustained resulting in his getting bed ridden, the appellant could not take admission in Class 10+1, consequentially incurred loss of one valuable year of study.

4. Respondent Nos.1 and 2 were proceeded ex parte before the learned Tribunal. Here also, despite service, none appears on their behalf. However, Sh. D.P. Gupta, learned counsel has put in appearance on behalf of respondent No.3, Insurance Company.

5. The learned Tribunal on the basis of Ex.P-25 to Ex.P-58 and Ex.PW-5/1 and Ex.PW-5/2 i.e. bills regarding purchase of medicines and payment of doctor fees, etc., observed that the claimant had established having spent some amount on his treatment and in addition thereto, would have spent some amount on transportation, special diet, and attendant charges etc., accordingly, awarded a sum of ₹25,000/- on treatment, transportation, special diet etc.

6. Learned counsel for the appellant contended that the aforementioned amount was inadequate in view of the fact that it stood established that the appellant had spent a sum of ₹23,308.35P on his treatment and payment of doctor's fees alone as also in view of the fact that the

appellant remained admitted in Haryana Nursing Home as an indoor patient for a period of close to a month during which period he underwent two surgeries.

7. Admittedly, the appellant remained admitted from 30.05.2001 to 17.06.2001 and again from 12.07.2001 to 06.07.2001 as an indoor patient in Haryana Nursing Home during which period, two surgeries were performed including skin grafting. In the absence of any documentary evidence to show incurring of expenditure beyond ₹23,308.35, award of said amount on account of medical expenses does not warrant interference. However, since a lump sum of ₹25,000/- was awarded on account of treatment, transportation, special diet etc., it transpires that only a sum of ₹1692/- was awarded on account of transportation, special diet attendant charges etc. The same to my mind is grossly inadequate. Since the petitioner remained admitted as an indoor patient for close to a month, beside, even thereafter would have required special diet, attendant and transportation for some period thereafter, therefore, for the period of approximately one month during which the appellant remained admitted in Haryana Nursing Home, Karnal, a sum of ₹3,000/- on account of special diet, ₹2,000/- on the account of attendant charges and ₹1,000/- on account of transportation charges is deemed just and proper compensation. As, regards the subsequent period, compensation on account of special diet @ 3,000/- per month for a period of two months, on account of attendant charges @ ₹2,000/- per month for a period of one month and as the appellant would have had to go to hospital for check up / follow up after discharge from the hospital, ₹1000/- on account of lump sum transportation charges over and above the compensation awarded for the period of hospitalization would meet the ends of justice. Accordingly, the

appellant would be entitled to a sum of ₹9,000/- on account of special diet, ₹4000/- on account of attendant charges and ₹2,000/- on account of transportation charges besides ₹23,308/- on account of medical expenses i.e. a total of ₹38,308/- as against ₹25,000/- awarded by the Tribunal on account of medical treatment, transportation, special diet etc. Further, since the appellant remained admitted in hospital as an indoor patient for approximately period of one month, besides underwent two surgeries, the sum of ₹12,000/- awarded on account of pain and suffering needs enhancement and is accordingly, enhanced to ₹20,000/-.

8. The learned Tribunal took notional income of the appellant for award of compensation on account of disability and loss of future earning as ₹15,000/- per annum. Accordingly, keeping in view 15% permanent disability suffered by the appellant, annual loss of income was taken as ₹2100/- and taking into account the age of the claimant, multiplier of 15 was applied and compensation of ₹31,500/- was held payable on account of permanent disability. The appellant had passed his 10th examination. In the cross-examination of appellant-claimant as PW-7, it has come out that his date of birth was 11.03.1984 thus, as on date of accident, he was 17 years and 2 months. As per the schedule to Section 163-A of the Motor Vehicles Act, in case of age above 15 years, but not exceeding 20 years, multiplier of 16 is applicable. Accordingly, the multiplier applicable is taken as 16 instead of 15 as applied by the Tribunal.

9. Learned counsel contends that the amount of ₹15,000/- as notional income per year is on the lower side and the minimum wages as payable to an unskilled labourer during the relevant period ought to have been taken into account. Learned counsel states that minimum wages under the

Minimum Wages Act, 1948 for the relevant period in the State of Haryana was ₹1964.58 therefore, the same be rounded off to ₹1965/- per month. Copy of the notification under the Minimum Wages Act, 1948 for the relevant period duly signed by learned counsel for the appellant is taken on record. Copy thereof handed over to learned counsel for the respondent-Insurance Company, who does not dispute the correctness of the same. Accordingly, notional monthly income of the appellant is taken as ₹1965/-. Accordingly, compensation payable on account of 15% permanent disability is worked out as $₹1965 \times 12 \times 16 = ₹3,77,280/-$, 15% of which comes out to ₹56,592/-. Accordingly, as against compensation of ₹31,500/- awarded on account of 15% permanent disability, the appellant is held entitled to award of ₹56,592/- on account of permanent disability suffered and resultant future loss of earning.

10. As regards claim for compensation on account of loss of one year of study, it needs mentioning that in the claim petition as well as grounds of appeal as also submissions, plea is that the appellant claimant was scheduled to take admission in 10 + 1 Class but could not take admission to injuries sustained and having remained bed ridden whereas while appearing as PW7, appellant claimant stated that he was studying in Class 10 + 1 but could not appear in the examinations due to shortage of attendance. Apart from the claim being contradictory, learned counsel has not pointed out any evidence in respect of the same by reference to school record to show that the petitioner could not take admission in Class 10 + 1 or appear in Class 10+1 examination on account of shortage of attendance. except the bald self serving statement of the appellant/claimant. Accordingly, no amount is payable on said account.

11. Accordingly, as against compensation of ₹68,500/- awarded by the Tribunal, the appellant is held entitled to award of ₹1,14,900/- along with interest @ 9% per annum with effect from the date of institution of the claim petition till realization of the awarded amount, less amount if any, already paid.

12. Accordingly, appeal is allowed. Award dated 09.12.2003 passed by the learned Tribunal, Karnal is modified to the extent as noted above.

March 28, 2019
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No