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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-83 -2002

Date of decision : 16.7.2019

Ramesh

..... Appellant (s)

Versus

Karan Singh and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.K. Ahluwalia, Advocate,
for appellant.

Mr. Suvir Dewan, Advocate,
for respondent No. 3.

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KULDIP SINGH J. (ORAL)

This is appeal against award dated 25.9.2001, passed by Motor Accident Claims Tribunal, Bhiwani (in short 'the Tribunal'), vide which on account of injury received by appellant Ramesh in a motor vehicle accident, compensation to the extent of Rs. 6,68,000/- was allowed. Insurance company was held liable to pay compensation with 9% per annum interest from date of filing of claim petition till realization. Claimant being not satisfied with said compensation has come up in appeal.

Facts of case are that claimant-appellant Ramesh, aged about 35 years, was previously working in Indian Navy. After getting retirement from Indian Navy, he joined Merchant Navy. On 2.1.1997 at about 5.30 PM, while driving motorcycle No. RJ-13-IMO-400, claimant-appellant accompanied by one Kamlesh was going on motorcycle. When they crossed village Kitlana and were near Hanuman temple, a Tata Four Wheeler No. HR-39-2861, being driven by respondent No. 1, came

from opposite side and struck against motorcycle. The front right while of four wheeler crushed right hand of appellant below elbow. He was immediately removed to Medical College and Hospital, Rohtak on same day and considering seriousness of injuries, he was shifted to Jaipur Golden Hospital, New Delhi, where he remained admitted from 3.1.1997 to 21.1.1997. 5 operations were conducted. His right hand below elbow was amputated. It is stated that appellant was getting USD 1000 salary in Merchant Navy where he was employed at Belgium which according to then, value of USD 1000 comes to Indian Rs. 36,000/-, excluding free food, accommodation and free air ticket. He came from Belgium to his native village and during holidays, he met with accident. He had received a call to rejoin duty on 26.2.1997, but he could not do so on account of his injury. Since appeal is for enhancement of compensation and respondents have denied accident and claimed that there was no negligence on the part of driver, therefore, detailed facts need not to be discussed.

From the pleadings, Tribunal framed following issues :-

1. Whether the accident in question had taken place due to rash and negligent driving of four wheeler No. HR-39-2861 by its driver Karan Singh, respondent No. 1 ?
2. To what amount of compensation, if any, the petitioner are entitled to and if so, from whom ? OPP
3. Whether the respondents are not liable to pay any compensation, in view of the various preliminary objections, raised by them, in their respective written statements ? OPR
4. Relief.

Tribunal held that disability of appellant qua right hand, as per

disability certificate Ex. P21 is 70% qua right hand. Tribunal took view that nobody from management was examined to prove that appellant was working in Merchant Navy. His salary in Indian Navy was Rs. 4,000/- per month. Therefore, assuming that now claimant can earn Rs. 5,000/-, his loss of income is taken to be Rs. 3,500/- per month. The multiplier of 14 was applied and loss of income is calculated at Rs. 5,88,000/- (Rs. 3500 x 12 x 14). Tribunal also allowed medical bills of Rs. 60,000/-, Rs. 10,000/- for transportation and Rs. 10,000/- for pain and suffering.

I have heard learned counsel for parties and have also carefully gone through file.

Before this Court, additional evidence was led to prove income of claimant.

I am of view that Tribunal has erred in holding that in absence of anybody being examined from management, it is not proved that claimant was working in Merchant Navy. I am of view that proceedings before Tribunal are in nature of summary inquiry and documents produced by both parties can be taken into consideration and examined in the light of evidence. Claimant has produced wages account (Ex. P16) showing that he was earning USD 1000 per month. He also produced certificate from United Ship Management Limited to show his salary as USD 1000. Same is another certificate (Ex. P18). It is to be noted that in evidence, claimant specifically stated that he was working in Merchant Navy and getting USD 1000 per month. He had come from Belgium to his native village when he met with accident. Claimant was a technician in Indian Navy. So was his position in Merchant Navy. He was duly tested by way of cross examination and nothing came out from cross examination that he was

not working in Merchant Navy. In cross examination, he gave name of company and stated that he was working as Trainee Electrical in said company. He stated that his degree of electrical line from Electrical Establishment of Indian Navy, INS Valsura, Jamnagar, is equivalent to Bachelor in Engineering. By way of additional evidence, some letters from United Ship Management Limited (Annexure-A-2 and A-4) have been produced which show that claimant was getting USD 1000 per month salary. Therefore, said documents are to be believed and it is to be held that salary of appellant in Merchant Navy was USD 1000 which at that time was equivalent to Indian Rs. 36000/-. In Merchant Navy, usually job is for 6 months in a year. Therefore, said income is only for 6 months.

Now, considering loss of income, it is to be noted that right hand below elbow of claimant was amputated resulting in 70% disability qua right arm. However, claimant can still earn something. Considering disability assessed by doctor, I am of view that loss of income in this case is 50% of income, earned by him in Merchant Navy, therefore, loss of income is Rs. 18000/- for 6 months. Loss of income comes to Rs. 1,08,000/- per annum. From said loss of income, income tax at the rate of 20% i.e. Rs. 21,600/- is to be deducted. Net loss of income comes to Rs. 86,400/- p.a. Considering age of 35, multiplier of 16 is applied. Total loss of income comes to Rs. 13,82,400/-. Rs. 60,000/- on account of medical bills already allowed by Tribunal are not disputed before this Court. For pain and suffering, I am of view that claimant had to undergo 5 operations. His right arm below elbow was amputated. Considering trauma suffered by him, Rs. 25,000/- for pain and suffering as

assessed in year 1997 are allowed. Rs. 10,000/- for special diet and Rs. 5,000/- for transportation are also allowed. Total amount of compensation comes to Rs. 14,82,400/-.

In view of said fact, appeal is allowed and compensation is enhanced from Rs. 6,68,000/- to Rs. 14,82,000/-. Enhanced compensation shall be paid by insurance company alongwith 7.5% per annum interest from date of filing of claim petition till realization.

(KULDIP SINGH)
JUDGE

16.7.2019
sjks

Whether speaking order	:	Yes
Whether reportable	:	No