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

**FAO No.3142 of 2009
Date of Decision: 14.01.2019**

Ali Mohammad

Appellant

Versus

Puran Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Chetan Kapoor, Advocate
for the appellant.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The award dated 07.01.2009 passed by the Motor Accident Claims Tribunal, Gurgaon [for brevity 'the Tribunal'] has been assailed in appeal by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The owner of Tata 207 bearing registration No. RJ-29GA-0246 [hereinafter referred to as 'offending vehicle'], driver and insurer

(i.e. The New India Assurance Company Ltd.) of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 25.10.2006, the appellant was making certain purchases at that time he was hit by a rash and negligent driven offending vehicle. As a result of the impact, he sustained grievous injuries including fractures of femur bones of both the legs. He was taken to Community Health Centre, Ferozepur Jhirka and thereafter he was referred to General Hospital, Mandikhera and then to Banga Bone Hospital, Alwar. He remained hospitalized from 26.10.2006 to 05.12.2006. FIR No.199, dated 26.10.2006 was registered at Police Station Ferozepur Jhirka.

A claim petition was filed. On the basis of evidence and the pleadings, the Tribunal held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹76,500/- alongwith interest @ 9% per annum.

Heard learned counsel for the parties and perused the relevant documents produced.

Learned counsel for the appellant contends that the appellant remained hospitalized for almost 40 days and he was operated upon and there was a disability to the extent of 15% on account of mild painful restriction of movements of both hip joints.

His grievance is that the amount awarded for disability is on the lower side and no amounts have been awarded for attendant, special diet as well as for loss of earning.

Learned counsel for the insurer while defending the award submits that there was no permanent disability. The appellant failed to substantiate that the injuries affected his functional ability. He resisted any further enhancement.

From the perusal of the disability certificate, it is clear that there was no permanent disability. It has specifically been mentioned that there is 15% disability "at present". The Tribunal awarded ₹30,000/- on account of 15% permanent disability. The appellant failed to substantiate his monthly earning, occupation and the fact that the injuries affected his functional ability. The fact which is not disputed is that he remained hospitalized for almost 40 days. It was pleaded that he was an agriculturist. His both legs were fractured, one of the leg was operated upon and in such circumstances, pecuniary and non-pecuniary damages are to be compensated.

The Supreme Court in case of **G. Ravindranath @ V. Gopala Gowda, 2013 (12) SCC 455**, held as under:-

"11. We have heard learned counsel for the parties and carefully perused the record.

It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and

miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

In the absence of any evidence and considering the fact that there was no permanent disability, the amount of ₹30,000/- awarded by the Tribunal for disability, which has been wrongly mentioned by the Tribunal as 'permanent disability', calls for no interference.

In the present case, injuries sustained were such that the

appellant would have required transportation not only during the period of treatment but subsequently also. His femur bones of both the legs were fractured and his movement was restricted not only during the period of treatment but subsequently also i.e. till he is fully recovered. Similarly, attendant would have been required and keeping in view the fact that there was a surgery and he suffered fractures, special diet was bound to be given to him for his speedy recovery. He would not have been able to work for a period of atleast 12 weeks. He was bound to get follow-up treatment after discharge from the hospital.

For the said reasons, the compensation awarded by the Tribunal is modified as follows:

Sr. No.	Particulars	Compensation (in ₹)
1.	On account of purchase of medicines and treatment etc., as awarded by the Tribunal	36,500/-
2.	On account of 15% disability, as awarded by the Tribunal	30,000/-
3.	On account of pain & suffering and loss of earnings etc.	30,000/-
4.	Attendant Charges	10,000/-
5.	Special Diet	10,000/-
6.	Transportation	15,000/-
7.	Follow-up treatment	10,000/-
	Total	1,41,500/-

The award dated 07.01.2009 is modified to the extent that amount of ₹76,500/- awarded by the Tribunal is enhanced to ₹1,41,500/-.

The claimants shall be entitled to enhanced amount alongwith interest as awarded by the Tribunal, from the date of filing the claim petition till the realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

January 14th, 2019
pankaj baweja

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| 1. Whether speaking/reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |