

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 262

Case No. : FAO No. 4069 of 2009 (O&M)

Date of Decision : April 04, 2019

Satpal Appellant

vs.

Shri Raj Kumar and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Ashish Yadav, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondent no. 3 – Insurance Company.

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DEEPAK SIBAL, J. (Oral) :

Through the present appeal, the appellant seeks enhancement in the compensation awarded to him by the Motor Accident Claims Tribunal, Gurgaon (for short – the Tribunal).

The facts, in brief, which would be required to be noticed for adjudicating upon the present appeal, are that on 02.05.2006, the appellant along with Sham Lal was walking by the road side when a Swaraj Mazda Truck bearing registration number HR-55-B-7644 (for short – the offending vehicle) hit him, as a result of which he received several injuries including injuries to his head. He was shifted to Kalyani Hospital, Gurgaon where he underwent treatment. At the time of discharge, the appellant was suffering

166 of the Motor Vehicles Act, 1988 (for short – the Act) before the Tribunal, which, after concluding that the offending vehicle was being driven in a rash and negligent manner, assessed the payable compensation to be paid to the appellant by the Insurance Company as the Tribunal further found the offending vehicle to be validly insured and that there was no violation of the terms of the Insurance Policy by its owner or driver. Through the present appeal, the claimant seeks enhancement in the awarded compensation.

Learned counsel for the appellant submitted that at the time of the accident, the appellant, as an agriculturist, was earning Rs.10,000/- per month. He submitted that since the appellant at the time of the accident was 32 years of age and had proven before the Tribunal that as a result of the accident, he had suffered 90% permanent disability, he was entitled to compensation after applying a multiplier of 16 to his income as also to 40% future prospects. Enhancement in the compensation on account of pain and suffering and compensation for loss of enjoyment of life and loss of expectation of life was also sought.

Learned counsel for respondent no. 3 – Insurance Company justified the compensation so awarded by the Tribunal through the impugned Award.

It is not disputed that in the accident in question the appellant suffered injuries to his head and that such accident was caused due to the rash and negligent driving by the driver of the offending vehicle. The appellant further proved before the Tribunal through leading of

documentary as well as oral evidence that as a result of the aforesaid accident, he had suffered 90% permanent disability, a finding which has not even been challenged by the Insurance Company.

In a recent judgment, the Hon'ble Apex Court in **Jagdish vs. Mohan and others** – (2018) 4 SCC 571, while dealing with the case of an injured person seeking enhancement in the awarded compensation, who had also suffered 90% permanent disability, held that the award of compensation must cover, amongst others, the following aspects :-

1. Pain, suffering and trauma resulting from the accident;
2. Loss of income including future income;
3. The inability of the victim to lead a normal life together with its amenities;
4. Medical expenses including those that the victim may be required to undertake in future; and
5. Loss of expectation of life.

Towards pain, suffering and trauma resulting from the accident, the Tribunal has granted to the appellant a lump-sum amount of Rs.50,000/- which, in the light of the aforesaid nature of injuries suffered by the appellant resulting in 90% permanent disability, is found to be inadequate. Therefore, such compensation is enhanced to Rs.2,00,000/- which is the same amount granted by the Hon'ble Apex Court in **Jagdish's** case (*supra*) under this head.

For 'loss of income', the Tribunal has granted to the appellant a lump-sum amount of Rs.1,80,000/-, which is also found to be on the lower

side. Since it has been proved before the Tribunal that the appellant is suffering from 90% permanent disability and has suffered paralysis of the right side of his body, to assess the compensation under the head 'loss of income including future income', firstly the income of the appellant is to be determined. At the time of the accident, the appellant claims to be earning Rs.10,000/- per month as an agriculturist. No documentary evidence in this regard was produced but since it is admitted that at the time of the accident, the appellant was an able-bodied young man of 32 years of age, it would be just and fair to assess his income at the minimum wages provided in the notification of the State of Haryana – "Prevailing Minimum Wages & Schedule of Rates (SOR) for Agricultural Labourers" applicable at the relevant time, which are Rs.2860/- per month (approx.). That being so, the monthly income of the appellant is rounded off to Rs.3,000/-.

In view of his aforesaid condition and after taking the appellant's age to be 32 years at the time of the accident, to the assessed income of the appellant, multiplier of 16 is ordered to be applied. He is further held entitled to future prospects @ 40% on his assessed income.

No compensation has been awarded by the Tribunal for 'inability of the appellant to lead a normal life together with its amenities'. Considering the physical state that the appellant is in for the last 13 years and that he would also continue to be so for the remaining period of his life, this Court deems it just and appropriate to award to the appellant under this head a lump-sum amount of Rs.1,50,000/-.

So far as 'loss of expectation of life' is concerned, there can

hardly be any dispute that a person with 90% permanent disability and half of his body paralyzed, would have least expectation to live. The compensation to be awarded by this Court would only be an attempt to minimize the mental trauma that the appellant is facing for the last about 13 years and would continue to face for the rest of his life. Such compensation is assessed at Rs.1,50,000/-.

To the above enhanced compensation, simple interest @ 6.5% per annum is also awarded from the date of filing of claim petition till the realization of the amount.

No other point was urged.

The appeal stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

April 04, 2019

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Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.