

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

FAO No. 1403 of 2007 (O&M)

Date of Decision: 4.9.2019

Gurmeet Singh

...Appellant

Versus

Union of India and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Saurabh Kapoor, Advocate, for
Mr. Ashit Malik, Advocate,
for the appellant.

Mr. Brijeshwar Singh Kanwar,
Standing Counsel for UOI—respondents No. 1 and 2.

None for respondent No. 3.

JAISHREE THAKUR, J.

1. This is an appeal that has been filed seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Karnal on account of the injuries suffered by the appellant in a road accident.

2. In brief, the facts are that on 07.08.2004, Vikram Singh was driving one motorcycle and Gurmeet Singh was riding on the pillion seat. They were coming from Pattal Ganga/Hemkund Sahib to their village Jalmana, when one truck of the Border Road Organisation, Utranchal bearing registration No. 02E-60055 came from the opposite direction. The truck was being driven by M.T. Vijayan-respondent No. 3 at a high speed and it struck against the motorcycle of Vikram. Due to the impact of the accident, both the occupants of the motorcycle fell down and received

multiple injuries. Vikram Singh succumbed to his injuries, whereas Gurmeet Singh, the appellant herein, was shifted to Civil Hospital, Gopeshwar, from where he was moved to Haryana Nursing Home at Karnal. The appellant filed a claim petition seeking compensation on account of the injuries suffered by him. He alleged that he had suffered a fracture of his right femur apart from injuries on other parts of his body. A steel rod was inserted in his femur bone and it was contended that an amount of ₹50,000/- was spent on treatment, special diet and transportation expenses. On appreciation of the evidence led, the Tribunal allowed compensation of ₹40,000/-. Aggrieved against the said inadequate amount, the instant appeal has been filed.

3. Mr. Saurabh Kapoor, learned counsel appearing on behalf of the appellant, submits that the appellant was 20 years of age and was doing agricultural work. He had stated in his cross-examination that he was owner of two acres of land situated in village Jalmana. It was argued that evidence produced on the record would reflect that he remained admitted in hospital from 7th of August 2004 till 11th of August 2004. During that time, he was operated upon and fracture was fixed by inserting a nail in the bone. It was further stated that he has not been given due compensation for the injuries suffered by him in the accident. To substantiate his claim for compensation, the appellant had produced on record the expenses incurred, excluding the expenses of medicines and nail, Ex. PB, admission and discharge card Ex. PA and follow up slips Ex. PC and Ex. PD. He also produced on record medical bills Ex. P1/A to Ex. P.9.

From the record documents Ex. R1 to R4, it is apparent that the appellant was medico legally examined by the Medical Officer District

Hospital, Gopeshwar, at 4:30 PM on 07.08.2004, who found injuries and advised x-ray of the femur bone. He was thereafter shifted to a Nursing Home at Karnal where he was operated upon and the fracture was fixed by inserting a nail in the bone. The appellant produced Dr. K.L. Sachdeva as PW1 who established that an amount of ₹9000/- was charged from the appellant as hospital expenses, including cost of medicines and nail. The appellant also produced on record Ex. P-1/A to Ex. P9, the medical bills which were for an amount of ₹ 2752/-. Since there was no disability certificate on the record, the Tribunal did not award any compensation towards the same. Taking all arguments and evidence into consideration, the Tribunal allowed a sum of ₹ 40,000 which was inclusive of reimbursement of medical expenses, loss of income, pain and suffering, special diet, transportation expenses.

4. Mr. Brijeshwar Singh Kanwar, Standing Counsel for UOI—respondent No. 3 pleads that adequate compensation has already been allowed to the appellant by the Tribunal and, therefore, there is no occasion for enhancement of the same.

5. I have heard the learned counsel for the parties and with their assistance have perused the pleadings and the evidence.

6. The factum of the accident is not disputed since no appeal has been preferred either by the driver/owner of the offending vehicle or by the Insurance Company. The Tribunal allowed compensation of ₹40,000/- to be paid to the appellant. The question that needs to be decided is, whether adequate compensation has been allowed to the appellant.

7. 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 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.

8. In the instant case, there is no evidence in the record as to what was the income of the injured/appellant. Therefore, his income was taken to be ₹ 2500/- per month as an income that would be available to an unskilled labour as minimum wages. The medical reimbursement was allowed on the basis of the statement given by the doctor and the bills produced. The compensation as allowed by the Tribunal is reproduced as under :-

<i>i) Reimbursement of medical expenses</i>	<i>: ₹16,000-00</i>
<i>ii) Loss of income</i>	<i>: ₹10,000-00</i>
<i>iii) Pain and suffering</i>	<i>: ₹5,000-00</i>
<i>iv) Special diet</i>	<i>: ₹5,000-00</i>
<i>v) Transportation expenses</i>	<i>: ₹4,000-00</i>

<i>Total</i>	<i>: ₹40,000-00</i>

9. The Tribunal, as already noticed, after scrutiny of the evidence

brought on record by the respective parties, awarded a sum of ₹40,000/-. However, the Tribunal did not grant any specific amount on account of attendant charges, in view of the judgment rendered in **Raj Kumar's cases (supra)**, therefore, the compensation payable to the appellant deserves to be enhanced, particularly in view of the fact that the accident took place on 7.8.2004 and the appellant had been taking treatment from Haryana Nursing Home, Karnal even in the month of October, 2004. Consequently, a sum of ₹5,000/- is granted to the appellant towards attendant charges and a sum of ₹5,000/- is enhanced towards pain and suffering. Thus, in all a sum of ₹10,000/- is enhanced over and above the amount already given by the Tribunal.

10. In view of the above, the award of the Tribunal is modified and the total compensation payable to the claimant shall be ₹ 50,000/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment.

4.9.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No