

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 1088 of 2010 (O&M)

Date of Decision: 22.05.2019

Sanjay Kumar

..... Appellant

VERSUS

Sunil and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Nishant Raj, Advocate,
for the appellant.

Mr. V.K. Garg, Advocate,
for respondent No.3.

JAISHREE THAKUR, J.

1. The instant appeal by appellant has been filed seeking to enhance the compensation awarded by the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as the 'Tribunal') on account of the injuries suffered by him in a motor vehicular accident.

2. In brief, facts are that on 31.08.2008, the claimant Sanjay along with Dilbag son of Raghubir Singh, resident of Village Seenk were going to his village Seenk from Israna and when they reached

near Ahar Chowk, a tractor make Sonalika being driven by respondent No.1 in a rash and negligent manner, directly hit the three wheeler bearing registration No. HR-67-6837. Respondent No.1, the driver of the offending vehicle ran away from the spot, leaving the tractor behind. Right portion of the three-wheeler was broken and the driver of the tempo Ram Narain son of Sher Singh and passengers Dhoop Singh, Sunhera, residents of village Seenk and one person of village Chhichhrana suffered injuries. The injured were shifted to a Hospital at Panipat where Sunehra died. Due to the accident, Sanjay-appellant herein sustained multiple grievous injuries, especially fracture on his right leg, knee and ankle. After the accident, he was got admitted in Gandhi Hospital, Panipat. It was stated that due to the accident, he become crippled one as he has sustained disability.

3. Respondent Nos.1 and 2 i.e. driver and owner of the offending vehicle in their joint written statement have denied all the allegations while stating that the accident was caused due to sole negligence of the driver of the three-wheeler. No accident took place on account of the rash and negligent driving of the aforesaid tractor by its driver. On the same lines, separate written statement was filed by the Insurance Company. Thereafter, issues were framed and respective evidence was led by the parties apart from tendering relevant documents. On appreciation of evidence, the Tribunal held that the accident in question occurred due to rash and negligent driving of offending tractor bearing registration No. HR-06-R-3198

by respondent No.1 Sunil. Sanjay-appellant herein was held entitled to compensation of ₹ 1,01,500/- under various heads, which is tabulated as under :-

Sr. No.	Heads	Amount
1	Pain and suffering	₹ 20,000/-
2	Special diet and attendant	₹ 10,000/-
2	Loss of income	₹ 14,000/-
3	Expenses spent on treatment	₹ 57,500/-
	Total	₹ 1,01,500/-

Aggrieved against the said award, the instant appeal has been filed by the claimant-Sanjay for enhancement.

4. Learned counsel for the appellant has argued that the compensation awarded by the Tribunal is on the lower side. The learned Tribunal has not taken into consideration that he has suffered multiple injuries on his entire body and the appellant received five fractures of right leg including knee and ankle. He remained admitted in Gandhi Hospital, Panipat from 31.08.2008 to 28.09.2008 i.e. about one month and spent more than rupees ten lakh on his treatment. Thereafter, the appellant was referred to PGIMS, Rohtak, where he spent more than Rupees two lakh on his treatment. However, the Tribunal has awarded a meager amount of ₹ 57,500/- It is further argued that the appellant suffered 40% disability, however, nothing was awarded by the Tribunal towards the disability as at that point of time the disability certificate was not issued by the Board, now the same has been issued, which is annexed with this appeal as Annexure

A/1. It is further argued that the Tribunal has ignored the aspect that the appellant was doing masonry work, however, due to the accident he is unable to perform the work of Mason and he cannot earn his livelihood and he would be dependent on other persons even for his daily routine. On account of this, the Tribunal has awarded only a sum of ₹ 14,000/- for loss of income. It is further argued the Tribunal has awarded a meager compensation of ₹ 20,000/- towards pain and suffering which is liable to be enhanced. It is further argued that the appellant spent more than ₹ 30,000/- on rich diet for early healing of fractures and injuries. However, the learned Tribunal has awarded a composite amount of ₹ 10,000/- only towards special diet and attendant charges and the same is liable to be enhanced. It is further argued that the appellant get regular treatment and used taxi and he spent more than ₹ 20,000/- for transportation but the Tribunal has not awarded any compensation under this head.

5. Per contra, learned counsel appearing on behalf of the Insurance Company urges that adequate compensation has been allowed while contending that there is nothing on the record to show that on account of his disability he is not able to work. It is further submitted that as per the statement of the claimant himself he has stated that he was earning a sum of ₹ 12,000/- per month i.e. ₹ 9,000/- per month from his masonry work and ₹ 3,000/- per month by selling milk, but he has not produced any document to that effect nor has produced any receipt regarding the same. The Tribunal took

his income to be ₹ 3,500/- per month equal to that of unskilled labourer and, therefore, would not be entitled to any further enhancement of compensation. In this regard, learned counsel for the Insurance Company relies upon a judgment rendered by Hon'ble the Apex Court in ***Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343*** wherein the principles of assessment of compensation in an injury case have been enumerated. It is argued that all injuries do not result in loss of earning capacity.

6. I have heard learned counsel for the parties and have also perused the award of the Tribunal.

7. The appellant herein met with an accident on 31.08.2008 in which he sustained multiple fractures. He remained admitted in the hospital from 31.08.2008 and was ultimately discharged on 28.09.2008 i.e. about more than one month. The Tribunal while taking into account various bills and medical expenses incurred, has allowed only an amount of ₹ 57,500/-.

8. The question for deciding whether the claimant is entitled to further enhancement of compensation has to be decided in the light of his temporary disability which has been assessed at 40% which disability he can recover after five years from the accident.

9. 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 to 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. In the instant case, the claimant was working as a mason. If the claimant had been a Typist working in a firm, such disability may not have affected his capacity of working, but in a case when a leg of a driver or a gardner or a daily-wager like a mason, a carpenter is amputated, his capacity of doing normal work would be hampered. In the instant case, the claimant-appellant herein is a mason and fracture would not affect his capacity of working after a short duration.

10. In view of the above and as per the dictum that has been stipulated in ***Raj Kumar*** case (supra), the appellant is allowed a enhanced sum of ₹ 70,000/- towards medical expenses. Though, all bills are not readily available but is a well known fact that in times of a medical emergency the injured does not have the presence of mind to retain all bills. In additional to this, he is allowed a sum of ₹ 10,000/- towards attendant charges, ₹ 5,000/- towards transportation

expenses and towards pain and suffering the compensation is enhanced from ₹ 20,000/- to ₹ 30,000/- and further a sum of ₹ 15,000/- is allowed towards loss of income as he suffered multiple fractures in his leg and it might have taken about four months in healing the same.

The compensation, as such, would work out as under :-

(i) Expenditure on treatment	: ₹ 70,000/-
(ii) Loss of income	: ₹ 15,000/-
(iii) Pains and suffering	: ₹ 30,000/-
(iv) Special diet	: ₹ 10,000/-
(v) Transportation	: ₹ 5,000/-
(vi) Attendant Charges	: ₹ 10,000/-
Total	: ₹ 1,40,000/-

11. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 1,01,500/- to ₹ 1,40,000/-.

12. The Insurance Company is directed to release the enhanced compensation in favour of the claimant-appellant with interest @ 7.5% per annum from the date of the appeal till realization.

13. Appeal is allowed in the aforesaid terms.

22.05.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.