

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3561 of 2011

Date of Decision: 25.01.2019

Krishan Lal

.....Appellant

Versus

Sohan Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Karan Garg, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for the respondents.

AVNEESH JHINGAN, J.(oral)

The award dated 12.1.2011 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') has been assailed by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for the injuries sustained in the motor vehicular accident

The driver of bus bearing registration No. HP-18-3602 (for short 'the offending vehicle'), owners i.e. General Manager, Himachal Road Transport Corporation, Nahan Depot, Nahan, Himachal Pradesh and Managing Director, Himachal Road Transport Corporation, Shimla, H.P., have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The facts emanating from the record are that on 23.3.2010, the appellant was riding his motor cycle bearing registration No. HR-05S-9788 and another person was the pillion rider on the motor cycle. On his way the motor cycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, the motor cycle fell down, the bus

appellant sustained grievous injuries. He was taken to Community Health Center, Mullana from where he was referred to General Hospital, Ambala and then to PGIMER, Chandigarh. FIR No. 46 dated 23.3.2010 was registered at Police Station Mullana.

A claim petition was filed claiming that Krishan Lal (claimant) was employed as Fitter with M/s Oleum International, Taraori and was getting monthly salary of ₹ 8000/-. It was proved before the Tribunal by producing disability certificate Ex.P3 that he became permanently disabled to the extent of 75%. The certificate was proved by deposition of Dr. Vinod Kumar, PW3. It has come on record that his left leg was amputated. He was operated thrice and remained hospitalized for one month. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The respondents were held jointly and severally liable to pay compensation. The Tribunal awarded a sum of ₹ 2,20,255/- along with interest at the rate of 6% per annum.

The detail of compensation awarded by Tribunal is as under:

S.No.	Particulars	Amount awarded
1.	Compensation for pain and suffering	₹ 10,000/-
2.	Compensation for better diet	₹ 5000/-
3.	Medical expenses	₹ 81,655/-
4.	Permanent disability (@ Rs.2000/- per percentage of disability is 60%)	₹ 1,20,000/-
5.	Loss of income	₹ 3600/-
	Total	₹ 2,20,255/-

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellant argues that there was 75%

permanent disability and 60% of the said disability was as a result of amputation of left leg. The Tribunal erred in awarding the lump-sum amount of ₹ 1,20,000/- for permanent disability. The grievance raised is that no amount has been awarded for transportation, attendant, follow-up treatment and for prosthesis leg and loss of amenities of life.

Learned counsel for the insurer defends the award and contends that the disability has rightly been assessed as 60% as the occupation and income of the deceased was not proved.

The contention raised by learned counsel for the appellant deserves acceptance.

Hon'ble the Supreme Court in ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another***, 2013(12)SCC 455, held as under:

"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 head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident 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."

A perusal of the above decision shows that in case of personal injury pecuniary damages should be given under various heads. It was further held that non-pecuniary damages should also be compensated.

Further, the Supreme Court in ***Anant son of Sidheshwar Dukre Versus Pratap son of Zhamnnappa Lamzane and another*** 2018 (8) JT 173, held as under:

"5. In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The claimant is entitled to be compensated for his inability to lead a full life, and enjoy those things and amenities which he would have enjoyed, but for the injuries."

In ***Anant son of Sidheshwar Dukre's case (supra)***, the Supreme Court relying upon its earlier decision in ***Yadav Kumar Vs. The Divisional Manager, National Insurance Company Ltd.*** 2010 (10) SCC

341, has held that the purpose of granting compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident, so far as money can. Only restriction is that the compensation should be in wind fall. Relevant para-6 is reproduced as under:

"6.The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.

This court in *Yadav Kumar v.The Divisional Manager, National Insurance Company Ltd., 2010(4) R.C.R. (Civil) 155: (2010) 10 SCC 341* explained "just compensation" in the following words:

"It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field."

In the present case, the appellant has lost his left leg and his life has been crippled. He was operated thrice and hospitalized for one month. The nature of injury and treatment is such that he was bound to have follow up treatment. There would have been requirement for transportation and attendant not only during the period of treatment but thereafter also. Amputation of leg effected the free movement of the

wheeler. He has suffered social stigma having lost his limb. The struggle of life would increase many fold resulting in shortening of expected life. Awarding of just and equitable compensation in the non-fatal accident, the above factors are to be considered.

The Supreme Court in *Raj Kumar Vs. Ajay Kumar (2011)*¹ SCC 343 has held that even for awarding the compensation for permanent disability, multiplier method is to be adopted. It has further been held that percentage of permanent disability qua the limb is not to be applied as percentage qua functional ability.

In the present case, the appellant failed to prove his earning and occupation. There is nothing on record to assess the effect of permanently disability vis-a-vis the functional ability. The accident is of the year 2010. It would not be appropriate to remand the matter back at this late stage.

Having due regard to the law laid down by the Supreme Court and after considering the fact that even if the appellant is considered to be a labourer, amputation of leg would have resulted in atleast 50% permanent disability qua the whole body. The Tribunal considered the monthly income of the appellant as ₹ 3600/- which is less than the minimum wages. In absence of any proof of the earning of the appellant, the safest yardstick is to rely upon the minimum wages prevalent in the State at the time of accident. The minimum wages for an unskilled labourer was ₹ 4200/- per month. The compensation is calculated considering the monthly income of the appellant as ₹ 4200/-.

Considering the fact that the appellant was hospitalized for one month and operated thrice, which resulted in amputation of lower left

agony and pain and suffering. Thus, the amount awarded by the Tribunal for pain and suffering is on lower side. Special diet would have been required for speedy recovery and the amount so awarded needs to be enhanced. The loss of earning for only one month was awarded even after hospitalization also, he would not have been able to attend his occupation atleast for six months. As there were fracture and amputation, there was follow up treatment also. The loss of limb results in loss of amenities of life and shortening of expected life, the appellant is to be compensated under the said heads also. As there was amputation of leg, there would be a requirement for fitting the artificial limb or atleast some support for movement.

For the reasons mentioned above, the compensation is awarded as under:

Sr. No.	Particulars	Amount
1.	Monthly earning	₹ 4200/-
2.	50% disability	₹ 2100/-
3.	Applying multiplier of 17 as appellant was 28 years 28 years at the time of accident	(2100x12x17) ₹4,28,400/-
4.	Loss of income	4200x6=₹25200/-
5.	Medical expenses as granted by the Tribunal	₹ 81,655/-
6.	Follow up treatment	₹ 30,000/-
7.	Pain and suffering	₹ 50,000/-
8.	Special diet	₹ 20,000/-
9.	Transportation	₹ 10,000/-
10.	Attendant	₹ 20,000/-
11.	Loss of amenities of life	₹ 50,000/-
12.	Shortening of life	₹ 50,000/-
13.	Prosthetic limb/other support	₹ 50,000/-
14.	Total	₹ 8,15,255/-

The award dated 12.01.2011 is modified to the extent that amount awarded of ₹ 2,20,255/- by the Tribunal is enhanced to ₹ 8,15,255/-.

The claimant shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

25.01.2019

reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No