

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

210

FAO-3914-2011 (O&M)

Date of decision: 07.05.2019

DEVI LAL

... Appellant

Versus

SHAILENDER @ SURENDER AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Amit Singla, Advocate for the appellant.
Mr. Banni Thomas, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 11.08.2009.

The Tribunal vide award dated 01.02.2011 allowed Rs.1,59,600/-, detailed hereunder:-

Reimbursement of medical expenses	Rs.62,600/-
Pain and sufferings and special diet	Rs.7000/-
Compensation qua disability	Rs.80,000/-
Loss of income	Rs.10,000/-

A sum of Rs.1,50,700/- has been awarded with regard to future medical treatment as per the report submitted by the Tribunal, in pursuance of order dated 29.11.2018 passed by this Court.

Counsel for the appellant would argue that the victim suffered disability to the extent of 40% as per disability certificate Ex.P35, therefore, compensation with regard to disability may be assessed by applying multiplier method. The Tribunal has not awarded any compensation for services of an attendant, transportation and loss of amenities of life.

Counsel representing the insurance company, on the contrary, would argue that the appellant has been adequately compensated in view of the amount awarded earlier as well as future medical treatment.

Dr. Kulbhushan Garg PW6 was examined to prove disability suffered by the victim and disability certificate Ex.P35. He would state that the medical board examined Devi Lal on 16.06.2010/13.10.2010 and found having fracture 2nd, 4th and 5th metacarpal of right hand and fracture supra

condylar and inter condylar femur right fixed with K-wires. In cross examination, he deposed that percentage of disability cannot be reduced by way of therapy and other treatment. It was not a case of fracture of bone. The disability is of particular limb and not of the whole body. He cannot tell percentage of disability pertaining to the whole body.

With regard to avocation, it is plea of the claimant that he was working as a mason. He did not examine any witness to corroborate his plea in this regard much less to prove his income from avocation prior to the accident. In the given scenario, the victim is to be treated as an unskilled labour and accordingly by taking clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the victim is assessed at Rs.3950/- per month. Taking into consideration the avocation of victim coupled with nature and extent of disability suffered by him, functional disability for calculating loss of future income is taken at 20%. Multiplier of 17 is applied as the victim was 26 years old at the time of occurrence. In this manner, loss of income on account of disability is assessed at Rs.1,61,160/- ($3950 \times 12 \times 17 \times 20/100$). The appellant is awarded Rs.20,000/- for loss of amenities of life and Rs.10,000/- for transportation and services of an attendant. The additional amount Rs.1,11,160/- shall be payable with interest @ 7.5% per annum from the date of petition till realization. The expenses with regard to future medical treatment i.e. Rs.1,50,700/- granted by the Tribunal is affirmed. This amount would be in addition to additional amount allowed by this Court.

The appeal is partly allowed in the aforesaid terms.

07.05.2019

ashok

Whether speaking/reasoned:
Whether reportable:

(REKHA MITTAL)
JUDGE

Yes / No
Yes / No