

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

F.A.O No. 5158 of 2011

Date of decision:- 19.08.2019

Firoz Alam

...Appellant

Versus

Raj Kumar & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. P.S. Mamli, Advocate
for the appellant.

Mr. P.S. Sullar, Advocate
for respondent Nos. 1 and 2.

Mr. V. Ramswaroop, Advocate
for respondent No. 3

RITU BAHRI J. (Oral)

The present appeal has been preferred by the injured/claimant-appellant (for short 'the appellant'), seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal') to the tune of Rs.2,43,872/- along with interest @ 7.5 per cent from the date of filing of the petition till realization of the amount, vide impugned award dated 19.03.2011.

FACTS NOT IN DISPUTE

As per claimants, Aash Mohammad (09 years) and appellant-Firoz Alam (06 years) accompanied by their father Jahir Hassan were going to Madrasa and when they reached near Vijay colony on bye pass road around 2.30 P.M then respondent No. 1 came while driving truck No. HR-37-A-5041 in a rash and negligent manner and also at high speed and struck against them after coming on wrong side of the road. Due to the impact,

they received multiple and grievous injuries and they were taken to Gaba Hospital, Yamuna Nagar where Aash Mohammad remained admitted for 20 days and appellant remained admitted for one month. His left leg was amputated and F.I.R No. 692 dated 03.12.2009 under Sections 279/337/338 IPC was registered against respondent No. 1 in P.S City, Yamuna Nagar.

The claimants proved the negligence of the driver by producing Ganga Ram, Ahlmad as P.W.4 who has brought the summoned record of criminal case titled State v. Ram Kumar arising out of the above mentioned F.I.R and has testified the copies of report under Section 173Cr.P.C Ex P-29, site plan Ex P-30. Further the claimant produced Dr.Vandana, Medical Officer, Gabba Hospital, Yamuna Nagar who has testified that appellant was having crushed injury on left foot and thereafter, his fore foot was amputated by Dr. K.B. Gupta, Orthopaedic Surgeon. She has proved the MLR of patient/claimant Ex P-20.

COMPENSATION ASSESSED BY MACT

HEAD	COMPENSATION AMOUNT
<i>Pain and suffering and expenses on treatment (including medicines implants etc.)</i>	<i>Rs.20,000/-</i>
<i>Compensation for disability resulting into loss of income & loss of enjoyment of life</i>	<i>Rs.1,00,000/-</i>
<i>On account of treatment</i>	<i>Rs.23,872/-</i>
<i>On account of 40% disability</i>	<i>Rs.80,000/-</i>
<i>TOTAL COMPENSATION AWARDED:-</i>	<i>Rs.2,43,872/-</i>

ARGUMENTS ADVANCED

The learned counsel for the appellant contends that the Tribunal has erred in awarding the compensation to the appellant to the tune of Rs.2,43,872/- only, as the appellant had suffered multiple injuries including

amputation of forefoot and remained in hospital for one month. He is not able to walk properly and cannot drive and has become disabled to the extent of 40%.

Reference has been further made to a judgment of Hon'ble the Supreme Court in a case of *Master Mallikarjun vs. Divisional Manager, the National Insurance Co. Ltd and another, 2013(4) RCR (Civil) 295* wherein Hon'ble the Supreme Court has laid down a criteria for awarding compensation in disability case suffered by the injured, which reads as under:-

“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.

6. In the facts of the present case, as per disability certificate Ex PW9/A, the disability was assessed as 40%. The appellant remained in hospital for one month

RE-ASSESSED COMPENSATION

In view of the above judgments, the compensation is re-assessed as under:-

HEAD	COMPENSATION AMOUNT
<i>Pain and suffering</i>	<i>Rs.2,00,000/-</i>
<i>40% Disability</i>	<i>Rs.4,00,000/-</i>
<i>Loss of enjoyment of life</i>	<i>Rs.1,00,000/-</i>
<i>Expenses on treatment</i>	<i>Rs.23,872/-</i>
<i>TOTAL COMPENSATION AWARDED:-</i>	<i>Rs.7,23,872/-</i>
<i>ENHANCED AMOUNT OF COMPENSATION</i>	<i>Rs.7,23,872-Rs.2,43,872=Rs.4,80,000/-</i>

The enhanced amount of compensation of Rs.4,80,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellant shall also get interest @ 9 % per annum from the date of filing of the claim petition, in view of judgment of Hon'ble the Apex Court in *Civil Appeal No. 4528-2019 titled as Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019* . The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

August 19, 2019
G Arora

(*RITU BAHRI*)
JUDGE