IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2303 of 2012 (O&M)
Date of Decision: February 13, 2019

Mohd. Ashwak

...... Appellants(s)

Versus

Jasbir @ Bhoop and another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Ekta Thakur, Advocate
for the appellant.

Mr. Subhash Goyal, Advocate
for respondent no.3-insurance company.

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LISA GILL, J. (Oral)

IOIN

Service of respondents no.1 and 2 already stands dispensed with vide order dated 20.02.2013. Main appeal was directed to be listed in April 2018 as per order dated 15.12.2017 in this appeal.

IOIN is accordingly disposed of and with the consent of learned counsel for the parties, main appeal is taken on Board for hearing today.

MAIN CASE

The appellant seeks enhancement of the compensation awarded to him by learned Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal) vide award dated 24.10.2011 on account of injuries suffered by him in the motor vehicle accident which took place on 16.07.2007.

It is undisputed that the appellant was involved in a motor vehicle accident which took place on 16.07.2007, which was caused due to the rash and negligent driving of the offending vehicle i.e. Mahindra Pick-up bearing registration no. CH-03-L-8830 by its driver-respondent no.1 Jasbir @ Bhoop. The appellant remained admitted at PGI, Chandigarh from 17.07.2007 till 19.07.2007. He was again admitted on 05.12.2007 till 15.12.2007. Medical record is available on record as Ex.P1 to Ex.P-3. As per the disability certificate Ex.P-4, the appellant, aged about 32 years at the time of accident, suffered 55% permanent disability. Appellant's left arm above elbow was amputated. Operation of his right ear was conducted on 17.12.2007 and he suffered loss of hearing. The appellant was admittedly involved in the business of sale and purchase of fruit. Appellant's income tax return of the year 2005-2006 is available on record as Ex.P-62 wherein his annual income is reflected to be Rs.99,850/-.

Learned Tribunal on considering the evidence on record assessed the income of the appellant to be Rs.1,00,000/- per annum. Considering his disability to the extent of 50%, loss of future earning was assessed as Rs.50,000/- per annum. Multiplier of 16 was applied and Rs.8,00,000/- awarded on account of future loss of earning. Learned Tribunal awarded a sum of Rs.8,58,634/-, the detail of which is as under:-

1.	Loss of future earning	50,000 x 16= 8,00,000/-
2.	Transportation charges	7,000/-
3.	Pain and suffering, special diet and loss of amenities of life	15,000/-
4.	Medicine and treatment charges	36,634/-
	Total	**8,58,634/-**

Learned counsel for the appellant argues that compensation on account of loss of earning should be enhanced as functional disability of the appellant is more than 50%. Moreover, the multiplier method should have been applied by learned Tribunal. Meagre compensation has been awarded under the other heads. It is thus, prayed that the compensation awarded to the claimant should be enhanced.

Learned counsel for respondent no.3-insurance company, however, prays that the impugned award dated 24.10.2011 does not call for any enhancement of the compensation as the same is reasonable and just in the facts and circumstances of the case. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the file.

It is not in dispute that the appellant suffered amputation of his left arm above the elbow. He also suffered loss of hearing. He was engaged in the business of sale and purchase of fruit. Appellant in his testimony has admitted that he continued to do the work of sale and purchase of fruit even after the accident. Therefore, learned Tribunal has rightly held functional disability of the appellant to be 50%. Income of the appellant has been correctly assessed as Rs.1,00,000/- per annum on the basis of the income tax return Ex.P-62. Moreover, increment on account of future prospects has to be afforded to the appellant.

As per the guidelines of Hon'ble Supreme Court in ***Syed Sadiq etc. Vs. Divisional Manager, United India Insurance Co., 2014 (1) RCR (Civil) 765***, compensation to the appellant is, however, required to be reworked. Functional disability suffered by the appellant in this case is 50%. Therefore, loss of income is assessed as Rs.50,000/- per annum (1,00,000 x 50%).

Increase in income on account of future prospects at the rate of 40% has to be afforded taking the amount to [50,000+20,000(50,000 x 40%)] = Rs. 70,000/- per annum. Age of the appellant was admittedly 32 years at the relevant time, therefore, multiplier of 16 is to be applied. Loss of earnings is, thus, assessed as Rs.11,20,000/- (70,000 x 16).

The appellant is further entitled to a sum of Rs.50,000/- each on account of pain & suffering and loss of amenities. He is also entitled to future medical expenses to the tune of Rs.25,000/-. The amount of Rs.36,634/- awarded by the learned Tribunal on account of medical expenses as well as Rs.7,000/- for transportation charges is upheld. Additionally the appellant is entitled to a sum of Rs.5,000/- for attendant charges and Rs.8,000/- on account of special diet.

The appellant is thus entitled compensation as detailed hereunder:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Loss of future earnings	11,20,000/-
2.	Transportation charges	7,000/-
3.	Pain & suffering	50,000/-
4.	Loss of amenities of life	50,000/-
5.	Medicine and treatment charges	36,634/-
6.	Future medical expenses	25,000/-
7.	Attendant charges	5,000/-
8.	Special diet	8,000/-
	Grand Total	**Rs.13,01,634/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

February 13, 2019 **(LISA GILL)**
Sunil **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No