

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

FAO No. 99 of 2012 (O&M)

Date of decision : November 07, 2019

Arshad Hussain @ Asgar Hussain

.....Appellant

Versus

Aamin Khan and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashish Gupta, Advocate
for the appellant.

Mr. Rajbir Singh, Advocate for
Mr. Abhinav Singla, Advocate
for respondent No. 2.

Mr. Manmohan, Advocate
for respondent No. 4.

LISA GILL, J.

This appeal has been preferred by the appellant – Arshad Hussain @ Asgar Hussain for enhancement of compensation awarded to him vide award dated 31.10.2011 passed by the learned Motor Accident Claims Tribunal, Nuh (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by him due to amputation of his right leg in the motor vehicle accident, which took place on 03.07.2009.

Brief facts necessary for adjudication of the case are that the appellant was involved in a motor vehicle accident on 03.07.2009. The appellant alongwith Sehsud and Musatkim was going to Nuh from Gagoli zone on his dumper bearing registration No. HR-55-F-1471. When they reached near village Bazdaka, a dumper bearing registration No. HR-27-J-0848 came from the front side, driven in a rash and negligent manner by respondent No. 1 and struck against the dumper of the appellant. As a result

thereof, the appellant got unbalanced. When he controlled his dumper, another dumper bearing registration No. HR-55-E-2056 driven in a rash and negligent manner by its driver struck against the dumper of the appellant. As a result thereof, the appellant received serious injuries. He was taken to Civil Hospital, Nuh. After conducting medico legal examination, he was referred to Escort Hospital, Faridabad where he remained admitted till 13.07.2009. As his condition became serious, he was taken to Swai Man Singh Hospital, Jaipur where he remained admitted since 21.07.2009. Thereafter the appellant was taken to Sri Vinayak Hospital, Bhiwani where he was operated upon on 11.08.2009 and remained admitted till 19.08.2009. The claimant suffered amputation of his right leg. Claim petition under Section 166 of Motor Vehicles Act was preferred by the appellant seeking compensation on account of the injuries and disability suffered by him.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to rash and negligent driving of the two offending vehicles i.e. dumpers bearing registration No. HR-27-J-0848 and HR-55-E-2056 by the respective drivers. This finding of the learned Tribunal has attained finality. The learned Tribunal while observing that medical bills to the extent of ₹1,74,849 and ₹2,13,486/- are available on record, awarded a lump-sum amount of ₹5,00,000/-.

Present appeal has been filed seeking enhancement of the compensation awarded.

Learned counsel for the appellant vehemently argues that the appellant was a driver by profession and due to amputation of his right leg he is unable to carry out his vocation, therefore, he suffered functional

disability to the extent of 100%. Learned Tribunal, it is urged, has erred in awarding a lump-sum amount of ₹5,00,000/- as compensation to the appellant. It is, thus, prayed that compensation awarded to the appellant be enhanced accordingly.

Learned counsel for the respondent - insurance company, while refuting the arguments raised, submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed and the impugned award dated 31.10.2011 be upheld.

I have heard learned counsel for the appellant and respondents No. 2 and 4 and have perused the file with their assistance .

There is no dispute that the appellant suffered serious injuries in the motor vehicle accident, which took place on 03.07.2009 due to rash and negligent driving of the two offending vehicle dumpers bearing registration No. HR-27-J-0848 and HR-55-E-2056 by the respective drivers. The appellant was taken to Civil Hospital, Nuh. Medico legal examination was conducted and he was referred to Escort Hospital, Faridabad where he remained admitted till 13.07.2009. As his condition became serious, he was taken to Swai Man Singh Hospital, Jaipur where he remained admitted since 21.07.2009 and thereafter the appellant was taken to Sri Vinayak Hospital, Bhiwani where he was operated upon on 11.08.2009 and remained admitted till 19.08.2009. Appellant suffered amputation of his right leg upto the upper third portion.

PW3 Gagan Deep, Record Keeper, Fortis Escort Hospital, Faridabad has proved admission of the appellant and the expenses incurred.

PW4 Magruddin, Record Keeper, Sri Vinayak Hospital, Bhiwari has proved

medical treatment and expenses incurred at the said hospital. PW5 Dr. S.K. Batta, Ortho Surgeon, General Hospital, Mandikhera has proved the disability certificate (Ex.P50) wherein it is certified that the appellant has suffered 70% disability on account of amputation of the right leg in the upper third portion. PW5 stated that the appellant may be able to drive a specially designed vehicle and not any other as efficiently even with the help of an artificial limb. Medical treatment record has also been proved on record by PW7 Dr. M.S. Ranga, SMO, SHC, Nuh and PW8 Satish Kumar Sharma, Medical Record Keeper, Swai Man Singh Hospital, Jaipur.

Learned counsel for the respondents are unable to deny that the appellant was a professional driver authorized to drive heavy transport vehicles. Ex.P1 is the driving licence of the appellant. Even at the time of the accident, he was driving a dumper. Needless to say the appellant has suffered functional disability which can reasonably be assessed to be 85%. He is rendered unable and unfit to drive a heavy transport vehicle. However, his functional disability is not assessed as 100% as he would, however, be able to earn some amount by engaging in some gainful alternate profession. There is no clear and cogent evidence on record to indicate the exact income earned by the appellant at the time of the accident. At the same time, it is a matter of record that the minimum wage of a driver at the time of accident was ₹4564/- per month. Therefore, it is considered just and expedient to assess the income of the injured claimant to be ₹4600/- per month. Appellant is entitled to 40% increment on account of loss of future prospects in view of his age i.e. 32 years at the time of accident. A multiplier of 16 has to be applied.

As per the guidelines laid down by the Hon'ble Supreme Court

in Sayed Sadiq etc. versus Divisional Manager, United India Insurance Company 2014 (1) R.C.R. (Civil) 765, the appellant is entitled to loss of future income of ₹10,51,008/- [(₹4600x85/100) + (40/100 x 85/100 x ₹4600) x 12 x 16]. The appellant is further entitled to a sum of ₹1,00,000/- each towards pain and suffering and loss of amenities. The appellant is entitled to a sum of ₹20,000/- each on account of special diet, attendant charges and transportation. As the appellant was admittedly 32 years old at the time of the accident, it is apparent submitted that he would be required to change his prosthetic leg during his life time, thus, he is entitled to a sum of ₹1,00,000/- Needless to say, the appellant shall be entitled to the sum of ₹3,88,335/- on account of medical bills, proved on record, as already awarded by the learned Tribunal.

The appellant is, thus, entitled to compensation detailed as under:-

Loss of future income	₹10,51,008/-
Pain and suffering	₹1,00,000/-
Loss of amenities	₹1,00,000/-
Special diet	₹20,000/-
Attendant charges	₹20,000/-
Transportation	₹20,000/-
Medical expenses	₹3,88,335/-
Artificial limb/Prosthetic	₹1,00,000/-
Total	₹17,99,343/-

Amount of compensation already awarded to the appellant shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per annum on the entire awarded amount from the date of filing of the petition till realisation.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

November 07, 2019
rts

(Lisa Gill)
Judge

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