

In the High Court of Punjab and Haryana at Chandigarh

FAO- 1408 of 2014(O&M)
Date of Decision:13.2.2019

Gulab Singh

---Appellant

vs.

Sunil Kumar Malhotra and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Amandeep Kaur, Advocate
for the appellant

Mr. D.S.Sukarchakia, DAG, Punjab

Mr. B.S.Taunque, Advocate
for respondent No.3

Rekha Mittal, J.

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 17.4.2008.

The Motor Accidents Claims Tribunal, Chandigarh (in short “the Tribunal”) awarded Rs. 4,32,000/-, detailed hereunder:-

Loss of amenities of life	Rs. 1,00,000/-
Pain and sufferings	Rs. 50,000/-
Compensation qua permanent disability	Rs. 2,67,000/-
Attendant charges	Rs. 5000/-
Special diet	Rs. 5000/-
Transportation expenses	Rs. 5000/-

Gulab Singh, injured was working as Assistant Sub Inspector (ASI) with Punjab Police when he met with unfortunate occurrence on the fateful day rendering him disable to the extent of 89%. After the accident, he was promoted as Sub Inspector and continued in service till 22.8.2012 when he was prematurely retired from service.

Counsel for the appellant would argue that claimant is entitle to loss of total salary for a period of 3 years and 9 days till his retirement from service on superannuation on 31.8.2015. It is further argued that had the claimant not met with accident and sustained serious injuries on his head, chest etc. rendering him physically and mentally incapacitated to continue in job, he would have drawn all the service benefits till his retirement on superannuation. It is further argued that even after retirement from service as Sub Inspector, he would have taken some assignment and accordingly, he is entitle to loss of income by applying appropriate multiplier. It is further argued that compensation allowed by the Tribunal under several heads is grossly inadequate and merits enhancement.

Counsel representing the insurance company, on the contrary, has supported assessment made by the Tribunal with the submission that though the injured sustained injuries on 17.4.2008 but he continued in service for a period of over four years after the accident.

In the appeal, Ravinder Pal Sandhu, Superintendent of Police (Headquarters), Fatehgarh Sahib filed affidavit dated 18.1.2018 and a relevant extract therefrom, reads as follows:-

“ 1. It is submitted here that Sh. Gulab Singh S/O Dharam Singh R/O # 252-C, Sector 51-A, Chandigarh was voluntary

retired as S.I. No. 888/PR on 22.8.2012 from district Fatehgarh Sahib.

2. That Sh. Gulab Singh was drawing last Basic Pay Rs. 23,810/- from District Fatehgarh Sahib and his Basic Pension Rs. 11,905/- has been sanctioned by the office of the Accountant General, (A&E), Punjab & U.T., Chandigarh's letter No. Pen-06/2181217009/ 2012-13/PE/12/10/80021486 dated 20.11.2012, is enclosed as Annexure R-1.”

Later, another affidavit by the aforesaid officer was filed on 27.3.2018. Paras 3 to 5 of the affidavit, reads thus:-

“3. He was promoted as Sub-Inspector w.e.f. 01-04-2010 vide Deputy Inspector General of Police, Patiala Range, Patiala's office order No. 13738-53/E-I, dated 21.5.2010 copy issued by Sr. Superintendent of Police, Sangrur vide his office endst. No. 5366-84/B-II, dated 22.5.2010 and there-after he was transferred from District Sangrur to District Fatehgarh Sahib on promotion as Sub-Inspector, is enclosed as Annexure A-II.

4. It is submitted that Sh. Gulab Singh son of Dharam Singh R/o # 252-C, Sector-51-A, Chandigarh took Voluntary retirement as Sub-Inspector No. 888/PR on 22.8.2012 from District Fatehgarh Sahib vide this office order No. 34462-69/CRC, dated 11-08-2012, is enclosed as Annexure A-III/T.

5. At the time of retirement appellant's 03 years 09 days service was remaining for his superannuation i.e. 58 years.”

Along with affidavit dated 27.3.2018, order dated 11.8.2012 (Annexure A-III/T) is appended whereby the injured was voluntarily retired from service. A relevant extract therefrom, reads as follows:-

“As per the official/Govt. Record the date of birth of SI Gulab

Singh No. 888/PR is 15-08-1957. This employee has given a written application/request to this office on dated 22-05-2012 that he is not physically well, so he should be given voluntary retirement from the department. Considering the request of this employee and taking his request as a notice of three months, it is ordered to give him voluntary retirement on 22-08-2012 as per the directions of Punjab Govt. and as per the rule 5.32 of part-II of part-I of Punjab Civil Services rules.

Order should be registered.

Sd/-
Sr. Superintendent of Police.
Distt. Fatehgarh Sahib”

On due consideration of the aforesaid materials, there remains no dispute that though the injured continued working with Police Department, Punjab till 22.8.2012 and even got promotion as Sub Inspector in 2010 but eventually due to his physical and mental status, he was not able to cope up with requirements of his service and ultimately sought voluntary retirement that was allowed with effect from 22.8.2012 when he had another three years and nine days service left till the age of superannuation i.e. 31.8.2015 meaning thereby that the injured suffered loss of emoluments for a period of three years and nine days on account of sustaining injuries that rendered him physically and mentally disable to the extent of 89%, proved by Dr. Rajesh Chhabra, Department of Neuro Surgery, PGI Chandigarh PW5.

Dr. Kajal Dass, Senior Resident, Department of Neurosurgery, PGI, Chandigarh PW1 brought the summoned record and deposed that

Gulab Singh was admitted in PGI on 17.4.2008 with the history of road side accident while driving scooter and hit by motor cycle. He suffered injuries, 3 cm laceration approximately 6 cm behind and above right ear, 2 x 3 cms abrasion over right eye lids, fracture right clavicle and multiple right lower ribs fracture and on CT scan head there were left temporal small contusion, traumatic subarchnoid haemorrhage and diffuse brain oedema. He was admitted in an unconscious state and managed in ICU conservatively and put on ventilator. Patient remained in ICU from 18.4.2008 to 14.5.2008 and discharged on 18.5.2008. At the time of discharge, the injured was unconscious but stable. He developed chest infection during his stay in the hospital. Patient with these type of injuries may remain in unconscious or vegetative state for life long.

Dr. Rajesh Chhabra, Department of Neuro Surgery, PGI, PW5 was examined to prove extent and nature of disability and disability certificate Ex. P13. He has testified that as per record, the patient was suffering from severe gait ataxia (difficulty in walking) and low I.Q. Overall disability is 89% in relation to whole body, permanent in nature and not likely to improve. Patient was on wheel chair and will require support for daily activities. He will not be able to perform duties involving skill and running around. He will need support throughout his life. In view of nature of injuries sustained rendering the claimant disable to the extent of 89%, claimant is awarded a sum of **Rs. 75,000/-** for pain and suffering (additional amount of Rs. 25,000/-).

As has been noticed in the earlier part of the judgment, the appellant could not carry on with his service till his retirement on

superannuation and as a result suffered loss of emoluments for a period of three years and nine days on account of injuries/disability and he is entitled to be compensated for the said loss. The gross emoluments at the relevant time were Rs. 39,287/-, recorded in document Annexure R-2 appended with affidavit of Ravinder Pal Singh Sandhu dated 18.1.2018. The appellant has been allowed monthly pension of Rs. 11,905/- vide document Annexure R1 appended to the same affidavit dated 18.1.2018. Had the appellant not retired prematurely, he would not have been entitled to pension for a period of three years and nine days till his retirement on superannuation. Taking into consideration the aforesaid, monthly loss of income would be Rs. 27,382/- (rounded off to Rs. 27,380/-). Claimant shall be entitled to addition in income for future prospects @ 15% as he was 55 years of age at the time of voluntary retirement. In this view of the matter, appellant is awarded loss of future income for a period of three years to the tune of **Rs. 11,33,532/-** [$\{27,380 + 4107 (15\%)\} \times 12 \times 3$].

After retirement from service, the injured would have taken some assignment in private sector. Taking a clue from minimum wage available in the year 2008 coupled with that the victim retired as Sub Inspector from Punjab Police, loss of future income post retirement is assessed at Rs. 10,000/- per month. The injured was more than 55 years of age when he voluntarily retired from service in August 2012. A multiplier of 9 can be applied for computing loss of future income on account of disability. He has already been granted compensation in respect of loss of emoluments for a period of three years. Accordingly, he would be entitled to loss of future income post retirement on superannuation by allowing multiplier of remaining six years and accordingly, loss of future income is

assessed at **Rs. 7, 20,000/-** [10,000 x 12 x 6]. Total compensation with regard to loss of future income on account of disability comes to **Rs. 18,53,532/-** (11,33,532 = 7,20,000).

As the claimant has been awarded loss of future income by applying multiplier method considering loss of income to the extent of 100%, compensation awarded by the Tribunal with regard to loss of amenities of life is reduced to **Rs. 25,000/-**. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Raj Kumar Vs. Ajay Kumar and others, 2011 (2) RCR(Civil) 101** wherein it has been held that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under head of loss of amenities or loss of expectation of life, as otherwise there may be duplication in the award of compensation.

The Tribunal has awarded a sum of Rs. 15,000/- towards attendant charges, special diet and transportation. Claimant shall be entitled to **Rs. 20,000/-** for special diet and transportation charges (additional sum of Rs. 10,000/-). The claimant has been allowed Rs. 5000/- towards attendant charges. The injured despite suffering permanent disability to the extent of 89%, continued working in the Police Department for a period of four years, may be on a lighter assignment, but with difficulty to perform his duties. However, it can safely be inferred that he does not require the services of an attendant like that of a person who is totally bed-ridden and

has a vegetative life. On the basis of hypothesis, guess work but taking a reasonable and sympathetic view, claimant is awarded **Rs. 50,000/-** for services of an attendant (Additional amount of Rs. 45000/-).

In view of the above, total compensation is **Rs. 20,23,532** (75,000 +25,000 +18,53,532 + 20,000 + 50,000) and the additional amount is **Rs. 15,91,532/-**(20,23,532-4,32,000) payable with interest @ 7.5% from the date of petition till realization. Out of total amount, a sum of Rs. 1,00,000/- shall be released forthwith and the remaining amount shall be invested in fixed deposit. Interest accruing on FDR shall be paid to the claimant who otherwise would be entitle to pensionary benefits from the department. Claimant shall be entitle to withdraw an amount of Rs. 50,000/- on expiry of each year for meeting his requirements.

(Rekha Mittal)
Judge

13.2.2019
paramjit

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