

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2204 of 2014  
Date of decision: 28.08.2019

**Bachu Singh**

**...Appellant**

**V/s.**

**Bahazuddin and others**

**...Respondents**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI.**

Present: Mr. S.K. Yadav, Advocate for the appellant.

Mr. Ravinder Arora, Advocate for the respondents.

\*\*\*

**RITU BAHRI, J. (Oral).**

The claimant has come up in appeal against the award of the Tribunal dated 28.10.2013 whereby he has been awarded compensation of Rs.1,60,000/- on account of injuries suffered in a road accident which took place on 18.08.2011.

**FACTS NOT IN DISPUTE**

Brief facts of the case are that on 18.08.2011 at about 5:00 p.m. the petitioner alongwith his nephew namely Vicky was coming back to his house No. D-65, Trikha colony, Ballabgarh, Faridabad from Delhi on motorcycle no. HR-29X/9203 being driven by Vicky and the petitioner was pillion rider on the same. When they reached at bye pass near Sector 9 Faridabad then the offending tractor with trolley bearing no. HR-51 AM/8180 overloaded with bricks in the trolley being driven by respondent no. 1 rashly, negligently without caring traffic on the road and without observing traffic rules came from front side and hit the motorcycle of the

petitioner from the front side after encroaching from the wrong side and consequently the petitioner and Vicky fell down on the road alongwith motorcycle and sustained injuries on his head and right hand. The nephew of the petitioner had also received minor injuries. The petitioner was taken to B.K. Hospital, Faridabad where the MLR of the petitioner was prepared and then referred for Safdarjung Hospital, New Delhi. The petitioner instead of Safdarjung Hospital, Delhi was got admitted in the Nursing home of Subhash C Manchanda Ortho Physio Care Centre 3C/110 NIT Faridabad and remained admitted from 26.08.2011 to 29.08.2011. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

#### **COMPENSATION ASSESSED BY THE MACT**

The parties are not in dispute with respect to finding on issue No. 1 that the accident took place on account of negligent driving by the driver of the offending vehicle. This finding has been rightly given in favour of the claimant keeping in view that FIR No. 414 dated 24.08.2011 under Sections 279 and 337 IPC (Ex.P51) was registered at Police Station Sector 7, Faridabad and the deposition of Vicky who tendered his affidavit Ex.PW7/A corroborating the version of claimant Bachu Singh.

The 40% disability has been duly proved by examining Dr. Ravi Shanker, Orthopaedic Surgeon, B.K. Hospital who tendered his affidavit Ex. PW6/A and deposed that on 07.11.2012, he examined Bachu Singh and disability certificate Ex.P6/1 was issued by Medical Board of three doctors as per which disability awarded to said person is 40% on account of post traumatic stiffness right elbow with restriction of supination and pronation right forearm with partial limitation right wrist movements with weak grip and pinch strength right and with flexion contracture right ring

finger. Keeping in view the same, the Tribunal had assessed following compensation:-

| Sr. No. | HEADS                             | CALCULATIONS                                     |
|---------|-----------------------------------|--------------------------------------------------|
| (i)     | Pain and suffering                | Rs.15,000/-                                      |
| (ii)    | Medical expenses                  | Rs.39,461/-                                      |
| (iii)   | Special diet and transportation   | Rs.10,000/-                                      |
| (iv)    | Attendant                         | Rs.5,000/-                                       |
| (v)     | Loss of income                    | Rs.10,000/-                                      |
| (vi)    | Disability (2000X40)              | Rs.80,000/-                                      |
|         | <b>TOTAL COMPENSATION AWARDED</b> | <b>Rs. 1,59,461/- rounded upto Rs.1,60,000/-</b> |

Hence, the claimant was found entitled to total compensation of Rs.1,60,000/- along with interest @ 7 ½% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

**REASSESSED COMPENSATION**

I have heard learned counsel for the appellants and perused the case file. The fact of accident is admitted and proved. It stands established that the claimant has received injuries as a result of the accident. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

The claimant was 55 years of age and was running the business of playing Dhol in marriages and was earning Rs.12,000/-p.m. As per disability certificate (Ex.P6/1), 40% disability is on account of post traumatic stiffness right elbow with restriction of supination and pronation right forearm with partial limitation right wrist movements with weak grip and pinch strength right hand with flexion contracture right ring finger. Thus 40% disability is to be taken qua the whole body as he is unable to pursue his profession of playing Dhol. As per the judgment of *Raj Kumar*

V/s. *Ajay Kumar and others* 2011(2) RCR (Civil) 101, the multiplier method has to be applied for the 40% permanent disability.

Hence, to meet the ends of justice, the compensation is hereby reassessed taking the income of the deceased as Rs.4,500/- p.m. as per the minimum wages prevalent in Haryana in the year 2011 and keeping in view the judgment passed by Hon'ble the Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

| Sr. No. | HEADS                                                          | CALCULATIONS                                     |
|---------|----------------------------------------------------------------|--------------------------------------------------|
| (i)     | Annual Income                                                  | Rs.4,500 X12=Rs.54,000/-                         |
| (ii)    | 10% of (i) is to be added as future prospects                  | 54000+5400=Rs.59,400/-                           |
| (iii)   | Compensation for 40% disability after multiplier of 11 applied | 59,400X11=Rs.6,53,400/-                          |
| (iv)    | Medical expenses                                               | Rs.39,461/-                                      |
| (v)     | Pain and suffering                                             | Rs.15,000/-                                      |
| (vi)    | Special diet and transportation                                | Rs.15,000/-                                      |
| (vii)   | Attendant                                                      | Rs.5,000                                         |
| (viii)  | Loss of income                                                 | Rs.10,000/-                                      |
|         | <b>TOTAL COMPENSATION AWARDED</b>                              | <b>Rs. 7,37,861/-</b>                            |
|         | <b>ENHANCED AMOUNT OF COMPENSATION</b>                         | <b>Rs.7,37,861-1,60,000/-=<br/>Rs.5,77,861/-</b> |

The enhanced amount of compensation of **Rs.5,77,861/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of *Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others*, Civil Appeal No. 4528 of 2019. Remaining conditions of disbursal of amount shall remain unaltered.

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

(RITU BAHRI)  
JUDGE

28.08.2019  
Divyanshi

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