

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

FAO No. 4053 of 2013 (O&M)

Date of decision : September 17, 2019

Mahender

.....Appellant

Versus

Suresh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikas Sharma, Advocate
for the appellant.

None for respondents No. 1 and 2.

Mr. M.K. Garg, Advocate
for respondent No. 4.

LISA GILL, J.

This appeal has been preferred by the appellant – Mahender for enhancement of compensation awarded to him vide award dated 07.09.2011 passed by the learned Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by him in the motor vehicle accident, which took place on 15.09.2008.

Brief facts necessary for adjudication of the case are that the appellant was involved in a motor vehicle accident on 15.09.2008. The appellant alongwith Diwan Sher was returning from his work place on his Hero Honda motorcycle bearing registration No. HR-31C-2197 after attending to a electric job work. When they reached near Jhota Farm on Safidon road, Jind, offending vehicle dumper/tipper Truck bearing registration No. HR-39A0045 struck against the motorcycle from left side.

As a result thereof, the motor cycle and left foot of the appellant was crushed under the wheels of dumper/tipper truck. The appellant was admitted in General Hospital, Jind. 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. The appellant claimed himself to be working as electrician, RO and Inverter mechanic under the name and style of M/s Kamal Electronic, earning a sum of ₹14,000/- per month.

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 offending vehicle by its driver – respondent No. 1. This finding of the learned Tribunal has attained finality. The learned Tribunal afforded compensation to the appellant which is detailed as hereunder:-

1.	Permanent disablement	₹20,000/-
2.	Pain and suffering	₹10,000/-
3.	Expenses on medicines	₹41897/-
4.	Transportation charges	₹5,000/-
5.	Special diet	₹10,000/-
6.	Loss of income	₹10,000/-
	Total	₹96,897/-

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

Learned counsel for the appellant argues that increment on account of loss of future prospects and compensation on account of loss of income for the period the appellant remained hospitalised and thereafter was unable to work due to his injuries has not been afforded. Meagre compensation has been afforded on account of pain and suffering,

transportation, special diet etc. 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 07.09.2011 be upheld.

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

There is no dispute that the appellant was about 39 years old at the time of the accident, which took place on 15.09.2008 due to rash and negligent driving of the offending vehicle by its driver - respondent No. 1. As per the evidence on record, the appellant suffered grievous injuries in the said accident. It is a matter of record that immediately after the accident the appellant was taken to General Hospital, Jind where treatment was afforded. Thereafter, he was shifted to Goel Orthopedic Centre, Jind and remained admitted there from 15.09.2008 to 01.10.2008 and again on 08.12.2008 to 09.12.2008. He suffered compound fracture of bones of left leg and foot. Operation was conducted, rod and nails were implanted in the left leg and foot of the appellant.

PW2 Dr. Satish Kumar, Medical Officer, General Hospital, Jind tendered affidavit (Ex. PW2/A) wherein it is mentioned that appellant is suffering from 10% disability due to 'old compound fracture both bones left leg with chronic ulcer on left leg with deformity with shortening of left lower limb one inch with pain'. Disability certificate of the appellant (Ex.P3) is on record. It is apparent that the appellant's ability to earn his

livelihood would necessarily have suffered to some extent due to the injuries suffered by him. Functional disability of the appellant, in this case, is thus, assessed to be 10% especially keeping in view the vocation of the appellant. Though it is claimed that the appellant was earning a sum of ₹14,000/- per month, there is no documentary evidence on record to prove same. In the facts and circumstances, where no evidence has been led to prove the income of the injured, it is considered just and expedient to assess the income of the injured claimant to be ₹4,500/- with reference to the minimum wage of an skilled labourer in the State of Haryana at the time of the accident which was ₹4,314/- per month. Appellant is entitled to 40% increment on account of loss of future prospects in view of his age i.e. 39 years at the time of accident. A multiplier of 15 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 ₹1,13,400/- $[(₹4500 \times 10/100) + (40/100 \times 10/100 \times ₹4500) \times 12 \times 15]$. The appellant is further entitled to a sum of ₹25,000/- for pain and suffering instead of ₹10,000/- awarded by the learned Tribunal. The appellant is also entitled to a sum of ₹25,000 for loss of amenities. Sum of ₹5,000/- on account of transportation and sum of ₹10,000/- on account of special diet is maintained. Needless to say, the appellant shall be entitled to the sum of ₹41,897/- on account of expenses incurred on medicines as already awarded by the learned Tribunal. Keeping in view the nature of injuries suffered by the appellant, it is apparent that he would not have been able to carry on any kind of work for at least six months. He is entitled to a loss of income for the said period.

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

Loss of future income	₹1,13,400/-
Loss of income for six months (4500x6)	₹27,000/-
Pain and suffering	₹25,000/-
Loss of amenities	₹25,000/-
Special diet	₹10,000/-
Transportation	₹5,000/-
Medical expenses	₹41,897/-
Total	₹2,47,297/-

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 (instead of 7%) 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.

September 17, 2019
rts

(Lisa Gill)
Judge

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