

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

FAO No. 1067 of 2016(O&M)

Date of decision: 5.7.2019

Ramesh ChandAppellant

VERSUS

Kirpal Singh and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sagar Aggarwal, Advocate for the appellant.

Mr. M.B. Jain, Advocate for the insurance company

REKHA MITTAL, J. (Oral)

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 12.12.2013.

The Motor Accidents Claims Tribunal, Kurukshetra (in short 'the Tribunal') awarded Rs.5,40,600/-, detailed hereunder:-

Medical expenses	Rs.3,80,600/-
Pain and suffering	Rs.10,000/-
Transportation	Rs.10,000/-
Attendant charges, special diet etc.	Rs.10,000/-
Loss of income	Rs.90,000/-
On account of disability	Rs.40,000/-

Counsel for the appellant would argue that the injured was working as Mason prior to the occurrence and on account of the injuries,

he has been rendered disable to the tune of 17.5% due to malunion radius ulna with contracture with 30 degree loss of supination pronation, proved by Dr. Anoop Mehta PW-3. It is argued that in view of avocation of the victim, he may be awarded future loss of earning by assessing functional disability and applying multiplier method.

Another submission made by counsel is that the victim remained under treatment for a period of one year and Tribunal has allowed loss of income to the tune of Rs.90,000/- at the rate of Rs.7500/- per month. It is argued that compensation allowed under heads like pain and suffering, transportation, attendant charges, special diet etc. is grossly inadequate. The claimant may be allowed compensation for loss of amenities of life as well.

Counsel representing the insurance company, on the contrary, would argue that there is no material on record to corroborate plea of the injured that he was working as Mason, therefore, income of the claimant assessed by the Tribunal needs reduction. He would further argue that as the Tribunal has allowed loss of income by assessing monthly income at Rs.7500/- per month, there is no justification for allowing additional compensation to the victim.

The plea of the claimant is that he was working as Mason thereby earning Rs.15,000/- per month. Except bald statement of the claimant, there is no evidence that he was working as Mason prior to the occurrence. His testimony is conspicuously silent in respect of the Masonry work done at a particular place and with a particular person. That being so, the claimant has failed to establish that he was working as Mason prior to the unfortunate occurrence. Considering him as an unskilled worker aged about 33 years, monthly income is assessed at Rs.5400/- per

month. Claimant shall be entitle to loss of income during period of treatment and recovery for a period of 12 months and the same is calculated at Rs.64,800/-. Taking into consideration that the claimant has been allowed loss of total income for the period of treatment and recovery during 12 months, compensation allowed by the Tribunal for pain and suffering, transportation, attendant charges, special diet would be Rs.60,000/- (additional amount is Rs.30,000/-).

The injured has suffered physical disability to the extent of 17.5% on account of crush injury to right forearm. There is no medical opinion as to how this disability should be considered for the purpose of functional disability. As this Court has assessed income of the victim by treating him as unskilled labour, functional disability is assessed to the tune of 10%. By applying multiplier of 16 and income at the rate of Rs.5400/- per month, loss of future income qua disability is calculated at Rs. 1,03,680/- (Rs.5400/- x 12 x 16 x 10%). Claimant shall be entitle to loss of amenities of life to the tune of Rs.10,000/-. Medical expenses allowed by the Tribunal are affirmed.

In view of the above, total compensation comes to Rs.6,19,080/- and the additional amount is Rs.78,480/- (Rs.6,19,080/- - Rs.5,40,600/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

JULY 5, 2019

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no