

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

FAO No. 3982 of 2014 (O&M)

Date of decision : July 02, 2019

Mubarik

.....Appellant

Versus

Saheed and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Salim Ahmed, Advocate
for the appellant.

Mr. Rajbir Singh, Advocate and
Mr. Sanjeev Goyal, Advocate
for respondent No. 3.

LISA GILL, J.

This appeal has been preferred by the appellant – Mubarik for enhancement of compensation awarded to him vide award dated 23.09.2013 passed by the learned Motor Accident Claims Tribunal, Nuh (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by him in the motor vehicle accident, which took place on 05.03.2012.

Brief facts necessary for adjudication of the case are that the appellant was involved in a motor vehicle accident on 05.03.2012. The appellant alongwith other passengers was going to his village Adbar from Nuh in a three wheeler driven by respondent No. 1 in a rash and negligent manner. The appellant and other passengers requested him to drive the vehicle at a slow speed but he did not pay any heed. When the three wheeler reached near plant of village Adbar Nuh-Adbar road, its driver lost control over the vehicle and hit against a water tanker parked towards the roadside. As a result thereof, the appellant and other passengers suffered

serious multiple injuries on their person. They all were shifted to PHC, Nuh from where the appellant was referred to Safdarjung Hospital, New Delhi. 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 a skilled tailor, earning a sum of ₹15,000/- per month. He claimed to have spent ₹2,50,000/- on his treatment. He suffered grievous multiple injuries as well as fracture and permanent disability to the extent of 15%

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 detailed as hereunder:-

i.	Medical expenses	₹28,100/-
ii.	Pain and suffering	₹5,000/-
iii.	Loss of basic amenities	₹5,000/-
	Total	₹38,100/-

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

Learned counsel for the appellant submits that compensation awarded to the appellant is woefully insufficient in the facts and circumstances of the case wherein the claimant has admittedly suffered permanent disability directly affecting his vocation. Due to restricted movement of the left elbow, he cannot carry out his profession in a proper manner. Nothing has been awarded in this respect. Learned Tribunal has awarded meagre compensation under the other heads and nothing has been awarded towards transportation, attendant charges and special diet. It is,

thus, prayed that compensation awarded to the appellant be enhanced accordingly.

Learned counsel for the respondent - insurance company refutes the above said arguments and submits that there is no ground whatsoever for any enhancement of compensation already awarded by the learned Tribunal. It is submitted that there is no evidence on record to prove that the appellant was working as a tailor at the time of the accident and that his ability to carry out his work has been affected by the injuries suffered. It is, thus, prayed that this petition be dismissed and the impugned award dated 23.09.2013 be upheld.

I have heard learned counsel for the appellant and respondent No. 3 and have perused the file with their assistance .

Perusal of the record reveals that the appellant suffered the injuries as mentioned in the MLR (Ex.PW3/B). He was admitted to Safdarjung Hospital, New Delhi on 06.03.2012 and discharged on 10.03.2012. Discharge summary is on record. As per the discharge summary, the claimant underwent surgery. He was advised special high protein diet as well. PW4 Dr. Vikram Singh, Medical Officer, General Hospital Mandikhera, District Mewat proved the disability certificate (Ex.PW4/A) issued by the Medical Board. The claimant is assessed with disability of 15% on account of 'restricted movement of left elbow with scaring left thigh, scaring right thigh with compliant of pain of left elbow'. Disability pertains to the limb. In the cross examination, PW4 deposed that disability can at best be reduced to 0.5 to 1% with physiotherapy. It is evident that the disability suffered by the appellant is permanent in nature. Learned Tribunal has clearly erred in not discussing the aspect of loss of income suffered by the appellant on account of injuries so suffered by him.

Admittedly, there is no specific evidence on record to indicate the appellant to be working as a tailor, earning a sum of ₹15,000/- per month. However, even if the appellant is taken to be a casual labourer, minimum wage in the State of Haryana at the time of the accident was ₹4,847/- per month.

Keeping in view the facts and circumstances of the case, functional disability of the appellant can reasonably be assessed as 15%. I do not find any merit in the argument raised by learned counsel for the insurance company that disability of 15% is qua the limb only, therefore, functional disability should be assessed at a much lower rate. The nature of injury would definitely lead to reduction in the earning capacity of the appellant whether he is working as a casual labourer or a tailor. Disability of the appellant is, thus, assessed as 15%. It has been held by the Hon'ble Supreme Court in *Sayed Sadiq etc. versus Divisional Manager, United India Insurance Company 2014 (1) R.C.R. (Civil) 765*, that the Court should be sensitive about the functional disability suffered by the claimant and award compensation accordingly. It is considered just and expedient to assess the income of the injured claimant to be ₹4,847/- per month, as minimum wage of a casual labour in the State of Haryana at the time of the accident was ₹4,847/- per month. Appellant is entitled to 40% increment on account of loss of future prospects in view of his age at the time of accident. A multiplier of 18 has to be applied.

As per the guidelines laid down by the Hon'ble Supreme Court in *Sayed Sadiq's* case (supra), the appellant would be entitled to loss of future income of ₹2,19,996 $[(₹4847 \times 15/100) + (15/100 \times 40/100 \times ₹4847) \times 12 \times 18]$. ₹28,100/- awarded by the learned Tribunal on account of medical expenses is maintained. Sum of ₹20,000/- each (instead of ₹5000/-)

towards pain and suffering and loss of amenities is awarded. The appellant is also entitled to a sum of ₹7,000/- each towards attendant charges, special diet and transportation.

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

Loss of future income	₹2,19,996
Medical expenses	₹28,100/-
Pain and suffering	₹20,000/-
Loss of amenities	₹20,000/-
Attendant charges	₹7,000/-
Special diet	₹7,000/-
Transportation	₹7,000/-
Total	₹3,09,096/-

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 amount of compensation.

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

July 02, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :
Whether reportable

:
:

Yes/No
Yes/No