

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

204

FAO-4923-2013 (O&M)
Date of decision: 17.09.2019

ISHWAR CHAND

... Appellant

Versus

SANDEEP & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Namit Sharma, Advocate for the appellant.
Mr. Punit 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 24.11.2010.

The Tribunal awarded Rs.1,82,000/-, detailed hereunder:-

Reimbursement of medical expenses	Rs.1,31,000/-
Loss of future income	Rs.32,000/-
Special diet, pain and sufferings, loss of amenities of life, transportation	Rs.19,000/-

Counsel for the appellant would argue that the injured suffered disability to the tune of 32%, proved by Dr. Vinod Kumar PW2. He would further submit that in view of nature and extent of disability suffered by the victim when examined in the light of his avocation, claimant is entitle to loss of future income by applying multiplier method. According to him, consolidated sum of Rs.19,000/- allowed by the Tribunal under various heads referred to in para 26 of the award needs enhancement.

Counsel representing the insurance company, on the other hand, would argue that disability suffered by the victim is qua a particular limb and not the whole body. It is further argued that injured has been adequately compensated for the loss.

The Tribunal, in para 24 of the award, has noticed that claimant produced medical bills Exs.P1 to P3, P7 to P48 valuing Rs.1,30,868/- and claimant has been reimbursed to the tune of Rs.1,31,000/- and the same is affirmed.

Dr. Vinod Kumar, Medical Officer, General Hospital, Karnal

PW2 was one of the members of medical board that assessed disability suffered by the victim. He has deposed that it was an operated case of right femur lower end and supra condylar fracture with operated case of right radius with complete restriction of right knee movement with partial restrictions of supination and pronation movements of the right forearm with deformity of the right hand. The disability was assessed 32%. He proved disability certificate Ex.PW2/A. In cross examination, he had stated that disability remains 16% i.e. 50% of 32% if converted to whole body. Meaning thereby that functional disability has been assessed to the tune of 16%. He has denied the suggestion that disability can be reduced with passage of time, medication and physiotherapy. In view of medical opinion given by Dr. Vinod Kumar, functional disability suffered by the victim is 16%.

Ishwar Chand appeared in the witness box and tendered into evidence his affidavit Ex.PW1/A. In para 3 of the affidavit, he has deposed that he had taken 11 acres of land on theka and his crop was damaged because of his accident. However, he did not produce any documentary evidence with regard to possession of any land much less 11 acres of land. The claimant failed to adduce satisfactory much less cogent and convincing evidence with regard to his avocation and income prior to the accident. In the given circumstances, claimant shall be treated as a casual labour. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the injured is assessed at Rs.4350/- per month. The claimant was stated to be 40 years of age at the time of accident. In the disability certificate, his age is mentioned as 40 years old. Accordingly, multiplier of 15 is admissible. In this manner, loss of future income on account of disability is assessed at Rs.1,25,280/- (4350 x 12 x 15 x 16%).

The claimant remained hospitalised for a period of 9 days. He sustained injuries on right leg and right forearm. Dr. Balbir Singh Virk from Virk Hospital, Karnal was examined to prove nature of injuries sustained and period of treatment during hospitalisation. Taking into consideration materials on record, claimant is awarded Rs.20,000/- for pain and sufferings, special diet, transportation and services of an attendant. He is

awarded Rs.25,000/- for loss of amenities of life. In this manner, total compensation is Rs.3,01,280/- and additional amount is Rs.1,19,280/- (3,01,280 – 1,82,000), payable with interest @ 7.5% per annum from the date of petition till realisation. The additional amount shall be invested in a fixed deposit for a period of two years.

The appeal is partly allowed in the aforesaid terms.

17.09.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No