

In the High Court of Punjab and Haryana at Chandigarh

FAO- 4866 of 2014 (O&M)
Date of Decision: 12.7.2019

Uday Ram

---Appellant

versus

Anil Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Prashant S.Chauhan, Advocate
for the appellant

Mr. Pardeep Kumar, Advocate
for the insurance company

Rekha Mittal, J.

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 7.4.2011.

The Motor Accidents Claims Tribunal, Rewari (in short “the Tribunal”) awarded Rs.4,62,160/-, detailed hereunder:-

Reimbursement of medical expenses	Rs. 1,62,160/-
For injuries, pain and suffering, loss of enjoyment of normal marital life, inconvenience, hardship, discomfort, disappointment, frustration, mental stress in life and loss of income	Rs. 3,00,000/-

Counsel for the appellant would argue that the Tribunal has awarded lump-sum amount of Rs. 3 lakhs under the aforesaid various heads in place of calculating just and reasonable compensation head-wise

particularly in the circumstances that the injured has suffered disability to the extent of 70% and he would no longer be able to work as a mason in the face of nature and extent of disability suffered by him. It is further argued that injured appeared before this Court in compliance with order dated 28.9.2018 and this court has recorded its observation in order dated 27.3.2019, sufficient to establish that loss of future income may be assessed by treating disability to the extent of 100%.

Counsel representing the insurance company, on the contrary, would argue that the claimant is adequately compensated even though the Tribunal has not assessed compensation head-wise.

I have heard counsel for the parties, perused the paper book and records.

The injured remained hospitalized from 8.4.2011 to 4.6.2011 and again from 20.11.2011 to 2.12.2011 and total period of hospitalization is approximately two months. It has been proved on record, in view of testimony of Hari Singh PW1, that prior to accident the injured was working as mason. Even the Tribunal has not rejected plea of the claimant that he was working as mason before the accident. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the appellant is assessed at Rs. 5200/- per month.

Dr. Ashok Saini, a member of the Medical Board that assessed disability and issued disability certificate Ex. PW2/A has deposed that disability at 70% was assessed on account of fracture right femur with fracture both bones of right leg with non union with marked loss of stability and restricted movements of right knee and ankle. In cross examination, he deposed that a little improvement in disability with passage of time and

physiotherapy cannot be ruled out. As has been highlighted by counsel for the claimant, the injured appeared in the court using a stick and support of others for walking, therefore, there is no possibility of his working as mason for the rest of his life. Taking a view from materials on record when examined in the light of judgment of Hon'ble the Supreme Court **Raj Kumar Vs. Ajay Kumar and others, 2011 (2) RCR(Civil) 101**, functional disability is assessed at 90%. The claimant shall be entitle to addition in income for future prospects @ 10%. The injured was 55 years of age at the time of unfortunate occurrence and admissible multiplier is 11. In this manner, loss of future income is calculated at Rs. 6,79,536/- [5200 x 12 x 11 = 6,86,400 + 68,640 (10%) = 7,55,040 x 90%].

As has been noticed hereinbefore, the injured remained hospitalized for a period of about two months. He sustained injuries noticed by the Medical Board in disability certificate Ex. PW2/A that rendered him disable to the extent of 70%. The claimant is awarded **Rs. 1,00,000/-** for pain and sufferings. He shall be entitle to **Rs. 45,000/-** for loss of amenities of life. He is awarded **Rs. 50,000/-** for services of an attendant, transportation and special diet. Medical reimbursement to the tune of **Rs. 1,62,160/-** allowed by the Tribunal is affirmed. The claimant is awarded a sum of **Rs. 25,000/-** for future medical expenses.

Total compensation is Rs. 10,61,696/- (1,00,000 + 45,000 + 50,000 + 162,160 + 25,000) and the additional amount is Rs. 5,99,536/- (10,61,696 - 4,62,160), payable with interest @ 7.5% per annum from the date of petition till realization. The additional amount except Rs. 50,000/- shall be invested in fixed deposit and interest accruing thereon shall be paid to the victim. The victim shall be entitle to withdraw Rs. 50,000/- on expiry

of each year. The amount of Rs. 50,000/- shall be released to the claimant forthwith.

The appeal is partly allowed in the aforesaid terms.

(**Rekha Mittal**)
Judge

12.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No