

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

FAO-5652-2013 (O&M)
Date of decision: 28.02.2019

SHREE DHAR PARSHAD SHASHTRI ... Appellant

Versus

GANESH BAHADUR AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. JS Khattar, Advocate for
Mr. Deepak Sharma, Advocate
for the appellant.

Mr. Harsh Aggarwal, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.23685-CII of 2013

Heard.

Allowed as prayed for. Delay of 20 days in refiling the appeal
stands condoned.

Main Case

The claimant is in appeal seeking enhancement of
compensation on account of injuries sustained in a motor vehicular accident
that took place on 03.09.2011.

The Tribunal has awarded Rs.1,03,559/- (rounded off to
Rs.1,04,000/-), detailed hereunder:-

- | | |
|---|-------------|
| 1. Expenses of treatment, transportation | Rs.65,159/- |
| Nourishing diet and miscellaneous | |
| 2. Loss of earning during the period of treatment | Rs.8400/- |

3. Pain, sufferings and trauma

Rs.30,000/-

Counsel for the appellant has submitted that the injured suffered disability and an application for additional evidence under Order 41 Rule 27 read with Section 151 CPC was filed seeking permission to produce the disability certificate Annexure A1. It is further submitted that this Court referred the matter to the Tribunal permitting the appellant to adduce evidence in respect of disability suffered by him and he examined Dr. Vijay Kumar, orthopedic Surgeon, Civil Hospital, Ambala City to prove disability and disability certificate Ex.PW1/A. It is argued that the Tribunal has awarded a paltry sum of Rs.30,000/- on account of permanent disability without appreciating that in view of avocation of the victim coupled with nature and extent of disability suffered by him, he is entitle to loss of future income by applying multiplier method. It is further argued that compensation allowed under certain heads by the Tribunal in the original award is inadequate and needs enhancement.

Counsel representing the insurance company, on the contrary, has supported assessment made by the Tribunal initially as well as vide order dated 21.02.2019 passed in pursuance of directions issued by this Court on 04.05.2018.

The Tribunal has awarded a sum of Rs.65,159/- under various heads including expenses on medical treatment. The claimant produced documents Mark A1 to A46. The Tribunal has allowed reimbursement of medical expenses to the tune of Rs.50,159/- that stood verified by Sh. ML Vaish, investigator of the insurance company RW1 but refused to allow

benefit of bills contained in appendix D attached to the report of the investigator as he verified that shops issuing the said bills were not in existence. Counsel for the claimant would argue that in PGI, Chandigarh, the chemists shops are leased out on yearly basis and in case some of the shops issuing the bills contained in appendix D of the report of investigator were not in existence at the time of verification, the claimant cannot be denied reimbursement of those medical bills.

The claimant appeared in the witness box and tendered into evidence his affidavit by way of examination in chief. He, for the reasons best known, did not produce medical bills in his testimony with an opportunity to the insurance company to cross examine him in regard to its correctness and authenticity. The documents were marked as A1 to A46 in the statement of counsel for the claimant recorded by the Tribunal. In the given scenario, I do not find any reason to interfere in findings of the Tribunal ignoring certain bills and allowing reimbursement of medical expenses to the tune of Rs.50,159/-.

The Tribunal has awarded a sum of Rs.15,000/- for special diet, transportation and miscellaneous expenditure. The injured is residing in a mandir at Ambala but got treatment from PGI, Chandigarh. He remained hospitalised for a period of 16 days w.e.f. 03.09.2011 to 19.09.2011. The injury rendered him disable to the extent of 15% on account of operation of both legs and rods being inserted in left leg. Taking a reasonable view on the basis of materials on record coupled with some guess work to be made by the Court, claimant shall be entitle to additional

sum of Rs.5000/- under the first head in regard whereof the Tribunal has awarded Rs.65,159/-.

The Tribunal has allowed loss of earning of Rs.8400/- during period of treatment and recovery. The injured is working as a Pujari in a Temple. He remained confined to hospital for 16 days. His income is assessed at Rs.5000/- per month. He shall be entitle to loss of earning for a period of three months i.e. Rs.15,000/- for the period of treatment and recovery. A sum of Rs.30,000/- allowed by the Tribunal for pain and sufferings is correct and affirmed.

This brings the Court to what compensation should be allowed to the claimant for disability suffered by him. The Tribunal has awarded a sum of Rs.30,000/- @ Rs.2000/- per percent by relying upon Division Bench judgment of this Court **Pyara Singh VS. Satpal Kumar, 2006(4) RCR (Civil) 546**. There cannot be dispute that loss of future income on account of disability depends upon the facts and circumstances obtaining in a case. There may be cases where there is no loss of future income on account of permanent disability suffered by the victim in case he happens to be a government employee and there is no loss of income and promotion avenues etc. However, in the case at hand, the victim is a Pujari in a temple. Dr. Vijay Kumar was examined to prove disability and disability certificate. In his testimony, he has deposed that the claimant suffered injuries and got operated both legs/thighs and rods were inserted and again said that operation of both thighs was conducted and rod was inserted in left leg and

his disability is 15%, permanent in nature. It is further stated that due to disability, victim cannot sit on floor by folding legs and in squatting manner. There may or may be chance of his improvement in disability.

The testimony of Dr. Vijay Kumar has not been challenged by way of cross examination as there was no representation on behalf of the insurance company either to cross examine Dr. Vijay Kumar or to adduce evidence in rebuttal. Taking into consideration avocation of the victim coupled with nature and extent of disability suffered by him, interest of justice commands that the entire disability suffered by the victim is taken as functional disability for the purpose of assessing loss of income in future. The income of the victim has been assessed at Rs.5000/- per month in the earlier part of the judgment. The victim was 45 years old at the time of occurrence and multiplier of 14 is admissible. In this manner, loss of future income is calculated at Rs.1,26,000/- ($5000 \times 12 \times 14 \times 15/100$). The claimant shall be entitle to additional sum of Rs.96,000/- ($1,26,000 - 30,000$) for loss of future income. In view of the above, additional compensation payable to the claimant is Rs.1,07,600/- that would carry interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

28.02.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No