

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

FAO No. 5221 of 2014 (O&M)

Date of Decision: 1.5.2019

Anil

...Appellant

Versus

Satbir and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. A.K. Sharma, Advocate
for the appellant.

Mr. Munish Mittal, Advocate,
for the respondent Nos. 1 and 2.

Mr. Abhishek Goyal, Advocate,
for respondents No.3.

JAISHREE THAKUR, J.

1. This appeal seeks to challenge the award dated 13.2.2014 passed by the Motor Accident Claims Tribunal, Jind, wherein the appellant herein has been allowed compensation of a sum of ₹15,38,500/- on account of the injuries suffered by him.

2. In brief, the facts are that in an accident that took place on 12.10.2012, the appellant herein suffered serious injuries. Therefore, the claimants filed a claim petition, while stating that on account of rash and negligent driving of the motorcycle bearing registration No. HR-33-B-6618 the appellant suffered multiple serious and grievous injuries. He was taken to Malik Hospital, Jind, from where he was first shifted to Sarvodaya

Multispeciality Hospital, Hisar and then shifted to PGIMS, Rohtak, from

where he was taken to Sarut Trauma Centre, Delhi. Thereafter, he took treatment at G.B. Pant Hospital, New Delhi, where he remained hospitalized till 21.11.2012. It was asserted that he is 100% disabled and is not in a position to move and work and is entirely on the mercy of others.

3. Learned counsel for the appellant submits that the amount of compensation awarded by the Tribunal is on the lower side. It is submitted that in the accident the appellant suffered injuries on left parietal region with multiple abrasions all over body. Both lower limbs examination showed 0/5 power in lower limb, reflexes were absent and there was 100% sensory loss below D-12 dermatome. Anal tone was absent. There was D11 burst fracture with marked spinal and compression. The appellant was discharged on 16.11.2012 with folley's catheter in situ. It is submitted that though it stands proved on the record that the appellant is 100% disabled and he is not in a position to move for rest of his life and has to depend on others, yet the Tribunal did not award any amount on account of prospects of increase in future earning. Even the amount granted by the Tribunal on account of medical expenses, pain and suffering, special attendant etc. is inadequate. It is further submitted that at the relevant time, when the accident took place, as per the Minimum rates of wages in the State of Haryana, even an unskilled labourer was getting ₹4967/-, whereas the Tribunal assessed the monthly income of the appellant at ₹4,000/- per month. Therefore, the monthly income of the appellant deserves to be assessed at least at ₹4967/-.

4. Per contra, learned counsel appearing on behalf of the respective respondents submit that adequate amount of compensation has been awarded by the Tribunal and no interference is called for.

5. I have heard learned counsel for the parties and perused the impugned award.

6. In a judgment rendered in **Raj Kumar Vs. Ajay Kumar and others 2011 (1) SCC 343**, a formula has been prescribed for assessing compensation to be paid to a claimant who has suffered injuries resulting permanent disability, wherein it has been held that he has to be awarded compensation under the following heads namely:-

“F. Motor Vehicles Act, 1998, Sections 147, 166 and 173- Injury to a person in Motor accident- He is to be awarded compensation under following heads:- Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity)”

7. The Tribunal, after scrutiny of the evidence brought on record by the respective parties, awarded a sum of ₹15,38,500/-. However, the Tribunal did not grant any compensation on account of loss of prospects of increase in future earning. From the evidence brought on record, it appears

that even the amount granted on account of other heads, particularly on account of pain and sufferings, future medical expenses and special attendant etc. are inadequate.

9. Keeping in view above fact that at the relevant time, when the accident took place, the minimum rates of wages in the State of Haryana, for an unskilled labourer was ₹4967/-, the monthly income of the appellant is assessed at ₹5,000/- per month. Further, this Court is of the opinion that since the disability of the appellant has been assessed at 100%, therefore, he is also entitled to grant of compensation on account of loss of prospects of increase in future earning. The appellant was 20 years of age at the time of accident, and therefore, an addition of 50% is to be computed to the established income of the appellant. Thus, the average income of appellant is assessed at ₹7500/- (₹5,000 monthly income plus 50% increase, which comes to ₹2,500/-). Therefore, while applying the multiplier of 18, the appellant will be entitled to ₹16,20,000/- (₹7500x12x18). Apart from that the appellant would require air mattress with pump and changing of foley's and urine collection bag, wheelchair and other accessories to make his living condition more acceptable till his expected life. The costs of such medical equipments keeps on increasing in view of the inflation and quality of the products and therefore, the amount of compensation on this count also deserves to be enhanced. Thus, taking note of the medical expenses so far incurred and to be incurred in future, I will provide for ₹5 lacs as future medical expenses. It is in the evidence that the appellant would require an attendant for rest of his life. Therefore, taking the average expenditure for an attendant to be ₹5,000/- per month and then applying a multiplier of 18,

attendant charges can be assessed at ₹10,80,000/- (5000x12x18). Furthermore, the compensation on account of loss of earning during treatment, transportation, medical expenses and nutritious diet etc, which appellant/claimant is entitled to, is reassessed as under:-

Sr. No.	Heads of claim	Amount
1	Compensation on account of loss of earning during treatment for 16 months i.e. ₹7500x16	₹ 1,20,000
2.	Loss of income due to 100% disability including future prospects	₹ 16,20,000
3.	Compensation towards future attendant charges	₹ 10,80,000
4.	Compensation towards transportation	₹ 20,000
5.	Compensation for nutritious diet	₹ 50,000
6.	Medical expenses and hospital charges	₹ 1,67,000
7.	Pain and suffering	₹ 2,00,000
8.	Future medical expenses	₹ 5,00,000
9.	Loss of amenities of life	₹ 2,00,000
10.	Special attending during treatment	₹ 50,000
11.	Total	₹ 40,07,000

11. The award of the Tribunal is modified and the total compensation payable to the claimant shall be ₹ 40,07,000/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the instant appeal till the date of payment.

(JAISHREE THAKUR)
JUDGE

1.5.2019
prem

Whether speaking/reasoned	Yes
Whether reportable	No