

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5904 of 2014 (O&M)
Date of decision: 1.5.2019

Harman Kapoor

.. Appellant

v.

Kewal Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ashwarya Bajaj, Advocate for the appellant.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 11.2.2014 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal') has been assailed by the appellant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The driver of car bearing registration No. HR-12F-1025 (hereinafter referred to as 'the offending vehicle'), owner and insurer (i.e. Reliance General Insurance Company Limited) of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The facts necessary for adjudication of the present appeal are that on 12.8.2010, the appellant was returning from his school on his motorcycle bearing registration No. HR-41D-0837. On the way, the motorcycle was hit by the offending vehicle, due to the impact, he was thrown on the wind shield of the offending vehicle and sustained injuries. He was taken to Saraswati Hospital, Pehowa, thereafter, he was shifted to Virk Hospital, Karnal from where he was shifted to PGI, Chandigarh. He suffered fracture of right leg. FIR was lodged.

In the claim petition filed, the Tribunal came to the conclusion that the accident was result of the rash and negligent driving of the offending vehicle. The owner, driver and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

The appellant produced medical bills amounting to ₹1,18,767/-. Disability certificate (Ex. P27) was produced showing the disability to the extent of 10% qua the limb. Dr. R. L. Arya and Dr. Gurdarshan Singh deposed as PW-3 and PW-4 to prove medical treatment documents and the disability certificate. The claimant was 18 years old at the time of accident. The Tribunal awarded a sum of ₹2,90,456/- along with interest @ 7.5% per annum. The detail of the compensation awarded is tabulated below:

<i>Particulars</i>	<i>Amount in ₹</i>
Pain and suffering	50,000/-
Medical expenses	1,18,767/-
Hospitalization	28,000/-
Disability	83,689/-
Transportation	10,000/-

Learned counsel for the appellant argues that the amounts awarded under various pecuniary and non-pecuniary heads are on the lower side.

From the perusal of the award and the relevant documents produced, the Tribunal took into consideration the fact that the appellant remained hospitalised for 14 days. The result of the injuries sustained was that he suffered disability to the extent of 10% qua the limb. Nothing was produced to establish that the said disability qua the limb has affected the functional ability of the appellant. The Tribunal considered 10% disability qua the limb as 6% qua the whole body and even added 50% future

prospects. The amounts towards pain and sufferings, hospitalisation and

transportation have been awarded.

The Supreme Court in case of **G. Ravindranath @ R. Chowdary Versus E. Srinivas and another, 2013(12) SCC 455**, held as under:-

“11. We have heard learned counsel for the parties and carefully perused the record.

It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, 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).

12. In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of

amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

In view of the law laid down by the Supreme Court in **Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343**, the Tribunal has rightly considered 10% disability qua the limb as 6% qua the whole body. No case is made out for enhancement of the amounts awarded under various heads. However, while awarding the compensation the Tribunal has not considered that the appellant remained hospitalised for 14 days and suffered fracture, he would have required attendant during the period of hospitalisation and thereafter also, the compensation should be awarded for the same.

For the view being taken, it is not deemed necessary to issue notice to the insurer at this stage.

However, in order to award just and equitable compensation, ₹25,000/- is awarded. It is clarified that while enhancing the amount, the interest to be awarded under Section 171 of the Act has been taken into consideration.

The award dated 11.2.2014 is modified to the extent that the amount awarded by the Tribunal to the tune of ₹2,90,456/- is enhanced by ₹25,000/-.

The appeal is partly allowed accordingly.

It is clarified that in case the insurer is aggrieved of the order passed, it would be at liberty to revive the appeal by moving an application.

(AVNEESH JHINGAN)
JUDGE

1.5.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No

