

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

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FAO-5762-2015 (O&M)

Date of decision: 06.02.2019

BHAGWAT

... Appellant

Versus

BABLU DASS AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rohit Rana, Advocate for the appellant.

Mr. Lalit Garg, 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 29.09.2013.

The Tribunal has awarded compensation of Rs.4,62,400/-, detailed hereunder:-

1. Medical expenses	Rs.2,62,400/-
2. Compensation for disability	Rs.1,50,000/-
3. Pain and sufferings	Rs.30,000/-
4. Transportation, special diet and services of attendant	Rs.20,000/-

Counsel for the appellant would argue that the claimant suffered head injury with right hemiparesis with fracture shaft of humerus right with radial nerve palsy with deformity of upper limb. It is further argued that as per statement of Dr. Satish Kumar Verma, Medical Officer, General Hospital, Palwal, disability suffered by the victim has been assessed at 75% by a medical board constituted for the purpose. It is prayed that taking into consideration avocation of the injured with nature and extent of disability suffered by him, compensation for loss of income on account of disability may be assessed by applying multiplier method. In addition, it is argued that claimant may be allowed compensation for loss of amenities of life etc. and compensation allowed by the Tribunal under various heads needs enhanced.

Counsel representing the insurance company, on the contrary,

has supported assessment made by the Tribunal with the submission that injured has been adequately compensated.

The Tribunal has awarded a sum of Rs.2,62,400/- towards reimbursement of medical expenses based upon bills etc. and the same is affirmed. The injured remained hospitalised for a period of 22 days. Loss of income is to be assessed by taking into consideration minimum wage of an unskilled labour at the relevant time. Taking a clue from notification issued by the State of Haryana, income of the victim is assessed at Rs.5350/- per month. Claimant is awarded loss of income for the period of treatment and recovery to the tune of Rs.10,700/- for a period of two months.

The appellant suffered disability to the extent of 75%. Dr. Satish Kumar Verma PW8 produced the disability certificate Ex.P64. He tendered into evidence his affidavit Ex.PW8/A by way of examination in chief wherein he has deposed that after going through treatment record and fresh x-ray, the board found 75% disability due to head injury with right hemiparesis with fracture shaft of humerus right with radial nerve palsy with deformity of upper limb. In his cross examination, he had stated that such type of injury can improve with passage of time upto 18 months after that recovery is remote. After every 5 years, disability is to be reassessed. Taking into consideration income of the victim @ Rs.5350/- per month by treating him as an unskilled labour coupled with the extent and nature of disability suffered by the victim and the fact that his disability has not been assessed by a medical board after 18 months of sustaining of injuries, interest of justice would be served if functional disability is taken to the extent of 40%. As per his age, admissible multiplier is 15. In this manner, loss of income on account of disability is assessed at Rs.3,85,200/- (5350 x 12 x 15 x 40/100). Amount of Rs.1,50,000/- allowed by the Tribunal shall be adjusted out of loss of income assessed by this Court. Claimant is awarded another sum of Rs.35,000/- for loss of amenities of life.

The Tribunal has awarded a sum of Rs.30,000/- towards pain and sufferings and Rs.20,000/- for transportation, special diet and services of an attendant. In view of discussion made hereinbefore, the claimant is awarded additional sum of Rs.10,000/- under the aforesaid heads.

Total compensation is Rs.7,53,300/- and the additional amount

is Rs.2,90,900/- (7,53,300 - 4,62,400), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

06.02.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No