IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 508 of 2016
Date of decision: 25.1.2019

Lal Kumar

.. Appellant

v.

Banarsi Dass and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vaibhav Sehgal, Advocate for the appellant.
Ms. Vandana Malhotra, Advocate for respondent No. 3.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 16.1.2015 passed by the Motor Accident Claims Tribunal, Ludhiana (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') for the injuries sustained by him in a motor vehicular accident.

The facts in brief are that on 10.9.2013, the appellant along with his brother-Baljit Singh was riding a motor cycle bearing registration No. PB-10DX-7512. On their way, they were hit by a rashly and negligently driven TATA Xenon Pick-up bearing registration No. PB-12Q-Temp-0381 (hereinafter referred to as 'the offending vehicle'). As a result of the impact, Lal Kumar (appellant) suffered injuries including fractures on his right leg and right arm. He was taken to CMC, Ludhiana, where he underwent surgeries of leg and arm. FIR No. 149 dated 18.9.2013 was registered at Police Station Meharban, District Ludhiana.

In the claim petition filed under Section 166 of the Act, it was pleaded that the appellant was a carpenter and was earning ₹20,000/- per month. It was stated that the appellant had suffered temporary disability to the extent of 50%.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and the insurer (i.e. ICICI Lombard General Insurance Co. Ltd.) were held jointly and severally liable to pay the compensation. The income of the appellant was assessed as 10,000/- per month. The Tribunal awarded a sum of ₹6,09,314/- along with interest @ 6% per annum. The amount awarded included ₹5,79,314/- for medical expenses, ₹20,000/- for loss of income and ₹10,000/- for pain and agony.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellant contends that the appellant was a carpenter, his occupation was affected due to the temporary disability to the extent of 50%. He was operated upon for the fractures and remained hospitalised for 53 days, the amounts awarded by the Tribunal under various heads are on the lower side and no amount has been awarded for follow up treatment.

Learned counsel for the insurer defends the award and resisted any further enhancement. She contends that there was no permanent disability.

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 the present case, there is no dispute that there was no permanent disability but the appellant suffered 50% temporary disability. He remained hospitalised for 53 days. His medical expenses were almost ₹6,00,000/-, which indicate the seriousness of the injuries suffered by him. The Tribunal while awarding the compensation has not considered the fact that as the appellant was operated upon and he required attendant and transportation. He was also bound to have follow up treatment and required special diet for speedy recovery. The amount awarded by the Tribunal for loss of income is only for two months which is on the lower side as he remained hospitalized approximately for two months and even thereafter his earning would have been affected. The amount awarded for pain and sufferings also need to be enhanced.

For the reasons mentioned above, the compensation is awarded as under:

Particulars	***Amount awarded in ₹***
Medical expenses as awarded by the Tribunal	5,79,314/
Attendant charges or expenses	15,000/-
Special diet	10,000/-
Transportation	10,000/-
Loss of earning	50,000/-
Pain and suffering	50,000/-
Follow up treatment	20,000/-
Total	7,34,314/-

The award dated 16.1.2015 is modified to the extent that amount awarded by the Tribunal to the tune of ₹6,09,314/- is enhanced to ₹7,34,314/-. The appellant shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

25.1.2019
mk

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