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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 628 of 2015 (O&M)
Date of Decision: 08.01.2019

Kuldeep Singh

-Appellant

Vs

Baldev Singh and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ram Kumar Saini, Advocate,
for the appellant.

Mr. R.K. Bashamboo, Advocate,
for respondent No.2.

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RAJ MOHAN SINGH, J. (ORAL)
CM No.1696-CII of 2015

For the reasons mentioned in the application, delay of 146 days in filing the present appeal is condoned.

Application stands disposed of.

Main case

This appeal has been preferred by the injured-claimant/appellant against inadequacy of compensation granted by Motor Accident Claims Tribunal, Kurukshetra.

Appellant- Kuldeep Singh was 25 years of age at the time of accident and was doing labour work. He received multiple grievous injuries in vehicular accident including left eye injuries and multiple fractures on his face and jaw. He remained hospitalized from 08.11.2012 to 23.11.2012.

The Tribunal on the basis of evidence on record assessed an amount of Rs.62,970/- towards medical expenses, Rs.68,000/- towards loss of future amenities, Rs.10,000/- for pain and sufferings, Rs.5000/- for attendant charges, Rs.5000/- for special diet and Rs.5000/- for transportation charges.

As per disability certificate Ex.P20, disability was found to be 34%. The injured was operated in Apna Hospital, Kurukshetra during the period of his hospitalization from 08.11.2012 to 23.11.2012.

The present appeal has been preferred for enhancement of compensation under different heads.

I have considered the submissions made by learned counsel for the parties.

In **Govind Yadav vs. New India Insurance Company Limited, 2011(4) RCR (Civil) 817**, the Hon'ble Apex Court after considering all pros and cons in detail assessed the compensation in case of permanent disability of the injured.

In **K. Suresh vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312**, the Hon'ble Apex Court held that in case of permanent disability, the injured is entitled to grant of compensation towards permanent disability as well as loss of earning capacity in future. The determination of compensation for loss of earning capacity on the basis of multiplier method was held to be proper. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective standards. There cannot be a flight in fancy. The award should correspond to reasonableness and should be in consonance with conventional sum. The endeavour should be to award just compensation keeping in view the suffering of the injured person.

In **S. Manickam vs. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696,** it was held by the Hon'ble Apex Court that the determination of just compensation cannot be equated to a bonanza. It has to be based on equitable principles. Reasonable approach should be adopted. Compensation towards permanent disability and loss of earning capacity, both were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of earning capacity.

Similar views were expressed in other judgments i.e. **G. Ravindranath @ R. Chowdary vs. E. Srinivas and another, 2013(3) RCR (Civil) 934**, **Rekha Jain vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996,** **Neerupam Mohan Mathur vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422** and **Yadava Kumar vs The Divisional Manager, National Insurance Company Ltd. and another,**

<u>2010(4) RCR (Civil) 154,</u> highlighting a distinction between damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injuries caused and to put back the injured as far as possible in the same manner, as if injury has not taken place. The Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

Even if the injured is considered to be a labourer, the minimum wage as per schedule of minimum wage prevailing in the year November, 2012 cannot be less than Rs.5000/- in any case. Even if disability qua whole body is to be taken to be ½ of the disability of particular limb i.e. 34%, same would come out to be 17% qua whole body.

The loss of income on the basis of loss of 17% would come out to be Rs.850/- per month i.e. Rs.10,200/- per annum. The injured was 25 years of age at the time of accident, therefore, multiplier of 18 can be applied to the aforesaid sum thereby assessing an amount of Rs.1,83,600/- as compensation.

The Tribunal has granted Rs.2000/- per percentage for permanent disability towards disfigurement of the body. In my opinion, the same is just and adequate. In this manner, an amount of Rs.68,000/- can be added to the aforesaid future loss on account of permanent disability and the tally would come out to be Rs.2,57,600/- to which an amount of Rs.62,970/- towards medical expenses can be added up. The Tribunal has awarded an amount of Rs.25,000/- in total towards pain and suffering, attendant charges, special diet and transportation.

In my considered opinion, the aforesaid award towards different head is wholly on lower side. In my considered opinion, the said amount has to be doubled. So, in place of Rs.25,000/- towards aforesaid heads, compensation needs to be enhanced to Rs.50,000/-. In this manner, total compensation payable comes out to be Rs.3,70,570/- (2,57,600+62,970+50,000).

The balance of the amount would carry interest @ 7.5% per annum from the date of filing of claim petition till final realization of the amount.

The liability to pay the enhanced amount shall remain the same as ordered by the Tribunal.

Normal consequences to follow.

08.01.2019 **(RAJ MOHAN SINGH)**
Jyoti Yadav **JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No