215-A

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 629 of 2015 (O&M)
Date of Decision: 08.01.2019

Kamaljeet

-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.1697-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- Kamaljeet was 25 years of age at the time of accident and was doing labour work. He received multiple grievous injuries in vehicular accident including fracture right femur. 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.76,144/- towards medical expenses, Rs.40,000/- 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 material on record, the appellant has suffered 20% permanent disability in relation to particular limb. Dr. R.L. Arya while appearing as PW1 has deposed that as per disability certificate Ex.P1, the claimant-appellant was having 20% permanent disability which was attributed to post operative restricted movements of right hip and knee. An amount of Rs.40,000/- was assessed towards loss of future amenities in life.

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, 2010(4) RCR (Civil) 154,** 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.

Keeping in view 20% permanent disability in respect of particular limb, disability can be slashed down to ½ in relation to whole body, therefore permanent disability to the tune of 10% can be considered qua the whole body and the earning capacity of the injured is impaired by 10%.

The minimum wage as per schedule of minimum wage prevailing in the year 2012 cannot be less than Rs.5000/- in any case. Monthly loss comes out to be Rs.500/- and annual comes out to be Rs.6000/-.

Keeping in view the age of the deceased, multiplier of 18 has to be applied as per **Smt.Sarla Verma vs Delhi Transport Corporation, 2009(3) RCR (Civil) 77**, which comes out to be Rs.6000x18= Rs.1,08,000/-. The total compensation awarded by the Tribunal is Rs.1,41,144/-.

To the aforesaid amount, an amount of Rs.76,144/- towards medical expenses as assessed by the Tribunal, Rs.40,000 for disfigurement of the body (i.e. Rs.2000/- per percentage) and enhanced amount of Rs.50,000/- towards pain and suffering, attendant charges, special diet and transportation can be added.

The total tally would come out to be Rs.2,74,144/-.

Difference 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.

Disposed of.

08.01.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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