

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

FAO-5864-2016 (O&M)

Date of Decision: 10.12.2019

Rani

.....Appellant

Versus

Satish Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr.Pankaj Katia, Advocate, for the appellant.

Mr.Maninder Arora, Advocate, for respondents No.1 and 2.

Mr. Vinod Chaudhari, Advocate, for respondent No.3.

NIRMALJIT KAUR, J. (ORAL)

CM-20060-CII-2016

For the reasons mentioned in the application, the delay of 783 days in filing of the appeal is condoned. However, the applicant will not be entitled to the interest for the period of 783 days.

CM stands allowed.

Main appeal

The present appeal is filed for enhancement of compensation awarded vide award dated 1.3.2014 by the learned Motor Accident Claims Tribunal, SBS Nagar in a case of injury with 80% permanent disability.

Learned counsel for the appellant while praying for the enhancement of compensation submitted that the income has been assessed on the lower side. He further submitted that the income of the deceased must be more than ₹ 40,000/- per annum, whereas, only ₹ 24,000/- per annum was assessed.

Learned counsel for the Insurance Company at the outset submitted that the compensation cannot be enhanced any further in view of the claim petition having been filed under Section 163-A of the Motor Vehicle Act, 1988 (for short 'the Act'). The same cannot travel beyond the schedule.

However, this Court is persuaded by the judgment of this Court rendered in FAO-951-2009 titled as Oriental Insurance Company Ltd. Versus Gurdev Singh and others, decided on 30.8.2012, wherein, the Court refused to interfere in the award of the Tribunal, even though, it had exceeded the quantum of compensation as fixed by the second schedule of the Act in a case having been filed under Section 163-A of the Act by holding as under:-

“Consequently, it would be appropriate to hold that in so far as the limits of conventional heads in the 2nd Schedule has no co-relation with the benefit granted u/s 163-A i.e. of the need to do away with proving negligence, a deviation may be made in assessing/ awarding compensation under the heads medical expenses, funeral expenses, loss of consortium/ loss of estate. In this regard courts can resort to the ratio of the decisions of the Hon’ble Supreme Court in Sarla Verma (supra) and Raj Kumar (supra) which, as already stated above, is the law of the land.

There is still another reason as to why the provisions of 2nd Schedule may prove to be inadequate in certain situations, while assessing fair compensation in injury cases. For example, a person suffers a head injury in a motor vehicular accident and as a result of such injury, he losses effective control over his legs and/or hands though strictly speaking, there is no disability in the legs or hands of the claimant. In such a situation, reference to the Schedule of the

Workmen Compensation Act for assessing the loss of earning capacity/ disability will prove to be futile in as much as the Schedule of said Act does not mention head injury at all. In such a situation, is the claimant left with no remedy even though he has suffered grievous injuries in the accident? Obviously, law cannot and should not fail a genuine claimant and hence, judicial interpretation assumes utmost significance.”

In the present case, the injured was just 25 years of unmarried girl. Her right leg was amputated above knees. She could not even walk properly. The disability was assessed as 80%. The injury will not only interfere in joining profession of her choice but would also hinder her marriage prospect as also she is bound to require life long assistance and medical treatment. In fact, the disability is likely to go worse with time.

Therefore, this Court has no hesitation in assessing the income of the deceased as ₹ 40,000/- per annum instead of ₹ 25,000/- per annum. It is known fact that the artificial limbs would be required to change after every five years, which would incur heavy expenses. Accordingly, ₹50,000/- is granted towards the replacement of artificial limbs.

In view of the above, the compensation is now re-assessed, as per the calculation provided under:-

Sr. No.	Head	Amount assessed
1	Income	40000/- per annum
2	Multiplier of 18	40000 x 18 = 7,20,000/-
3	Pain and suffering	5000/-
4	Medical expenses	169000/-
5	Cost of Artificial Limb	50000/-
6	Total	9,44,400/-
7	Awarded by the Tribunal	606000/-
8	Enhanced amount	338000/-

Thus, the enhanced compensation of ₹ 3,38,000/- be paid to the appellant within two months from the receipt of certified copy of this order

alongwith 6% interest per annum from the date of filing of claim petition. However, the appellant will not be entitled to the interest for the period of 783 days. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

Disposed of accordingly.

(NIRMALJIT KAUR)
JUDGE

10.12.2019
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No