

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

FAO No.5869 of 2016 (O&M)

Date of decision: 05.07.2019

Rahul

... Appellant

Versus

Kirat Dhillon and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. A.K. Spehia, Advocate for the appellant.

Mr. Paul S. Saini, Advocate and

Mr. Vipul Sharma, Advocate for the insurance company.

REKHA MITTAL, J.

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 18.05.2015.

The Tribunal awarded Rs.15,60,476/-, detailed hereunder:-

Medical charges	Rs.19,276/-
Transportation charges	Rs.10,000/-
Compensation for engaging an attendant	Rs.10,000/-
Compensation for special diet	Rs.10,000/-
Pain and sufferings	Rs.50,000/-
Compensation for loss of enjoyment	Rs.50,000/-
Compensation for permanent disability	Rs.9,07,200/-
Compensation for artificial limb	Rs.5,04,000/-

Counsel for the appellant would argue that the injured has suffered permanent disability to the extent of 70% on account of amputation of right lower limb below knee at the age of 18 years but the Tribunal has not extended benefit of addition in income for future prospects

while determining loss of future income. Another submission made by counsel is that the Tribunal has not granted compensation qua matrimonial prospects.

Counsel representing the insurance company, on the contrary, would argue that the Tribunal has shown magnanimity in allowing loss of future income by considering disability to the extent of 70% even in absence of evidence that disability suffered by the victim is functional in nature. The claimant has been awarded more than Rs.5 lakh towards price of artificial limb but there is no evidence on record that the claimant has actually spent a particular amount much less Rs.5 lakh for the artificial limb.

I have heard counsel for the parties, perused the paper book and records.

The medical board of Postgraduate Institute of Medical Education and Research, Chandigarh (in short 'PGI') assessed disability to the extent of 70% and condition is stated to be non-progressive and not likely to improve. None of the members of the medical board was examined to prove assessment of disability or as to how disability to a particular limb is to be treated for the purpose of functional disability.

Dr. Ram Kishan from the Department of Orthopedics, PGI, Chandigarh was examined. He deposed on behalf of Dr. Aditya Aggarwal and identified signatures of Dr. Aditya Aggarwal on disability certificate Ex.P26. In his cross examination, he has stated that the patient will have difficulty in walking, running and day to day activities and he can only do

sitting job. He further deposed that marketing job is not advisable as he will suffer fatigue.

Dr. Ram Kishan was not one of the members of medical board that assessed disability. His statement is conspicuously silent as to how disability to a particular limb is to be treated to assess functional disability in view of avocation of the victim. The victim was stated to be a student of 10+2. However, there is no documentary evidence with regard to his educational qualification or performance in studies to prove that he was a brilliant student. The Tribunal has assessed his income @ Rs.6000/- per month on the basis that he can do tuition work. However, the Tribunal has not assessed functional disability in the light of disability to a particular limb in respect whereof he has been allowed expenses of artificial limb to the tune of Rs.5,04,000/-. Taking a cumulative view of the aforesaid, even if functional disability is assessed less than 50% but claimant is extended benefit of addition in income for future prospects @ 40%, his entitlement to future loss of income would be less than what has been assessed by the Tribunal by applying multiplier of 18. In the given circumstances, there is no scope for enhancement of compensation in respect of future loss of income.

The Tribunal has awarded a sum of Rs.5,04,000/- for artificial limb. The claimant examined Ashwani Kumar Verma to prove quotation Ex.P4 with regard to price of the artificial limb. The witness was examined in September, 2015. Till date, the claimant has not produced any document with regard to purchase of artificial limb and price thereof. Ashwani Kumar

Verma in his cross examination has deposed that cost of artificial leg below knee starts from Rs.60,000/- and goes upto Rs.5 lakh and the same depends upon various factors. In absence of evidence that claimant has actually spent an amount of Rs.5,04,000/- for purchase of artificial limb, compensation allowed by the Tribunal with regard to price of artificial limb would also include compensation for loss of matrimonial prospects.

The claimant has been awarded Rs.50,000/- for loss of amenities. Hon'ble the Supreme Court in **Raj Kumar Vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101** has held that when loss of future income is allowed by assessing functional disability and applying multiplier, compensation for loss of amenities of life or expectation of life would be negligible as allowing compensation under these heads would amount to duplication. In the given circumstances, compensation for loss of amenities of life allowed by the Tribunal is affirmed. Compensation allowed under various other heads when examined in the light of materials on record, needs no enhancement. Accordingly, there is no justification for allowing compensation more than what has been assessed by the Tribunal.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

05.07.2019

ashok

Whether speaking/reasoned:
Whether reportable:

(REKHA MITTAL)
JUDGE

Yes / No
Yes / No