

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7349 of 2015 (O&M)

Date of decision: 20.09.2019

Gopal Prasad

...Appellant

V/s.

Asrudin and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ashish Gupta, Advocate for the appellant.

None for the respondents.

RITU BAHRI, J. (Oral).

CM-22977-CII-2015

For the reasons mentioned in the application, the same is allowed and the delay of 105 days in filing the appeal is condoned.

FAO-7349-2015(O&M)

The claimant has come up in appeal against the award of the Tribunal dated 26.03.2015 whereby he has been awarded compensation of Rs.1,26,000/- on account of 15% disability suffered in a road accident which took place on 07.02.2009.

Brief facts of the case are that on 07.02.2009, the claimant was going to Badkali from Pinangwan in Marshal Jeep No. RJ-05-U-0280 (hereinafter referred to as the 'offending vehicle') driven by respondent No. 2 in a rash and negligent manner. The claimant and other occupants of the offending vehicle told respondent No. 2 not to drive the offending vehicle in a rash and negligent manner, but he did not pay any heed to the request. At

about 4:00 p.m. when the offending vehicle reached in front of Auto Fuel Petrol Pump in the area of village Pinangwan, then respondent No. 2 in the process of overtaking a tanker No. HR-38-K-9189 struck the offending vehicle against a stationary tractor-trolley and the tanker also struck against the offending vehicle from back side. As a result of accident, the claimant sustained fracture on his both legs. Consequently, the claimant filed claim petition before the tribunal.

It is pertinent to mention here that vide award dated 04.04.2011, the claim petition of the claimant was dismissed. However vide order dated 17.07.2014 passed by this Court in FAO No. 4794 of 2011, the case was remanded back to the tribunal for assessing the compensation in view of percentage of disability suffered by the claimant.

The parties are not in dispute with respect to finding on issue No. 1 that the accident took place on account of negligent driving by the driver of the offending vehicle. This finding has been rightly given in favour of the claimant keeping in view that FIR No. 43/09 under Sections 279, 337 and 338 IPC was registered and charges were framed against accused Mubin (driver).

The disability certificate Ex.PW4/A was proved by PW4 Dr. Vikram Singh who stated that he alongwith other members of medical board examined the claimant and found traumatic fracture both bones, both legs with bilateral nailing tibia with mild restriction of movements of both knee joint and assessed disability of both legs as 15%.

The age of the claimant was 44 years as per the MLR (EX.P7). While considering the income of the claimant as Rs.3,000/- per month, the tribunal assessed the compensation as under:-

SR.NO.	HEADS	CALCULATIONS
(i)	Annual income	3,000X12=Rs.36,000/-
(ii)	Compensation on account of 15% disability after applying multiplier of 15	Rs.81,000/-
(iii)	Pain and suffering	Rs.5,000/-
(iv)	Medical expenses	Rs.40,000/-
	TOTAL COMPENSATION AWARDED	Rs. 1,26,000/-

Hence, the claimant was found entitled to total compensation of Rs.1,26,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

I have heard learned counsel for the appellant and perused the case file. The fact of accident is admitted and proved. It stands established that the claimant has received injuries as a result of the accident. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

The claimant was 44 years of age and the tribunal had assessed his monthly income as Rs.3,000/- p.m. which is on lower side keeping in view the minimum wages prevalent in State of Haryana in the year 2009, which were Rs.3,840/- (rounded upto Rs.4,000/-).

Hence, to meet the ends of justice, the compensation is hereby reassessed taking the income of the claimant as Rs.4,000/- p.m. and keeping in view the judgment passed by Hon'ble the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Annual Income	Rs.4,000 X12=Rs.48,000/-
(ii)	Compensation for 15% disability after multiplier of 15 applied	48,000X15X15%=Rs.1,08,000/-
(iii)	Medical expenses	Rs.40,000/-
(iv)	Pain and suffering	Rs.5,000/-

	TOTAL COMPENSATION AWARDED	Rs. 1,53,000/-
	ENHANCED AMOUNT OF COMPENSATION	Rs.1,53,000-1,26,000/-= Rs.27,000/-

The enhanced amount of compensation of **Rs.27,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others***, Civil Appeal No. 4528 of 2019. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is allowed.

Pending application also stands allowed.

(RITU BAHRI)
JUDGE

20.09.2019
Divyanshi

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