

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 7506 of 2015(O&M)

Date of Decision:23.5.2019

Ram Kishan

---Appellant

vs.

Pawan Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Jatin Hans, Advocate
for the appellant

Mr. Atul Gaur, Advocate
for respondents No. 1 and 2

Mr. Amit Jaiswal, Advocate
for respondent No. 3

Rekha Mittal, J.

Ram Kishan, the claimant has preferred the appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 3.2.2013.

The Tribunal awarded Rs. 13,00,000/- as consolidated amount.

Counsel for the appellant would argue that the claimant remained admitted in Sir Ganga Ram Hospital, Delhi from 3.2.2013 to 22.3.2013. Dr. Ravi Chauhan PW3 was examined in respect of treatment during hospitalization in the aforesaid hospital. Dr. Manish Sheoran PW6 proved permanent disability caused to the victim. He would further argue that the claimant also examined Dr. Ankit PW8 from General Hospital, Bhiwani to prove medico legal report dated 03.2.2013 Ex. PW8/A. It is

argued that the claimant has proved medical expenses to the tune of Rs. 3,30,283/- based upon documentary evidence. Sonu PW7 an employee of Otto Bock Health Care, New Delhi has proved that the claimant was given artificial limb 3E80 Electronic Knee joint mentioned in Ex. PW7/D of the value of Rs. 8,15,000/- and the entire payment has been made by way of instalments. It is vehemently argued that in view of evidence on record, the claimant is entitle to compensation more than what has been assessed by the Tribunal. It is further argued that the Tribunal has not discharged its obligation to assess compensation head wise, allowed in a case where the victim has suffered permanent disability. Further argued that future loss of income may be assessed by applying multiplier method and considering disability to the tune of 100% as the claimant has been rendered unfit to perform any labour work much less as an agriculturist or dairy farmer.

Counsel representing the insurance company, on the contrary, would argue that disability suffered by the victim is only qua a particular limb, therefore, the claimant cannot assert for grant of compensation in respect of total disability of 90%. Another submission made by counsel is that if consequence of disability suffered by the claimant has not been reduced even with the help of artificial limb, the claimant should not have spent an amount of Rs. 8,15,000/- for purchase of artificial limb and he should have served his purpose by purchasing an artificial limb worth Rs. 1/1.5 lakhs.

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

Dr. Ankit, the then Medical Officer posted at General Hospital,

Bhiwani has proved medico legal report dated 3.2.2013 Ex. PW8/A. Dr. Ravi Chauhan PW3 of Sir Ganga Ram Hospital, Delhi deposed that Ram Kishan sustained injuries to right lower limb for which right limb above knee was amputated on 3.2.2013 along with debridement, grafting and K.wire. Fixation of right ring finger was carried on 5.2.2013. On 6.2.2013, debridement and secondary amputation stump closure under G.A. was done. Again on 13.2.2013, debridement of amputation stump done under SA. Thereafter on 16.2.2013 right above knee amputation secondary stump closure was done under GA and patient was discharged on 22.2.2013. He proved discharge summary Ex. PW2/A, casualty card Ex. PW2/B, admission card Ex. PW2/C and treatment records Ex. PW2/D.

Taking into consideration the nature of injuries sustained coupled with treatment given to the injured during his hospitalization for a period of about 20 days in Sir Ganga Ram Hospital, Delhi, appellant is awarded an amount of **Rs. 50,000/-** for pain and sufferings. He shall be entitle to a sum of **Rs. 30,000/-** for services of an attendant, transportation and diet money etc.

Dr. Manish Sheoran PW6 has proved that the injured suffered 90% permanent disability on account of traumatic amputation of right lower limb of the lanel of upper part of femur bone. He has deposed that due to disability, patient is unable to do agriculture and other labour work for the rest of his life. The plea of claimant is that prior to the occurrence, he was an agriculturist and dairy farmer. There is no evidence on record that claimant was owning or possessing any agriculture land. He has also not examined any witness to prove his dairy business. In the given

circumstances, the injured is treated as a labour. Taking a clue from notification issued by the State of Haryana fixing minimum wage, income of the injured is assessed at Rs. 5200/- per month.

The injured appeared before the court and had shown artificial limb installed in his right leg. He was finding it difficult to walk even with the help of a stick. The medical opinion given by Dr. Manish Sheoran is that he would not be able to do agriculture or other labour work. In the given circumstances, I find merit in contention of the appellant that entire disability suffered by him is to be treated as functional disability for computing loss of income. As the injured would not be in a position to work as a labour, if he starts even doing some work while sitting, he may get negligible returns. He cannot do any work independently. As such, he is allowed benefit of future prospects @ 40%, in view of age less than 40 years. Admissible multiplier is 15. In this manner, loss of future income is calculated at **Rs. 11,79,360/-** {9,36,000 + 3,74,440 (40%) = 13,10,400 x90%}.

The appellant shall be entitle to reimbursement of medical expenses to the tune of **Rs. 3,30,283/-** based upon documents produced before the Tribunal.

Sonu PW7 has proved that the claimant spent Rs. 8,15,000/- for purchase of artificial limb. As the injured has already spent money for purchase of artificial limb which has been installed in his right leg, he is entitle to reimbursement of expenses of artificial limb to the tune of **Rs. 8,15,000/-**

Taking a cumulative view of the facts and circumstances

discussed hereinbefore, appellant is awarded a sum of **Rs. 40,000/-** for loss of amenities of life. Hon'ble the Supreme Court in **Raj Kumar vs. Ajay Kumar and others, 2011 (2) RCR(Civil) 101** has held that when compensation is awarded by treating the loss of future earning capacity as 100% or even anything more than 50%, the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount is to be awarded under the head of loss of amenities or loss of expectation of life as otherwise there may be duplication in the award of compensation.

In view of the above, total compensation is Rs. 24,44,643/- [11,79,360+8,15,000+3,30,283+40,000+50,000+30,000} and the additional amount is **Rs.11,44,643/-** (24,44,643-13,00,000), payable with interest @ 7.5% from the date of petition till realization. The Tribunal has not made any provision for investment of compensation assessed. Additional amount shall be invested in a fixed deposit. The claimant shall be entitle to withdraw the amount of interest and Rs. 50,000/- on expiry of each year.

The appeal stands disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

23.5.2019
paramjit

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