

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

FAO No. 2337 of 2017 (O&M)

Date of decision : January 16, 2019

Kulbir

.....Appellant

Versus

Dharampal and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kuldeep Sheoran, Advocate
for the appellant.

None for respondents No. 1 and 2.

Mr. V. Ramswaroop, Advocate
for respondent No. 3.

LISA GILL, J.

This appeal has been preferred by the appellant – Kulbir for enhancement of compensation awarded to him vide award dated 07.09.2016 passed by the learned Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'Tribunal') on account of injuries and disability suffered by him in the motor vehicle accident, which took place on 09.11.2015.

Brief facts necessary for adjudication of the case are that the appellant was involved in a motor vehicle accident on 09.11.2015. He alongwith his brother Rajbir was going from Uklana to Bhuna on their Bajaj Platina motor cycle bearing registration No. HR-22H-2245. The vehicle was driven by the appellant's brother – Rajbir. When they reached near village Saniyana, offending vehicle Truck bearing registration No. RJ-07G-8776

driven by respondent No. 1 came from behind and struck against the motorcycle of the appellant. As a result thereof, the appellant and his brother fell down and received multiple serious injuries in the accident. They were shifted to Sangwan Hospital, Uklana. Thereafter, due to grievous injuries, they were admitted in Chawla Nursing Home, Hisar. Claim petition under Section 166 of Motor Vehicles Act was preferred by the appellant seeking compensation on account of the injuries and disability suffered by him.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to rash and negligent driving of offending vehicle truck bearing registration No. RJ-07G-8776 driven by respondent No. 1. This finding of the learned Tribunal has attained finality. The learned Tribunal afforded compensation to the appellant detailed as hereunder:-

i.	Pain and suffering	₹10,000/-
ii.	Disability physical	₹20,000/-
iii.	Medical expenses	₹90,000/-
iv.	Loss of amenities & enjoyment of life and future prospects etc.	₹20,000/-
v.	Transportation charges	₹5,000/-
vi.	Special diet and attendant charges	₹5,000/-
	Total	₹1,50,000/-

Present appeal has been filed seeking enhancement of the compensation awarded.

Learned counsel for the appellant argues that increment on account of loss of future prospects and compensation on account of loss of income for the period the appellant remained hospitalised and thereafter was unable to work due to his injuries has not been afforded. Meagre compensation has been afforded on account of pain and suffering,

transportation, special diet etc. It is, thus, prayed that compensation awarded to the appellant be enhanced accordingly.

Learned counsel for the respondent - insurance company, while refuting the arguments raised, submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. It is submitted that the compensation has been rightly assessed and the impugned award dated 07.09.2016 be upheld.

I have heard learned counsel for the appellant and respondent No. 3 and have perused the file with their assistance .

There is no dispute that the appellant was about 22 years old at the time of the accident, which took place on 09.11.2015 due to rash and negligent driving of the offending vehicle by its driver - respondent No. 1. As per the evidence on record, the appellant suffered grievous injuries in the said accident. It is not in dispute that immediately after the accident the appellant was taken to Sangwan Hospital, Uklana where treatment was afforded. Thereafter, he was shifted to Chawla Nursing Home, Hisar and remained admitted there from 09.11.2015 to 12.11.2015. Operation was conducted and rod was inserted in the right leg of the appellant.

PW3 Suresh Kumar O.T. Assistant, Chawla Hospital, Hisar has proved discharge card (Ex.P1) of the appellant and specifically deposed regarding the operation, which was conducted upon the appellant on 09.11.2015. Disability certificate of the appellant (Ex.P20) is on record wherein the claimant – appellant is reflected to be suffering from 15% disability qua limb. It is apparent that the appellant's ability to earn his livelihood would have suffered to some extent as functional disability of the appellant cannot be ignored. Functional disability of the appellant, in this

case, is thus, assessed to be 5% especially keeping in view the vocation claimed to be followed by the appellant. The appellant had claimed to be doing agricultural work though there is no documentary evidence on record to prove same. In the facts and circumstances, where no evidence has been led to prove the income of the injured, it is considered just and expedient to assess the income of the injured claimant to be ₹6,000/-, as minimum wage of an unskilled labourer in the State of Haryana at the time of the accident was ₹5,886/- per month. Appellant is entitled to 40% increment on account of loss of future prospects in view of his age i.e. 22 years at the time of accident. A multiplier of 18 has to be applied.

As per the guidelines laid down by the Hon'ble Supreme Court in *Sayed Sadiq etc. versus Divisional Manager, United India Insurance Company 2014 (1) R.C.R. (Civil) 765*, the appellant is entitled to loss of future income of ₹90,720/- $[(\text{₹}6000 \times 5/100) + (40/100 \times 5/100 \times \text{₹}6000) \times 12 \times 18]$. The appellant is further entitled to a sum of ₹25,000/- for pain and suffering instead of ₹10,000/- awarded by the learned Tribunal. The appellant is entitled to a sum of ₹10,000/- on account of special diet and attendant charges instead of ₹5,000/-. Sum of ₹5,000/- on account of transportation is maintained. A sum of ₹20,000/- is awarded on account of loss of marriage prospects. The appellant is entitled to a sum of ₹20,000/- on account of loss of amenities. Needless to say, the appellant shall be entitled to the sum of ₹90,000/- on account of medical bills as already awarded by the learned Tribunal. Keeping in view the nature of injuries suffered by the appellant, it is apparent that he would not have been able to carry on any kind of work for at least three months. He is entitled to a loss of income for the said period.

The appellant is, thus, entitled to compensation detailed as under:-

Loss of future income	₹90,720/-
Loss of income for three months (6000x3)	₹18,000/-
Pain and suffering	₹25,000/-
Loss of amenities	₹20,000/-
Loss of marriage prospects	₹20,000/-
Special diet and attendant charges	₹10,000/-
Transportation	₹5,000/-
Medical expenses	₹90,000/-
Total	₹2,78,720/-

Amount of compensation already awarded to the appellant shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realisation.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

January 16, 2019
rts

(Lisa Gill)
Judge

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