

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6677 of 2017 (O&M)

Date of Decision: 29.04.2019

Anil Kumar

.....Appellant

Versus

Dharambir and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sudhir Aggarwal, Advocate
for the appellant.

AVNEESH JHINGAN, J.(oral)

The award dated 17.4.2017 passed by Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as 'the Tribunal') in CIS No. MACP/414/2015 has been challenged by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), for the injuries sustained in the alleged accident.

The facts necessary for adjudication of the present appeal are that on 19.4.2015 appellant alongwith Gajraj had gone to Pataudi in a car bearing registration No. HR-26-AT-2311. While they were returning Fortuner Car bearing registration No. HR-26-CB-0477 (for short 'the offending vehicle') struck the car. As a result of the impact, the appellant sustained grievous injuries. FIR No. 91 dated 20.4.2015 was registered at Police Station Farrukh Nagar.

In the claim proceedings it was pleaded that the injured was working as a driver. Various documents were produced and

PW9 -Dr. Virender Baswana appeared to prove the disability certificate Ex.P19 in which it was certified that the appellant suffered disability to the extent of 10% on account of pelvis injury. The Tribunal considering the evidence including the bills, cash memos etc., awarded a sum of ₹ 5,62,000/- alongwith interest at the rate of 7.5% per annum. The detail of compensation awarded is reproduced below:

Sr. No.	Heads of claim	Amount (₹)
1.	Hospitalization, fracture, surgery and pain & suffering etc.	60,000/-
2.	Attendant charges	10,000/-
3.	Special diet	10,000/-
4.	Expenses incurred on treatment and medicines etc.	2,54,400/-
5.	Transportation charges	2000/-
6.	Future loss of income	2,25,600/-
	Total	5,62,000/-

The issue framed with regard to accident being result of rash and negligent driving of the offending vehicle was decided in favour of the claimant. The owner, driver and insurer were held jointly and severally liable to pay compensation.

Learned counsel for the appellant argues that the amounts awarded under various pecuniary and non-pecuniary heads are on lower side as the deceased was hospitalized for eight days and he suffered fracture and was treated as outdoor patient.

From the perusal of the award, it is evident that there was 10% disability on account of pelvis injury, the Tribunal took the said percentage qua the whole body, applied multiplier method for awarding compensation.

There was nothing on record to establish affect on functional ability. The

Supreme Court in case of Raj Kumar Versus Ajay Kumar (2011) 1 SCC 343, held as under:

"18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%."

As the proceedings are under welfare legislation, the same is not being interfered. The Tribunal has considered various heads i.e. attendant charges, special diet, expenses incurred on treatment and medicines etc., transportation etc. All the bills proved before the Tribunal were duly reimbursed. The Tribunal also awarded compensation for loss of future income.

In any case as pointed out earlier, the amount awarded for future loss of income was calculated by taking 10% disability on account of pelvis injury vis-a-vis whole body, the amount awarded compensate the other heads

of compensation.

No case is made out for further enhancement.

The appeal is dismissed.

29.04.2019

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable:	No