

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

**FAO No.7890 of 2017 (O&M)
Date of decision: 06.11.2019**

Ahsan Mohammad

....Appellant

Versus

Shri Ramesh Chand and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Arora, Advocate,
for the appellant.

Mr. Mayank Mathur, Advocate,
for respondent Nos.1 and 2.

Mr. U.K. Garg, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') vide award dated 28.10.2016, on account of injuries received by him in a motor vehicular accident which took place on 06.10.2007.

Brief facts of the case are that on 06.10.2007, at about 04.00 P.M., when claimant-appellant (Ahsan Mohammad) was playing near his house at village Bhondsi, District Gurgaon, one Tata-407 bearing registration No. HR-55-C-4023 being driven by Ramesh Chand-respondent No.1 in a rash and negligent manner, came and hit him (appellant), as a result of which, he received multiple facial and orbital fractures and developed complete visual loss in the right eye. With regard to the accident,

at Police Station, Sohna against respondent No.1-Ramesh Chand. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver-respondent No.1 and thus, returned finding on issue no.1 in favour of the claimant. This finding was rightly given on the basis of deposition of Hussain Mohd. (PW-3), who is father of injured-claimant. Claimant has also proved on record copy of FIR Ex.P1 and driving licence of respondent No.1 as Ex.P2. After the accident, claimant-appellant has lost complete vision of his right eye. The compensation was awarded by the Tribunal as under:-

Sr. No.	Heads	Amount
1.	Medical, Hospital expenses	Rs.27,786/-
2.	Pain and sufferings	Rs.20,000/-
3	Transportation/diet	Rs.10,000/-
4	Permanent disability (loss of vision of right eye & loss of matrimonial prospect)	Rs.2,00,000/-
	Total	Rs.2,57,786/- rounded off Rs.2,58,000/-

Ultimately, the claimant was found entitled to a total compensation of Rs.2,58,000/- along with interest at the rate of 8% from the date of filing of the claim petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

Learned counsel for the appellant contends that the claimant was 07 years of age when he had received accidental injuries and lost complete vision of right eye. In this regard, disability certificate Ex.PW4/A

was issued by the Medical Board, Gurgaon. This certificate was proved on record by Naresh Kumar (PW-4), who was an official of the office of Civil Surgeon, Gurgaon.

Learned counsel refers to the judgment passed by Hon'ble the Supreme Court in **Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another**, 2013 (4) RCR (Civil) 295 and another judgment passed by Chhattisgarh High Court in **Tulsi Ram Sarthi vs. Md. Sharif Khan and others**, 2019 (2) ACC 83 to contend that compensation on account of permanent disability suffered by the claimant, is liable to be enhanced.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. Parties are not in dispute with regard to finding given by the Tribunal on issue No.1 to the effect that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver. Hon'ble the Supreme Court in **Master Mallikarjun's** case (supra), has laid down the structured formula for awarding the compensation towards permanent disability. In para No.12, it has been observed as under:-

“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent ability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.”

In the present case, the claimant has lost vision of his right eye

and as per Workmen Compensation Act, 1923 (Employee's Compensation Act), Part II of the Schedule I at Serial No.25, disability of loss of one eye has been assessed as 40%. Applying the above said provision, disability as per **Master Mallikarjun's** case (supra), is being assessed as Rs.4,00,000/-. Accordingly, keeping in view the peculiar circumstances of the present case, compensation is hereby re-assessed in the light of the judgments passed in **Master Mallikarjun** and **Tulsi Ram Sarthi's** case (supra), as under:-

Sr. No.	HEADS	AMOUNT (In Rs.)
(i)	Medical, Hospital expenses	Rs.27,786/-
(ii)	Pain and sufferings	Rs.1,00,000/-
(iii)	Transportation/diet	Rs.10,000/-
(iv)	Lloss of vision of right eye, mental and physical shock, hardship, inconvenience and discomforts etc. and loss of amenities in life on account of permanent disability.	Rs.4,00,000/-
(v)	TOTAL COMPENSATION AWARDED	Rs.5,37,786
(vi)	Enhanced amount of compensation	Rs.5,37,786 – 2,58,000 = Rs.2,79,786/-

The enhanced amount of compensation of **Rs.2,79,786/-** 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. Remaining conditions of disbursal of amount shall remain unaltered.

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

(RITU BAHRI)
JUDGE

06.11.2019
ajp