

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

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Date of decision: 09.01.2020

XOBJC-78-CII-2008 (O&M) in/and
FAO No.934 of 2008 (O&M)

Vikash (minor) thr his father

... Appellant

Versus

Satluj High Vidya Mandir School and anr.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Akash Vashisth, Advocate for
Mr. Sanjay Vashisth, Advocate for the appellant.
Mr. Lokesh Sharma, Advocate
for cross objector/respondent No.1.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.934 of 2008 and cross objections No.78-CII of 2008 as these have emerged out of the same award dated 07.12.2007 passed by the Motor Accidents Claims Tribunal, Rewari whereby compensation has been assessed on account of injuries sustained by Vikash in a motor vehicular accident that took place on 11.02.2005.

FAO No.934 of 2008 has been filed by the claimant seeking enhancement of compensation whereas cross objections have been filed by respondent No.1 for reduction of compensation.

The Tribunal awarded Rs.2,73,326/-, detailed hereunder:-

Reimbursement of medical expenses	Rs.1,33,160/-
Compensation qua disability	Rs.1,00,000/-
Pain and sufferings	Rs.30,000/-
Transportation expenses	Rs.5000/-
Purchase of medicines	Rs.5166/-

Counsel for the appellant would argue that Vikash was 14 years old at the time of unfortunate occurrence. He was crushed under front wheel of the offending vehicle resulting in fracture femur and other injuries. It is further argued that because of injury to his leg, he has been rendered disable to the extent of 55%, proved by Dr. AK Saini PW6. In addition, he has suffered 100% hearing loss in view of statement of Dr. Ashok Ranga PW7. It is argued with vehemence that in view of nature of injuries sustained, period of treatment as an indoor patient and disability caused to the victim,

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compensation allowed in respect of disability, pain and sufferings, transportation charges etc. is liable to be enhanced.

Counsel representing respondent No.1, on the contrary, would argue that there is no clear evidence on record that 100% DB loss in both the ears is on account of sustaining injuries in the accident. It is further argued that in the first document prepared immediately after admission of the injured, there is no reference to any injury sustained on upper part of body particularly ears or head, therefore, hearing loss to the victim has no nexus with the injuries sustained in the accident and as such, he is not entitle to compensation with regard to hearing loss.

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

Dr. Birender Yadav of Birendra Hospital, Garhi Bolni Road, Rewari is the treating doctor of Vikash. He had stated that on 11.02.2005, Vikash was admitted with alleged history of being run over by school bus leading to crush injury to his right thigh. He proved copy of MLC Ex.PW1/A. He further deposed that Vikash was operated for stabilization of bone (right femur) and debridement of crush bone. As per his testimony, the patient remained admitted in the hospital from 11.02.2005 to 11.03.2005 and again from 12.03.2005 to 19.07.2005. He has further deposed that 50% disability regarding hearing occurred due to injuries and 50% due to confinement of bed for a long time.

Dr. AK Saini PW6 proved disability certificate Ex.PW6/A whereby disability was assessed to the extent of 55% on account of post traumatic ankylosis of right knee with mark scaring. Dr. Ashok Ranga proved disability certificate Ex.PW7/A in respect of hearing impairment to the extent of 100% DB loss in both ears.

Perusal of Ex.PW1/A, medico legal report prepared by Dr. Birender Yadav makes it evident that no injury was found on the upper body of the victim. Perusal of the statement of Dr. Birender Yadav further reveals that no treatment was given to the injured in respect of any injury on upper part of the body particularly on head or ears. That being so, it is difficult to accept contention of the appellant that he suffered hearing loss on account

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of receipt of injuries in the accident. That being so, the claimant shall be entitle to compensation by considering disability to the extent of 55% assessed by Dr. AK Saini. There is no clear evidence on record as to how disability to the extent of 55% on account of post traumatic ankylosis of right knee can be considered for assessing functional disability. Hon'ble the Supreme Court in **R.D. Hattangadi vs. M/s Pest Control (India) Private Limited, AIR 1995 (SC) 755** has held that in injury cases, compensation can be assessed on the basis of hypothesis, guess work and sympathetic considerations. Taking into consideration age of the victim coupled with nature of injuries sustained and period of treatment as indoor patient, interest of justice commands that functional disability is assessed more than 30%. Accordingly, the claimant is awarded Rs.4 lakh for pain and sufferings already undergone, to be suffered in future, mental and physical shock, hardship, inconvenience, discomfort etc. and loss of amenities in life on account of permanent disability, in the light of enunciation laid down by Hon'ble the Supreme Court **Master Mallikarjun Vs. Divisional Manager, The National Insurance Co. Ltd. and another, 2013(4) RCR (Civil) 295**. The amount of Rs.1 lakh qua disability and Rs.30,000/- for pain and sufferings assessed by the Tribunal shall be adjusted towards Rs.4 lakh. Reimbursement of medical expenses and medicines allowed by the Tribunal are correct and affirmed. The injured remained hospitalised for a period of more than 5 months. Claimant shall be entitle to Rs.15,000/- for expenses on transportation and services of an attendant. He is awarded Rs.15,000/- for loss of income of parents during treatment of the victim.

Total compensation is Rs.5,68,326/- and additional amount is Rs.2,95,000/- (5,68,326 – 2,73,326), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms. As a natural corollary, cross objections filed by respondent No.1 are dismissed.

09.01.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No