IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6978 of 2016 (O&M)
DATE OF DECISION: 05.03.2020

Sahid

…..Appellant

versus

Masaum Khan and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ashish Gupta, Advocate for the appellant

Ms. Vandana Malhotra, Advocate for the Insurance Company

..

ALKA SARIN, J.:

The present appeal has been filed by the claimant against the award dated 26.07.2016 passed by the Motor Accident Claims Tribunal, Mewat. The Tribunal has awarded a sum of Rs.1,10,000/- on account of injuries received by the claimant in a motor vehicle accident. Dissatisfied with the amount awarded, the present appeal has been preferred.

The brief facts, relevant to the present lis are that on 13.02.2015 at about 10.00 A.M. the appellant along with his brother Sakir was going to Ferozepur Jhirka on his motorcycle bearing registration No.HR-28C-6269. The appellant was a pillion rider. The driver of the motorcycle Sakir is stated to have been riding the motorcycle on the correct left side of the road at a moderate speed.

When they reached near Bodikoti, the offending vehicle, a dumper bearing registration No.HR-55M-6386, which was being driven by respondent No.1, came from the back and hit the motorcycle. Due to the impact, the claimant-appellant received serious and multiple injuries on various parts of his body and also suffered fracture of the right leg and knee. Thereafter, the brother of the claimant-appellant, namely, Sakir took the claimant-appellant to General Hospital, Mandikhera, where the doctors conducted MLR, gave him first aid and then referred him to Medical College, Nalhar, but his family members took him to Birender Hospital, Rewari where the claimant-appellant remained admitted from 13.02.2015 to 26.03.2015. An FIR dated 14.02.2015 was also registered at Police Station, Ferozepur Jhirka.

The claim petition was filed by the claimant-appellant for compensation to the tune of Rs.20 lakhs. Respondent Nos.1 and 3 filed separate written statements. Respondent No.1 took the preliminary objections, *inter alia*, qua maintainability, *locus standi* and concealment of true and material facts. On merits, it was pleaded that respondent No.1 had falsely been implicated in the case. It was further averred that the accident took place due to the rash and negligent driving of the motorcycle. Respondent No.2 did not appear before the Court and he was proceeded against *ex-parte* vide order dated 27.11.2015. Respondent No.3-Insurance Company raised several preliminary objections in its written statement, *inter* *alia,* regarding *locus standi*, no cause of action, concealment of material facts and non-joinder and mis-joinder of necessary parties. It was further averred that respondent No.1 was not holding a valid and effective driving licence at the time of the accident. On merits, respondent No.3 raised the plea that the accident had been caused due to the rash and negligent driving of the motorcycle.

On the basis of the pleadings and the evidence on the record, the Tribunal returned a finding that the claimant-appellant had received the injuries on account of the rash and negligent driving of respondent No.1 who was the driver of the offending Dumper. Under issue No.1, the Tribunal awarded the following compensation:-

Sr. No.	**Head**		**Compensation Awarded**
1.	Loss of income	—	Rs.5,000/-
2.	Medical expenses	—	Rs.90,000/-
3.	Special diet	—	Rs.5,000/
4.	Pain & sufferings	—	Rs.10,000/-
	Total compensation	—	**Rs.1,10,000/-**

I have heard the learned counsel for the parties.

It has been contended that as per the dictum laid down by the Supreme Court in the case of ***Raj Kumar*** vs. ***Ajay and another***, ***2011(2) R.C.R. (Civil) 101***, a multiplier method ought to have been applied, inasmuch as, the claimant-appellant had suffered 25%

disability. It is further averred that all the medical expenses have not been given despite the requisite bills having been produced on the record. Also, learned counsel for the claimant-appellant contended that the amounts awarded towards special diet, pain and sufferings were on the lower side. He also contended that the Tribunal erred in not awarding any amount towards transportation.

Per contra, learned counsel for respondent No.3-Insurance Company contended that a just amount has been awarded to the claimant-appellant. It is further averred that the amounts against bills Ex.P7 to P12 have rightly not been given. Further, learned counsel for the respondent No.3-Insurance Company contended that Ex.P16, the disability certificate, could not be co-related with the accident in question.

The principles for determination of compensation in case of permanent/partial disability have exhaustively been dealt with by the Apex Court in the case of ***Raj Kumar*** *(supra)*. The relevant paragraphs from the judgment are reproduced hereinbelow:-

> *"6. The heads under which compensation is awarded in personal injury cases are the following: Pecuniary damages (Special damages)*
>
> *(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.*
>
> *(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:*

(a) Loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses Item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of nonpecuniary damages Items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability Item (ii)(a).

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the *extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.*

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the

> *percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."*

It is trite that in the case of grievous injuries resulting in partial or permanent disablement, the compensation has to be awarded under the heads as laid down in the case of ***Raj Kumar*** (*supra*). The Tribunal, in the present case, has erred in not awarding the compensation as per the dictum laid down by the Supreme Court. The claimant-appellant in the present case was 21 years of age at the time of the accident and was an able-bodied young man who is stated to have been working as a car mechanic. As per the certificate, Ex.P16, the claimant-appellant had suffered 25% permanent disability of the limb on account of the accident. A perusal of Ex.P16 clearly reveals that the permanent disability has been suffered due to "*Post traumatic operated c/o fracture dislocation. Rt. Ankle joint c mid tarsal dislocation of Rt. foot c severe restriction of movements at Rt. ankle joint. Twenty five percent (25%)*". PW3-Dr. Nasim Ahmad, MO (Ortho Surgeon), Civil Hospital, Mandikhera had stepped into the witness box and clearly stated that the disability had been assessed at 25% on account of post traumatic operated case of fracture dislocation of the right ankle joint with mid tarsal dislocation of right foot with severe restriction of movement at the right ankle joint.

Though the case set up by the claimant-appellant was that he was working as a car mechanic and earning an amount of Rs.15,000/- month, however, there is no evidence on the record to support the said averment. In view thereof and in view of the law laid down by the Apex Court in ***Raj Kumar*** (*supra*), I deem it proper to take the earning capacity as per the minimum wages prevalent at the time of the accident which were Rs.5,800/- per month. The disability suffered by the claimant-appellant is 25% qua the limb. Therefore, it would be appropriate to take the functional disability of the claimant-appellant as 12.5%. I further find that the amount awarded towards special diet is also on the lower side. I, therefore, deem it just and appropriate to award an amount of Rs.25,000/- towards special diet and under the head transportation and other expenses and attendant charges I deem it proper to award an amount of Rs.50,000/-. Further for the pain and sufferings suffered by the claimant-appellant, I deem it proper to award an amount of Rs.1 lakh.

As far as the medical bills produced by the claimant-appellant are concerned, the amount has rightly been awarded by the Tribunal as Rs.90,000/-. A perusal of the bills Ex.P7 and P8 reveals that the said bills of a pharmacy are dated 26.03.2015 *i.e.* the day when the claimant-appellant is stated to have been discharged. It would have been understandable if the bills had been raised by the hospital but the said bills by the pharmacy do raise a doubt in the mind of the Court. Similarly, the bill Ex.P9 is dated 02.04.2015 and bills Ex.P10 and Ex.P11 are both dated 13.04.2015. The same medicines are mentioned in both the bills Ex.P10 and Ex.P11. In the bill Ex.P10, 10 tablets of each medicine have been mentioned while in the bill Ex.P11, 20 tablets of the same medicine have been mentioned. There is no explanation forthcoming as to how and why two bills of the same date, from the same chemist were issued and that too for different quantities of the same medication. In view thereof, the Tribunal has rightly discarded the bills Ex.P7 to P12.

In view of the aforesaid, I deem it just and proper to award the following compensation:-

Sr. No.	**Head**		**Compensation Awarded**
1.	Monthly income	—	Rs.5,800/-
2.	Annual income	—	Rs.69,600/-
3.	Annual loss of income on account of 12.5% functional disability	—	Rs.8,700/-
4.	Annual loss of income on account of 12.5% functional disability after adding future prospects @ 40%	—	Rs.12,180/- (8700+3480)

5.	Multiplier of 18 (Age 21 years)	——	Rs.2,19,240/- (Rs.12180x18)
6.	Medical Bills	——	Rs.90,000/-
7.	Special diet	——	Rs.25,000/-
8.	Transportation & Attendant charges	——	Rs.50,000/-
9.	Pain & suffering	——	Rs.1,00,000/-
	Total compensation	——	**Rs.4,84,240/-**
	Enhanced compensation	——	**Rs.3,74,240/-**

The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition till realisation.

With the above observations, the present appeal is allowed and the award passed by the Tribunal is accordingly modified.

(ALKA SARIN)
JUDGE

05.03.2020
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NOTE:
Whether speaking/non-speaking: Speaking
Whether reportable: YES