

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 15.01.2020****FAO No.9972 of 2014 (O&M)**

Manoj Kumar

...Appellant

Vs.

Kuldeep Kumar & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Yashveer Kharb, Advocate, for
Mr. Ajay Ghangas, Advocate, for the appellant.

Mr. Rajbir Singh, Advocate,
for the Insurance Company.

RAJIV NARAIN RAINA, J. (ORAL)

1. The first appeal from order is for enhancement of compensation for injuries suffered by the appellant in a motor accident which occurred on 20.01.2010. The appellant-claimant along with one Pawan Kumar was commuting to Faridabad in his car bearing registration No.HR-29W-6533. He was at the wheel. When the duo reached Dudhola Mord, near Village Prithla NH-2, a Canter/Truck bearing registration No.HR-46D-8719, driven by respondent No.1 rashly and negligently, hit the car from rear boot resulting into multiple injuries to the appellant. An FIR No.27 dated 21.01.2010 under Sections 279 and 337 IPC was also registered in this regard. The injured aged 34 years was pleaded to be doing a job with M/s Shivalik Export, Faridabad and earning Rs.5500/-

per month as salary. He remained hospitalized under treatment from 20.01.2010 to 29.01.2010 in Batra Hospital, Delhi.

2. The compensation assessed by the Tribunal in the impugned award is tabulated as under:

1. Medicine and treatment charges	=	4,53,575.00
2. Transportation charges	=	5000.00
3. Attendant charges	=	5000.00
4. Special Diet	=	5000.00
5. Pain and Suffering	=	5000.00
6. Loss of Income	=	4506.00
7. Enjoyment and immunities in life	=	5000.00
8. Disability 10% loss (Rs.5200 x 12)	=	<u>62,400.00</u>
Total :	=	<u>5,45,481.00</u>

3. Mr. Kharb learned counsel for the appellant submits that though as per the certificate of disability (Ex.P62), the disability has been assessed as 40%, but the Tribunal has grossly erred in taking the functional disability of the appellant as only 10% when there was testimony of PW-7 Dr. B.S.Sharma, Deputy Civil Surgeon, GH Palwal deposing differently. Moreover, the Tribunal provided a very meager sum under different heads, thus, the amount of compensation is required to be enhanced by modifying the award passed by the Tribunal.

4. On the other hand, Mr. Rajbir Singh, learned counsel representing the insurance company submits that the award passed by the Tribunal is perfectly legal and justified. All the heads of compensation are taken care of properly and there is no scope for enhancement.

5. I have heard learned counsel for the parties and have gone through the paper-book with their assistance. Admittedly, after the accident, the appellant was shifted to Fortis Escorts Hospital, Faridabad

from where he was referred to Batra Hospital, Delhi due to his critical condition. The appellant remained admitted in Batra Hospital, Delhi from 20.01.2010 to 29.01.2010 with multiple injuries. Thereafter, he was under follow up treatment with Spero Hospital, Palwal. The disability certificate records disability as 40% (right hand). The Tribunal, in my view, has committed a perverse error in not properly appreciating the medical evidence brought on record by taking the permanent disability of the appellant to the tune of 10%. Therefore, I will take the loss of earning capacity of the appellant in the future as 20%.

6. The Tribunal assessed the income of the appellant as Rs.5200/- per month which I will retain as fair amount in the face of want of satisfactory evidence and thus adopt a suitable multiplier of 16 to the age of the injured at the time of accident to assess the future loss of earning capacity calculated at Rs.1,99,680/-. Though the amount assessed by the Tribunal under the head of medical and treatment charges as well as loss of income during the period of hospitalization of the appellant shall remain intact, but I will deem it fit to enhance the compensation for transportation charges to Rs.15,000/-; attendance charges to Rs.15,000/-; special diet to Rs.15,000/-; pain and suffering to Rs.50,000/- and loss of enjoyment of life and amenities to Rs.20,000/-. For 20% permanent disability, I also grant Rs.40,000/- to the appellant.

7. In all, the compensation payable is assessed at Rs.8,12,761/- as against Rs.5,45,481/- assessed by the Tribunal which was on the lower side and not just and reasonable. The amount in excess over what has already been provided by the Tribunal shall also attract interest @7.5% p.a. from the date of filing of the claim petition till its realization. The

liability in this regard shall remain the same as has already been assessed by the Tribunal.

8. The award stands modified and the appeal is allowed to the above extent.

15.01.2020

Vimal

[RAJIV NARAIN RAINA]

JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes/No