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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2206-2016(O&M)
DATE OF ORDER: 20.12.2022

Saloni Pandey

.....Appellant

Vs.

Rajinder Singh & others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Shashikant Gupta for the appellant.

Mr. Dinesh Kumar Prajapati, Advocate
for respondent No.3-Insurance Company.

Nidhi Gupta, J.

This appeal has been filed by the claimant-injured seeking enhancement of compensation of Rs.1,35,000/- awarded to her by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as "the Tribunal") in MACT Case No.177 of 2014 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as "the Act").

Learned Tribunal on the basis of the pleadings of the parties and evidence led by them, concluded that the appellant had been injured in a motor vehicular accident that took place on 02.04.2014 due to the rash and negligent driving of respondent No.1 of Ford Eco Sport bearing registration No.PB-06-X-4990 (hereinafter referred to as "the offending vehicle"), owned by respondent No.2 and insured by respondent No.3. Accordingly, in view of the facts and circumstances of

the case, learned Tribunal awarded compensation in the following manner:-

1	Bills	14720
2	Hospitalization & Health Diet	15000
3	Attendant expenses assessed	14000
4	Driver expenses assessed	16000
5	Compensation for disability	40000
6	Compensation for Pain and Suffering for grievous hurt i.e. 2 fractures	20000
7	Transportation expenses assessed	5000
8	Loss of income assessed	10000
	Total	1,34,720/-

Further, interest at the rate of 7.5% per annum was also granted from the date of filing of petition till realisation of the whole amount and the respondent No.3 was directed to make the payment as vehicle in question was insured and therefore, respondent No.3 was bound to indemnify respondent No.2, registered owner of the vehicle in question.

It is inter alia submitted by learned counsel for the appellant that the appellant is an Interior Designer and it was proven on record that she was earning Rs.15,000/- per month. In support, salary certificate Exhibit P4 and testimony of PW4 is referred to. Exhibit P2 is the appointment letter of the appellant and it is submitted that it is therefore proven that the appellant was working as an Interior Designer and was getting salary of Rs.15,000/- per month.

It is further submitted that the appellant was admitted in hospital for 8 days from 02.04.2014 to 09.04.2014 and she had received two fractures. Appellant is also stated to have suffered 20% permanent disability as evident from disability certificate Exhibit P3. It is accordingly submitted that the amount given by the Tribunal is on the lower side and nothing has been awarded on account of prospects of marriage; and even no multiplier has been applied. It is further stated that only Rs.14,000/- has been given as attendant charges whereas Exhibit P27, which is issued by Attendant shows that the appellant had paid Rs.12,000/- per month to the Attendant for the period April, 2014 to October, 2014. It is further stated that all the amounts under conventional heads i.e. transportation and pain & agony are on the lower side.

Per contra, learned counsel for the respondent-Insurance Company submits that no proof of income has been attached by the appellant/claimant and even no witness has been produced in support to show that the appellant was earning Rs.15,000/- per month. It is further stated that the disability of the appellant is neither permanent nor functional and therefore, future prospects are not admissible to the appellant as it is only a fracture case which will improve over time.

I have heard learned counsel for the parties. A perusal of the record/LCR of the case, in particular, the statement of PW4 Jeetesh Sehgal, Accountant with M/s Heritage Marketing at page 111 of the LCR, shows that the appellant was appointed as Interior Designer with the said company only on 01.03.2014 on a monthly salary of Rs.13,500/- and variable pay of Rs.3,000/-. In cross-examination, it is admitted that the

company makes the payment through cheque and also maintains account in this regard however, admittedly the said witness PW4 had not brought the said record. Accordingly, it is nowhere proved that the appellant was earning Rs.15,000/- per month. Moreover, it is clear from the above facts that the appellant was appointed on 01.03.2014 which is only one month prior to the accident which took place on 02.04.2014. Definitely, this casts a shadow of doubt on the claim of the appellant that she was drawing salary of Rs.15,000/- per month as an Interior Designer. These facts are also borne out from the appointment letter Exhibit P2 dated 01.03.2014 at page 171 of the LCR, whereby the appellant was offered an appointment in the above said company as an Interior Designer with gross emoluments of Rs.13,500/- per month, as such, there is no proof of income of the claimant being Rs. 15,000/- per month.

The second contention of the learned counsel for the appellant is that the appellant had suffered 20% permanent disability as evidenced by Disability Certificate dated 28.01.2015 Exhibit P3. However, in this regard, statement of PW1 Dr. Atul Malhotra, MS (Orthopedics), Max Hospital, Mohali, is relevant to the effect that the claimant *“sustained closed fracture of middle and lower third left tibia and fibula without neurovascular deficit”*. It is further stated by PW1 that the claimant suffered two fractures on left leg and due to this, she may have disability in future. Accordingly, it is clear that the claimant has not suffered any permanent disability and her normal daily work is not hindered due to the injury suffered. Accordingly, in view of the fact that it is not proven on record that the appellant has suffered any permanent or functional

disability, I hold that the Rs. 40,000/- granted by Id. Tribunal for disability is sufficient.

A further perusal of the impugned Award shows that medical bills submitted by the appellant Exhibit P4, Exhibit P6, Exhibit P9, Exhibit P14 and Exhibit P23 were paid under the Ex-servicemen Contributory Health Scheme and had not been paid by the appellant. Learned counsel for the appellant is unable to deny this fact. Accordingly, the appellant is not entitled to any compensation under this head. The amount of Rs.15,000/- granted towards Hospitalisation and Health Diet, as also Rs.14,720/- spent/submitted by the appellant towards remaining medical bills is also maintained. I further find that the Exhibit P27 which is note written by an attendant, is unreliable as it is just a note dated 31.10.2014 written on a rough sheet by one Shalini Tiwari who stated that she has performed Attendant duty of the appellant on salary of Rs.400/- per day with effect from April, 2014 to October, 2014 i.e. Rs. 12,000/- per month. As such, I find no ground to interfere with the Attendant Expenses of Rs.14,000/- granted by the learned Tribunal. However, additional Rs. 50,000/- is granted on account of pain and suffering due to two fractures suffered by the appellant.

In view of the above discussion, the compensation admissible to the appellant is re-worked as follows:-

1	Bills	14,720/-
2	Hospitalization & Health Diet	15,000/-
3	Attendant expenses assessed	14,000/-
4	Driver expenses assessed	16,000/-

5	Compensation for disability	40,000/-
6	Compensation for Pain and Suffering for grievous hurt i.e. 2 fractures	70,000/-
7	Transportation expenses assessed	5000/-
8	Loss of income assessed	10000/-
	Total	1,84,720/-

The appeal is accordingly disposed of in above terms.

Pending applications if any, stand disposed of.

20.12.2022

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No