IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6242-2013 (O&M)
Date of Decision: September 27, 2022

Anish Sharma

...Appellant

VERSUS

Bahadur Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ankit Grewal, Advocate
for the appellant.

Mr.Ravinder Arora, Advocate and
Mr.Neeraj Khanna, Advocate
for respondent No.3-Insurance Company.

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ARCHANA PURI, J.

This appeal arises out of the motor accident claim, following the serious injuries suffered by the appellant-claimant, on 09.08.2010, when the motorcycle bearing registration No.HR-12D-3480, driven by the appellant-claimant, was hit by the truck bearing registration No.HR-39-7127.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.88,500/- to the appellant.

Being dissatisfied with the awarded amount, the appellant-claimant has filed the present appeal for seeking enhancement of the compensation.

So far as, the fact of accident and manner of its taking place as well as the liability of the driver, owner and insurer of the offending vehicle, to be joint and several, are concerned, it is pertinent to mention that no appeal has been filed by the persons, so made liable, to challenge the Award and thus, findings so arrived, has attained finality.

In this backdrop, learned counsel for the appellant-claimant underscores that the appellant-claimant has suffered 35% permanent disability and is unable to perform everyday activities and he requires constant support, even, for the confined life, he has been forced to live after the accident. Since, he has become invalid, it is submitted that the compensation awarded, for pain and suffering, transportation, attendant charges, diet and nutrition, taken together as Rs.15,000/-, is miserably on lower side. Besides the same, it is submitted that medical bills have wrongly been discarded, even though, they are in the name of the appellant-claimant and co-relate to his treatment period.

Further, learned counsel for the appellant submits that the Tribunal has worked upon the compensation, vis-a-vis, permanent disability, in a mechanical manner, while taking **Rs.2000/- per %age** of the disability. Learned Tribunal has not taken into consideration, the impact of permanent disability, upon the life of the appellant-claimant, not only relating to this income generating capacity, but also about non-quantifiable implications, on the life of the appellant-claimant.

Besides the same, learned counsel for the appellant assiduously submits that looking at the nature of injuries sustained by the appellant, additional medical exigencies are necessitated and expenses are incurred for regular medical treatment in future. In fact, it is submitted that even after passing of the Award, soon within a period of six months, the appellant-claimant had undergone major knee operation, where 3 knee ligaments, namely PCL, ACL and PLC, were replaced. The operation was conducted on 16.04.2013 and the appellant was discharged on 19.04.2013. He had spent a sum of Rs.75,000/-, on this operation.

Thus, learned counsel for the appellant has made a prayer for extensive enhancement of the amount, as so awarded by the Tribunal.

On the other hand, learned counsel for the Insurance Company has refuted the claim the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. Thus, he submits that the appeal sans merit and deserves to be dismissed.

PW-4 Dr.Pardeep Kamboj, Assistant Professor, Department of Ortho, PGIMS, Rohtak has been examined by the appellant, vis-a-vis, the disability suffered, as outcome of the accident. This witness was member of the Board, who examined the appellant-claimant and certified the disability as 35% and that too permanent. The disability certificate is Ex.PW3/J, which states about the permanent disability to be 35%, on account of following injuries:-

> ***Fracture Dislocation (R) hip with # BB leg (R) with ligamentous injury (R) knee # DP (R) Middle and index finger.***

This permanent disability was assessed as 35%, on account of ***'instability (R) knee, reduced (R) knee movements with delayed union (R) tibia with myosin associated (R) hip with reduced movement of (R) hip***

***joint with malunited # of DP index and middle finger (R) hand*'.**

Keeping in view the nature of injuries, so sustained, the disability, so suffered, in view of the age of the appellant-claimant, to be 34 years, at the relevant time and looking at the avocation followed by him, as Marketing Supervisor in M/s Laxmi Precision Screws Ltd., reflects travails, which the appellant, will have to face in life. The 34 year old's youthful dreams, pertaining to his growth in a private sector and future hopes were snuffed to a great extent by the serious accident. Youngman's impaired condition certainly would have impacted his family members. Their resources and strength are bound to be stressed by the need to provide full time care to the claimant, at least for some period of time, soon after the accident.

The Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be justly determined. In ***Helen C. Rebello and others vs. Maharashtra SRTC and Anr., 1999 (1) SCC 90***, the Bench, held the following on the contours of '**just**' compensation:-

> *"The word "just", as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just."*

A person therefore is not only to be compensated for the injury suffered due to the accident but also for the loss suffered on account of the injury and his inability to lead the life he led, prior to the life altering event.

A three judges' bench in ***Jagdish Vs. Mohan and others, 2018 (4) SCC 571***, made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

> *"...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law."*

The Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his life, on account of his physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count but the functional disability, on account of injury sustained, can always be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the apt observations made by the Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343***, which are herein reproduced:-

"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 shows 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."*

The test for determining the effect of permanent disability, on future earning capacity involves the following 3 steps, as was laid down in ***Raj Kumar's case (supra)*** and reiterated in ***Chanappa Nagappa Muchalagoda vs.Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796***, as herein given:-

> *"13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions, so that he continues to earn or can continue to earn his livelihood."*

At this juncture, also it is apt to make reference to the observations made in ***Pappu Deo Yadav vs. Naresh Kumar and others, (2020) SCC Online 752***, which are herein given:-

> *"13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right*

hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court reassessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity."

"20. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application

of some 'proportionate' principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case."

As noted earlier, the impact of earning capacity for the appellant-claimant, by virtue of his 35% disability, must not be measured as a proportionate of his earning capacity. It should be noted that PW-1 Ravinder Gupta, who was employed as Assistant Manager in the employer company of the appellant-claimant, has proved the salary slip of the claimant, for the month of December 2011 and the same is Ex.P1. Besides the same, he proved salary statement of the appellant-claimant, which is Ex.P2. The salary slip relates to the period of about one year after the accident. There is nothing, as such, on record about the appellant having remained off work, on account of injuries sustained but anyhow, looking at the kind of injuries sustained, as detailed in the earlier portion of the judgment, definitely the appellant-claimant must have remained away from the work, for at least two months, after the accident. Moreover, his working efficiency, also ought to be effected. Besides the same, the appellant's chances of growth in private sector, as compared to normal healthy man, after having become partially invalid, must have been restricted.

Considering all these factors, definitely, his loss of earnings, on account of permanent disability, can be taken as **50%**. As per claim of the appellant, his earnings, at the relevant time, was Rs.12,000/- per month. Though, qua the same, besides the assertion so made, no evidence, as such, has been led but anyhow, as per salary slip Ex.P1, in the month of December 2022, the net payable salary of the appellant was Rs.14,697/-. Thus, by use of some guess work, the salary of the appellant, at the relevant time, after making necessary deductions, can conveniently be taken to be Rs.10,000/-. Taking into consideration, his sufferings and also taking into consideration, his extent of disability and non-quantifiable implications, the loss is assessed as 50%, i.e. Rs.5,000/- per month. So, annual loss is assessed to be Rs.60,000/- per month and by application of multiplier of '16' as held in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*** and also multiplying the same with 35% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as **Rs.3,36,000/-**. Accordingly, under this head, the amount awarded by the Tribunal, is enhanced proportionately.

Now, coming to the medical bills of the appellant-claimant, vis-a-vis, the treatment undergone by him. The bills, which have been taken into consideration by the Tribunal, are the bills Ex.P3 to Ex.P7, proved by way of examination of PW-Rajender Kumar. However, the other bills, which are original and have been tendered into evidence by the counsel, had not been taken into consideration, as it was observed that they were not proved by examination of any witness and thus, cannot be taken into consideration. However, the aforesaid observation, is palpably wrong.

It is well settled principle of law that Motor Accident Claim Tribunal, is not a regular court, in a strict sense of the term. In fact, proceedings before the Tribunal, are in nature of an enquiry and the Judge presiding said Tribunal, can adopt any suitable procedure, in his discretion. It is settled proposition of law that the strict rules of pleadings and rules of evidence, do not apply to such cases and in case, there is any doubt regarding the genuineness of the any document, the evidence of the claimant himself, should be construed sufficient to prove such documents.

In this case, the bills which have been produced, are in the name of the claimant and co-relate to his period of treatment but some bills have not been taken into consideration by the Tribunal. The total of the bill, excluded from consideration, comes to be approximately Rs.55,000/-. Since the bills are in the name of the appellant-claimant and co-relate to the period of his treatment, the amount of the bills, ought to be taken into consideration, on account of medical expenses, incurred upon the appellant-claimant. Thus, considering the same, the enhanced amount shall be now Rs.58,500/- (Rs.3500+Rs.55,000/-).

Besides the aforesaid, it is also pertinent to mention that Tribunal had taken as one head, together for pain and suffering, transportation, attendant charges and diet & nutrition and paid Rs.15,000/- under this united head. This, amount is on lower side. Considering the extent of disability suffered by the appellant-claimant, the amount has to be separately taken up and needs enhancement. Thus, on the account of pain and suffering, the amount so granted, is enhanced to **Rs.20,000/-**.

The appellant-claimant is resident of Rohtak and he had availed treatment from Delhi. Though, no doctor, as such, has been examined but the appellant-claimant himself had deposed about the same, when he stepped into witness box. The settlement receipt Ex.PW-1/D relates to Max Healthcare Unit. This reflects about his treatment, so undergone, from Delhi and further, there is also receipt of AIIMS, proved in evidence. Thus, for the transportation also, much expenses must have been incurred and on this count, separate amount of Rs.10,000/- is granted.

For some period of time, after the accident, the appellant-claimant must have been looked after by a by-stander/attendant. Though, learned counsel for the Insurance Company submits that no material is produced by the appellant-claimant, on actual expenses incurred for the services of the attendant and it is argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability suffered, besides the family members, the appellant-claimant, ought to be having one attendant to look after him, as there was need for assistant living for some period of time. Since, no material is produced to quantify the expenses for the attendant, making a conservative estimate @ Rs.4,000/- per month, appears to be bare minimum. At least for a period of five months, some assistance was required by the appellant-claimant. Thus, under the head of attendant charges, compensation is quantified as **Rs.20,000/-**.

Also, the appellant-claimant must have been put on highly nutritious diet and on this count also, another amount of **Rs.10,000/-** is granted.

Looking at the kind of injuries, suffered by the appellant-claimant, definitely, some future medical treatment, ought to be extended to the appellant, from time to time. It is, though, submitted by learned counsel for the appellant that soon after the Award, the appellant-claimant had undergone surgery and a sum of Rs.75,000/- was spent, but however, no material, as such, has come on record. But anyhow, the injury on the hip as well as right knee, right legs and hand, ought to be taken care of in future.

The efforts of the Courts must always be to substantially ameliorate the misery of the claimant and recognize his actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

In ***Smt.Sarla Verma's case (supra)***, the Supreme Court held that the just compensation is adequate compensation and the Award must be just that- '**no less and no more**'. The plea of the victim suffering from a cruel twist of fate, when asking for some more, is not extravagant, but it is for seeking appropriate recompense, to negotiate with the unforeseeable and the fortuitous twists, is his impaired life. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding '**just compensation**'.

While attempting to grant compensation on same lines, in view of the seats of the injuries, in future, need ought to be there to seek medical treatment by the appellant-claimant. Thus, on future medical expenses, another amount of **Rs.1,00,000/-** is granted to the appellant-claimant.

Accordingly, the appellant-claimant is held entitled for compensation as under:-

Permanent disability	**:**	**Rs.3,36,000/-**
Medical bills	**:**	**Rs.58,500/-**
Pain & suffering	**:**	**Rs.20,000/-**
Transportation charges	**:**	**Rs.10,000/-**
Attendant charges	**:**	**Rs.20,000/-**
Diet and Nutrition	**:**	**Rs.10,000/-**
Future medical expenses	**:**	**Rs.1,00,000/-**
Total	**:**	**Rs.5,54,000/-**

With the above observations, the appellant's appeal stands allowed. The impugned Award dated 23.07.2012 stands modified, to the extent, as indicated aforesaid. Apart from this modification regarding enhancement of compensation, the remaining terms of the impugned Award, shall remain same.

September 27, 2022 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**