

256 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO-3169-2016

Reserved on : July 12, 2022  
Pronounced on : July 15, 2022

Kusam .....Appellant

**Vs.**

Bhupinder Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Abhinav Kalia, Advocate  
for the appellant.

Mr. Manmohan Saroop, Advocate  
for respondent No.2.

Mr. Ashwani Talwar, Advocate  
for respondent No.3.

**ARVIND SINGH SANGWAN, J.**

Prayer in this appeal is for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Karnal vide award dated 3.11.2015, as under :-

|                           |                         |
|---------------------------|-------------------------|
| Age                       | 25 years                |
| Period of hospitalization | 1.10.2012 to 16.10.2012 |
| Occupation                | Housewife               |
|                           | Heads of Claim          |

| Sr.No. |                                                 | Amount                 |
|--------|-------------------------------------------------|------------------------|
| 01.    | Loss of Income during treatment                 | Nil.                   |
| 02.    | <b>Medical Expenses</b>                         |                        |
| (i)    | Medicines                                       | Rs.61,676/-            |
| (ii)   | Hospital Charges including implant              | Nil                    |
| (iii)  | Attendant Charges                               | Rs.10,000/-            |
| (iv)   | Special diet                                    | Rs.10,000/-            |
| 03.    | Transportation                                  | Rs.10,000/-            |
| 04.    | Pain and suffering                              | Rs.10,000/-            |
| 05.    | Disability                                      | Rs.24,000/-            |
| 06.    | % of loss of annual earning capacity            | Nil                    |
| 07.    | Reduction in life expectancy/ loss of amenities | Nil                    |
| 08.    | Loss of prospectus of marriage                  | Nil                    |
|        | Total                                           | Rs.1,25,676/-<br>===== |

Brief facts of the case are that on account of the motor vehicle accident dated 1.10.2012, the appellant sustained multiple injuries and remained admitted in hospital. The appellant filed the claim petition on the ground that she was aged 25 years at the time of accident and apart from being house wife she was running a milk dairy earning Rs.10,000/- per month. It is also stated that she spent Rs.02 Lacs on her treatment from a private hospital, including the medicines and special diet. Due to accident, she has become permanently disabled.

The respondent-Insurance Company as well as the driver and owner contested the claim petition before the Tribunal.

The learned Tribunal on issue No.1, recorded a finding that the accident in question took place due to rash and negligence driving of respondent No.1-Driver of car bearing registration No.HR-37-B-7888. Under Issue No.2, while assessing the quantum of compensation, the Tribunal held that as per the statement of claimant Kusum PW1, it is stated that she remained admitted in two private hospitals at Karnal and

later on, she was referred to PGI, Chandigarh, where she remained admitted for 15 days and was operated for fracture on her left elbow and right foot. The claimant further stated that she spent Rs.02 lacs on her treatment, medical tests, expenses of transportation and for taking special diet. She has suffered 24% permanent disability. The claimant further stated that due to permanent disability, her working capacity has been adversely affected and she has to engage a domestic servant.

As per the medical bills, it is proved that a total sum of Rs.61,676/- was spent on her medical treatment.

PW2 Dr. Vinod Kumar, SMO, Kalpana Chawla Government Medical College and Hospital, Karnal proved that the disability suffered by the appellant as per the disability certificate is 24% due to mal-united fracture of left elbow with conjuncture formation left arm with loss of third or fourth metatarsal right foot with conjecture formation.

Since the respondents did not lead any evidence, considering the evidence of the appellant, the aforesaid compensation was awarded.

Counsel for the appellant has referred to the judgment of the Hon'ble Supreme Court in 2015(3) RCR (Civil) 967 **Rajan Vs. Soly Sebastian and another,** to submit that in such circumstances where the victim has suffered bodily disability with regard to the earning capacity, 50% enhancement for future prospects is awarded.

Counsel for the appellant has also referred to 2020(4) SCC 413 **Kajal Vs. Jagdish Chand and others,** to submit that it is held by the Supreme Court that while assessing just and fair compensation on account of the permanent disability, the Tribunal must appreciate loss of earning capacity on account of permanent disability apart from granting

the compensation under the pecuniary and non-pecuniary damages head.

Counsel for the appellant has further relied upon the judgment of the Hon'ble Supreme Court 2014(14) SCC 369 **Malikaarjun Vs. Divisional Manager, National Insurance Company Limited and another,** wherein it is held that upto the permanent disability of 30% the compensation to the tune of Rs.03 lacs can be awarded. Therefore, it would be just and fair that the appellant is awarded a total compensation of Rs.3,61,676/-, including the expenses on medicines, i.e. Rs.61,676/-

Counsel for the respondent-Insurance Company could not dispute the well settled principle of law of the Hon'ble Supreme Court.

Accordingly, this appeal is partly allowed and the amount of compensation is enhanced to Rs.3,62,000/-. The respondent-Insurance Company will deposit the enhanced amount before the Motor Accident Claims Tribunal, Karnal within a period of two months from today, along with interest @ 6% per annum, failing which the respondent-Insurance Company will be liable to pay the amount along with interest @ 12% per annum.

The appeal is disposed of accordingly.

**( ARVIND SINGH SANGWAN )**  
**JUDGE**

**July 15, 2022**  
satish

Whether speaking/reasoned : YES / NO  
Whether reportable : YES / NO