IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5466-2019(O&M)

Reserved on 24.11.2022
Date of pronouncement: 05.12.2022

Surender .... Appellant

Versus

Dalbir and others .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Vinod Gupta, Advocate,
for the appellant.

Mr. D.K. Prajapati, Advocate,
for respondent No.3-Inusrance Company.

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HARKESH MANUJA, J.

The present appeal lays challenge to an award dated 09.08.2019 passed by the learned Motor Accident Claims Tribunal, Jind(in brevity, 'the Tribunal'),whereby compensation of Rs.46,93,595/- has been awarded to the appellant/claimant along with interest @ 7.5% per annum.

Brief facts of this case are that on 31.08.2017 at about 07:00 pm when appellant/claimant was proceeding from his shop towards his house, a truck bearing registration No. HR-69-3536 hit him. As a result, appellant/ claimant fell on the road in front of the truck and the right side front wheel ran over his leg and therefore, his both legs got crushed. Regarding this accident, FIR No. 792 dated 01.09.2017 u/s 279,338 IPC was registered at Police Station, City- Jind.

Based thereupon, claim petition filed by the appellant- injured was allowed by the learned Tribunal, holding that the accident occurred on account of rash and negligent driving of respondent No.1. In order to compensate the appellant on account of injuries suffered by him, learned

Tribunal assessed his functional disability to the extent of 100% and awarded compensation in the following manner :-

Sr. No.	Nature	Amount in Rupees
1.	*pain and suffering*	*Rs.2,00,000/-*
2.	*Medical expenses*	*Rs.24,94,595/-*
3.	*Loss of amenities*	*Rs.2,00,000/-*
4.	*Future loss of Income*	*Rs.15,99,000/-*
5.	*Attendant charges & special diet etc*	*Rs.2,00,000/-*
	TOTAL:	*Rs. 46,93,595/-*

Being aggrieved against the award dated 09.08.2019, the present appeal has been preferred by the appellant/claimant for enhancement of compensation.

Learned counsel for the appellant/ claimant contends that learned Tribunal has erred while treating the appellant/ claimant as un-skilled labourerfor the purpose of assessing his income. He further contends that since claim of the appellant was that he was running a furniture shop and to prove his income, Income Tax Returns (ITR) of last 3 years i.e. 2015-16, 2016-17 & 2017-18 were brought on record as Ex. P59 to P61, therefore, learned Tribunal should have assessed loss of income, on the basis of ITR for assessment year 2016-17. He again contends that in view of the judgment of Hon'ble Supreme Court **"Kajal vs Jagdish Chand and others",** Civil Appeal No.735 of 2020 decided on 05.02.2020 as appellant/ claimant suffered 100% permanent disability, compensation for pain and suffering should have been Rs.6,00,000/-. He also contends that no compensation has been given under the heads of transportation; whereas compensation awarded under the head of special diet and loss of amenities is on extremely lower side. He further contends that no compensation was awarded on account of bills for replacement of accessories for artificial limbs while he should have been appropriately compensated for future medical expenses as artificial limbs will required to be replaced two- three times in the lifetime of appellant/ claimant.

On the other hand, learned counsel for respondent No.3-Insurance Company contends that no documentary evidence was brought on record to prove the profession and income of the appellant/ claimant and ITRs were not conclusive evidence of income of a person, hence, learned Tribunal rightly assessed the income as an un-skilled labourer. In support of his submissions, he places reliance upon the judgements of **“Lalita Jain and another vs Malkiat Singh and others”,** reported as 2019 AAC 1500 and “**Smt. Shabana Begum and ors vs Yogesh Kumar and ors”,** reported as 2014(78) RCR (Civil) 278. He also places reliance upon the order dated 10.03.2022 passed by Hon’ble Supreme Court in the case of **“The Branch Manager Oriental Insurance Co. Ltd. vs K.J. Prashanthkumar and ors”** SLP No. 3540-3541 of 2022, to contend that on this basis, stay has been granted by the Hon’ble Apex Court in that case. He further contends that compensation granted by the learned Tribunal is already on higher side and thus, requires no interference.

I have heard learned counsel for the parties and perused the paper-book. I find force in the argument raised by the learned counsel for the appellant that as the Income Tax Returns for the last 3 years were duly brought on record by him as Ex. P59 to P61, therefore, learned Tribunal should have assessed his annual income on the basis of his last ITR. The reasoning given by the learned Tribunal that appellant/ claimant was not able to prove that he was running a furniture shop is negated from the ITR itself, wherein the information sheet, income has been shown from the sale of wooden and steel furniture and other job work done. The fact that he has shown his tax liability as nil, is also of no consequence as it shall depend upon the tax slab of that particular year and further, if appellant was showing less income, the compensation calculated in accordance with the income shown in the ITR will also be on the lower side causing no prejudice to the respondents.

Even, in the case of **"Malarvizhi & Ors. Vs United India Insurance Company Limited &Anr."** reported as 2020(1) RCR Civil 488, it was held by Hon'ble Apex Court that Income Tax Return is statutory document on which reliance may be placed to determine the annual income. Relevant portion from para-10 is reproduced hereunder:-

> "……….*we are in agreement with the High Court that determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased…………"*

The judgements relied upon by learned counsel for Insurance Company- Respondent No.3 are not applicable in the facts and circumstances of this case and are distinguishable. In **Lalit Jain's** (supra)case, the ITRs relied upon by the appellant- claimant were filed much prior to the date of accident and it was on that basis, this Court remitted back the matter for affording opportunity to the respondents to verify and rebut the same.

In **Shabana Begum's** (supra) case, the ITRs were not believed by the Tribunal as well as by the Delhi High Court, in the peculiar facts of the case, as though deceased himself was only educated upto 11^{th} class with very poor marks, while it was claimed that he was running a coaching center for 10^{th}/ 12^{th} class students.

In **Prashantha kumar's** (supra) case, while the accident took place on 14.03.2014, the ITR relied upon was filed on 04.11.2014 i.e. after the accident.

Per contra, in the facts of the present case, the ITRs relied upon are of immediately preceding 3 years and are in consonance with the avocation claimed by the appellant. Therefore, there is no hinderance in relying upon the said ITRs of the appellant/ claimant for assessing his annual income. Thus, In view of the ITR for the assessment year 2016-17, the annual income of appellant/ claimant should have been taken as Rs.2,57,520/-.

However, the argument of learned counsel for the appellant/ claimant that in view of **Kajal's** (supra) case, compensation on account of pain and suffering should have been Rs.6,00,000/- in view of 100% disability, do not hold much substance. In Kajal's case (supra), compensation under non- pecuniary headings was assessed on the basis of Hon'ble Apex Court judgment in **"Mallikarjun vs. Divisional Manager, The National Insurance Company Ltd and ors"**, reported as 2013(10) SCALE 668. A perusal of both these judgments reveals that the direction by Hon'ble Apex Court regarding payment of Rs.6,00,000/- on account of 100% disability is applicable only in cases of children where income is assessed on notional basis or actual determination of income is not possible. In the facts of this case, when the annual income of appellant/ claimant has been fixed on the basis of ITRs and he is suitably compensated under other non- pecuniary heads, this slab specified in **Mallikarjun's** (supra) case is not to be applied applicable to the facts of the present case.Therefore, compensation awarded by the learned Tribunal under non- pecuniary headings does not require any interference.

Further, from the word “etc.” used in compensation awarded under the head of attendant charges and special diet etc.,it can not be deduced that it also included expenses incurred or to be incurred by appellant regarding transportation thus, and is just, in view of the facts of the present case and the sum of Rs.1,00,000/- is awarded on this account.

Further more, bills of Rs. 25,300/- have been brought on record by the appellant/ claimant as annexure A-1 to show the expenses incurred by him for replacement of accessories of artificial limb. It can not be denied that in future as well,appellant/ claimant will incur expenses on this account and hence, Rs.1,00,000/- are awarded for compensation under the head of future medical treatment including physiotherapy.

In view of what has been stated hereinabove, the appellant shall be entitled for the grant of following compensation:-

Sr. No.	**Nature**	**Amount in Rupees**
1.	Annual income	Rs.2,57,520/-
2.	*Future Prospects @25%*	*Rs.64,380/-*
3.	*Multiplier of 13*	*Rs.41,84,700/-*
4.	*Pain and suffering (as awarded by the learned Tribunal)*	*Rs.2,00,000/-*
5.	*Medical expenses (as awarded by the learned Tribunal)*	*Rs.24,94,595/-*
6.	*Loss of amenities (as awarded by the learned Tribunal)*	*Rs.2,00,000/-*
7.	*Future medical expenses*	*Rs.1,00,000/-*
8.	*Attendant charges & special diet etc (as awarded by the learned Tribunal)*	*Rs.2,00,000/-*
9.	*Transportation*	*Rs.1,00,000/-*
	TOTAL:	*Rs.74,79,295/-*
	Amount Awarded by the Tribunal	*Rs.46,93,595/-*
	Enhanced Amount	*Rs.27,85,700/-*

The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon’ble Supreme Court in **Smt. Supe Dei and othersVs. National Insurance Company Limited and other**, (2009) (4) SCC 513 approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

Consequently, the present appeal is disposed off in the above terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

05.12.2022 **(HARKESH MANUJA)**
anil **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*