

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(i)

FAO-7591-2014 (O&M)

Deepika

...Appellant

VERSUS

Sukhdev Singh @ Suka and others

...Respondents

(ii)

FAO-7592-2014 (O&M)

Usha Devi

...Appellant

VERSUS

Sukhdev Singh @ Suka and others

...Respondents

Date of Decision: November 16, 2022

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Ekta Thakur, Advocate
for the appellants.

Mr.Suman Jain, Advocate
for respondent No.3-Insurance Company.

ARCHANA PURI, J.

These are two appeals arising out of motor accident claims, following the serious injuries suffered by appellants/claimants on 02.01.2011, when the trolly bearing registration No. RJ-07GA-6193, driven by its driver (respondent No.1), Sukhdev Singh @ Sukha struck the appellants/claimants from behind, who were on foot, at the spot of the accident.

On perusal of the evidence adduced, learned Motor Accidents Claims Tribunal had awarded compensation to the extent of Rs.75,000/-, vis-a-vis, injuries sustained by Deepika and also awarded compensation to the extent of Rs.14,18,400/-, qua injuries sustained by Usha Devi, in the accident in question.

Being dissatisfied with the awarded amounts, the appellants/claimants have filed the respective appeals for enhancement of the compensation.

So far as the fact of accident and manner of its taking place as well as 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 have attained finality.

In this backdrop, learned counsel for the appellant/claimant-Usha Devi underscores that the appellant/claimant had suffered 89% permanent disability. Her both legs were amputated in the accident in question and being in such condition, she is unable to perform everyday activities and thus, she requires constant support, for the confined life, she has been forced to live after the accident. Since, she has become invalid, it is submitted that the compensation awarded for various aspects like pain, suffering, transportation, attendant charges, disability etc. is miserably on the lower side.

It is submitted that considering the age of the appellant/claimant-Usha Devi, nature of the injuries, so sustained and the amputation of both the lower limbs, has almost paralyzed her life, therefore,

considering the same, the compensation, as such, requires extensive enhancement.

So far as, appellant/claimant-Deepika is concerned, it is submitted that she was 14 years old young girl (at the time of accident) and she had sustained injuries. Though the disability has been assessed to be 6% physical disability, which is not likely to improve with the passage of time, but however, this extent of disability has also devastated her life, as she had long journey to go and various aspects of life have been badly effected due to the injury, so sustained. The impact of permanent disability, upon the life of appellant/claimant, is not only relating to the income generating capacity but also about non-quantifiable implications, which have not been taken into consideration by the concerned Tribunal, while making assessment of the compensation.

The Motor Vehicle Act is in the nature of Social Welfare Legislation and its provisions make it clear that compensation should be justly determined. A person is not only to be compensated for the injuries suffered due to the accident but also for the loss suffered on account of the injury and his inability to lead the life, he/she led prior to the life altering event. It should always be kept in mind that 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. Thus, 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/her life, on account of the physical disability, so suffered. 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.

Keeping in view the same, it is pertinent to mention that it is impossible to equate human sufferings and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The Court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss of sufferings suffered by the victim.

In *Sarla Verma vs. Delhi Transport Corporation and anr.*, **2009(3) RCR (Civil) 77**, Hon'ble 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/her 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’**.

In this backdrop, let us consider the injuries sustained by the

appellant/claimant-Usha Devi, in the accident in question. Usha Devi herself has stepped into a witness box as PW-2 and she has deposed about the kind of injuries sustained by her as well as the injuries sustained by her daughter Deepika, in the accident in question. She has deposed about having suffered multiple injuries on vital organs of the body and remained admitted in PGI Chandigarh. She was operated three times and her both legs, above knee, were amputated, on account of injuries. Though, she was discharged on 09.01.2011, but due to the injuries suffered by her, she remained on bed and had undergone acute pain and suffering and is still undergoing the same. Also, she deposed that prior to the accident in question, she was quite active and managing household affairs, but now has become totally disabled. Besides the same, she has also deposed about the engagement of two attendants to look after her for three months and now she requires whole time servant to look after her, as her both legs have been amputated. Her discharge and follow up card is Ex-P8.

Besides the aforesaid, even Dr. Pebam Sudesh has been examined by the appellant/claimant, who has deposed that Usha Devi, aged about 37 years, was examined for the purpose of assessment of her disability and he was one of the members of the Board, which assessed her disability. Her disability certificate has been proved as Ex.P10. As per the same, the amputation of both the legs of Usha Devi, above knee, was done and disability in respect of both lower limbs of the body has been assessed as 89%, which is permanent in nature and cannot improve, on account of amputation of both the legs, above knee. The said Doctor also deposed about her requirement of attendant to look after herself and she can do work

while sitting and would feel difficulty while doing work by standing.

It is further pertinent to mention here that the service of mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife/mother to the house is invaluable and that it cannot be computed in terms of money. A housewife/homemaker does not only work by the clock and she is in constant attendance of the family throughout and such services rendered by the homemaker, has to be necessarily kept in view, while calculating the loss, on account of injuries sustained by her. Even though, injuries on the person of Usha Devi has been assessed as 89% of both the lower limbs of the body, but however, the kind of duties, she must be handling in the capacity of being mother/wife, as such, has to be taken into consideration, more particularly, when her both legs have been amputated.

Considering the inflation induced increase in the wages, even of the labourer, the notional income of Usha Devi can conveniently be taken to be Rs.7,000/- per month. The grant of future prospects on the notional income calculated, in case the victim is a housewife, is also a necessary component of '**just compensation**' as held by three Judge Bench of the Hon'ble Supreme Court in the decision rendered in '***Kirti and another v/s Oriental Insurance Company Ltd., 2021(2) SCC 166***'.

Thus, to do complete justice to appellant-Usha Devi, qua her multifarious roles, as a home manager, it is appropriate to consider the extent of functional disability as 60% of the body.

Considering the earnings of Usha Devi, taking notional income as Rs.7000/- per month, 40% increase, on account of future prospects comes

to be Rs.2800/-. Thus, the total amount comes to be Rs.9,800/-. The annual amount works out to be Rs.1,17,600/- 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 60 (%age of the disability) and dividing the same by 100, as per the standard multiplier process, on account of the same, the loss is assessed as Rs.10,58,400/-. Accordingly, under this head, the amount awarded by the Tribunal is enhanced proportionately.

Keeping in view that both legs, above knee, of the appellant/claimant-Usha Devi had been amputated, on account of injuries sustained in the accident in question, so in these circumstances, it has been rightly held by learned Tribunal that she requires the help of the attendant for whole of her life, as she cannot work independently. However, compensation so awarded, on this aspect, is miserably on a lower side. The Tribunal had worked upon the compensation, on this aspect by taking the payment to be made to the attendant at the rate of Rs.2,000/- per month. Thus, the yearly expenses of the attendant comes to be Rs.24,000/- and to the same, multiplier of '16' had been applied. However, keeping in view the inflation induced increase made from time to time, it shall be just and appropriate, if we take the payment, ought to be made to the attendant @ Rs.5,000/- per month and thus, the annual payment to the attendant comes to be Rs.60,000/-. Considering, the appellant/claimant-Usha Devi, to be about 37 years old, as asserted, the suitable multiplier to be applied is '15' instead of '16' as taken by the Tribunal. Thus, so working upon the compensation on the aspect of attendant charges, for her life, comes to be

Rs.9,00,000/-.

Also, the appellant/claimant must have been put on highly nutritious diet and on this count also considering the extent of disability suffered by her, another amount of Rs.50,000/-, is granted.

Looking at the kind of injuries suffered by the appellant/claimant, for visits of the hospital also, certain amount must have been incurred and in modest estimate on this count, an amount of Rs.10,000/- is given.

On account of amputation of both her legs, the life of appellant/claimant-Usha Devi has been devastated. She has been incapacitated to lead the life, she left prior to life altering event and made her dependent upon others. So, on account of loss of amenities and enjoyment of life, the amount of compensation stands enhanced from Rs.1,00,000/- (as granted by the Tribunal) to Rs.2,50,000/-.

She must have suffered silently on account of amputation of both the legs and on the aspect of pain and suffering also, the amount of compensation is enhanced to Rs.2,50,000/-.

Now, coming to the assessment of compensation on account of injuries sustained by Deepika in the accident in question. Undisputedly, Deepika was 14 years old, at the time of accident. Both her parents Suresh and Usha Devi had stepped into witness box as PW-1 and PW-2, respectively, and they have deposed about admission of Deepika in PGI Chandigarh on account of injuries sustained in the accident in question and her treatment-cum-discharge card has been proved as Ex-P-5. It reveals that she was admitted in the hospital on 04.01.2011 and was discharged on

08.01.2011. The treatment card reveals that it was '# Rt distal BB leg open grade-III cont DNVD'.

Besides the aforesaid, even, PW-3, Dr. Pebam Sudesh, Associate Professor, Orthopaedic, PGI Chandigarh , who was member of Board of Directors, which had examined Deepika, had proved the disability certificate, which is Ex.P-10 and therein he has stated about Deepika to have suffered 6% disability, which is not likely to improve with the passage of time. Also, he deposed that she can have problem in running and playing.

During the course of arguments, learned counsel for the Insurance company has assiduously submitted that since, no functional disability, as such, has been suffered by appellant/claimant-Deepika, therefore, compensation already granted by the Tribunal is just and reasonable, which calls for no further enhancement.

However, the aforesaid submission is not tenable. As already observed aforesaid, the ibid Act requires determination of payment of '**just compensation**' and it is the duty of the Court to ensure that appellant/claimant is paid compensation which is '**just**'. When the compensation is awarded, various factors are to taken into consideration. Though, as in the case in hand, the permanent disability is assessed to be 6% with no likelihood of improvement in the future, but however, what inquiry is required to be made by the Court is about the resultant loss, which the injury entails to the income generating capacity of the appellant/claimant. It is pertinent to mention that appellant/claimant was 14 years old child, when she suffered injuries. It reflects travails which the appellant has to face in life. Her youthful dreams pertaining to her growth

and future hopes were snuffed to a great extent by this accident. Though, it is 6% permanent disability, but fact remains that she is unmarried young girl. On account of sustaining of injuries, her chances of growth in life have been restricted. It is pertinent to mention that PW-3 Dr. Pebam Sudesh, has stated that disability suffered by her is not likely to improve with the passage of time and she can also have problems in running and playing. From the testimony of her father PW-1 Suresh Kumar, it is evident that her father was working as Head Constable in ITBP, at the time of accident. Usually, the parents' avocation holds a great fascination for a child to follow and thus, considering the same, she also must be having a desire to join such defense services, but however, as deposed by the doctor concerned, she can have problem in running and playing on account of injuries sustained. Thus, her chances of joining the security forces, as such, ought to have been restricted to some extent, on account of which, she must have remained stressed, at least for some period of time. Considering the social setup of the Indian society, on account of permanent disability though the extent is less must have had its own impact on marriage prospects of young appellant/claimant. For some period of time, she must have been put on special nutritious diet and furthermore, also must have been looked after by the attendant, more particularly, when her mother had also sustained injuries in the accident in question, which were quite severe.

Considering the aforesaid aspects, on account of pain and suffering, the compensation so awarded is enhanced from Rs.20,000/- to Rs.50,000/- and on account of special nutritious diet, the compensation so awarded is enhanced from Rs.5,000/- to Rs.20,000/-. On account of

permanent disability suffered, the compensation remains to be Rs.20,000/-. On the aspect of attendant charges, the compensation stands enhanced from Rs.5,000/- to Rs.20,000/-. On account of marriage prospects and career growth, having been restricted to some extent, another sum of Rs.50,000/- is granted.

Thus, in the light of the aforesaid discussion, the appellant/claimant-Usha Devi in FAO-7592-2014, is now held entitled for compensation:

Permanent disability	:	Rs.10,58,400/-
Attendant Charges	:	Rs.9,00,000/-
Diet and Nutrition	:	Rs.50,000/-
Transportation charges	:	Rs.10,000/-
Loss of Amenities	:	Rs.2,50,000/-
Pain & suffering	:	Rs.2,50,000/-
Total	:	Rs.25,18,400/-

Similarly, in FAO-7591-2014, appellant/claimant-Deepika is entitled to compensation as under:

Pain and suffering	:	Rs.50,000/-
Diet and Nutrition	:	Rs.20,000/-
Permanent disability	:	Rs.20,000/-
Attendant Charges	:	Rs.20,000/-
Restricted marriage prospect and career growth	:	Rs.50,000/-
Total	:	Rs.1,60,000/-

With the above observations, both the appeals i.e. FAO-7591-2014 and FAO-7592-2014 stand allowed. The impugned Award dated 20.01.2014 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.

November 16, 2022	(ARCHANA PURI)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	Yes/No