

FAO-5974-2016 (O&M)

Pronounced on : July 25, 2022

The Tribunal granted the compensation in the following manner :-

Age	32 years	
Period of hospitalization	10.1.2014 to 23.1.2014, 24.1.2014 to 5.2.2014.	
Occupation	R.O. Camper water supplier	
Sr.No.	Heads of Claim	Amount
01.	Loss of Income during treatment	Nil
02.	Medical Expense	
(i)	Medicines	Rs.5,09,241/-
(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	Nil
06.	Loss of earning capacity	Nil
07.	% of loss of annual earning capacity due to permanent disability	Nil
08.	Reduction in life expectancy/loss of amenities	Nil
09.	Loss of prospect of marriage	Nil
	Total	Rs.5,49,241/-

Aggrieved therefrom, the present appeal has been filed.

It is argued on behalf of the appellant that the appellant is still under treatment and the Tribunal has not awarded appropriate compensation for pecuniary damages, including the expenses incurred by the appellant for medical attendant; loss of earning upto the date of the judgment as well as non-pecuniary damages, including mental and physical shock; pain and suffering already suffered or to be suffered in future and compensation for the loss of amenities of life which the

claimant has suffered on account of injuries, especially when the claimant is not able to sit; walk or run and the compensation for loss of expectancy of life and on account of inconvenience/hardship, discomfort and mental stress faced by the claimant in his life.

Counsel for the appellant has further argued that the appellant was working as R.O. camper water supplier and was earning Rs.20,000/- per month. He remained admitted in the hospital from 10.1.2014 to 24.1.2014 and, thereafter he was shifted to another hospital to New Delhi and remained hospitalized till 5.2.2014. The appellant suffered multiple injuries on his hand, stomach, chest, ear, nose, left leg and fracture on the left hand.

Counsel for the appellant also argued that on account of sustaining injuries on the hand, the appellant is unable to lift heavy articles like; R.O. Camper, which he was supplying for earning his livelihood.

Counsel for the appellant submitted that under the head of special diet; transportation, pain and suffering and attendant charges, a meager amount of Rs.10,000/- each is awarded and nothing is awarded on account of loss of earning capacity or permanent loss of annual earning or reduction of life expectancy or amenities as well as loss of prospects of marriage.

Counsel for the appellant has referred to the statement of PW3 Dr. Rahul Goyal, Oscar Hospital, who treated the appellant and

stated that the appellant was kept in ICU Ward and a chest tube was put in the left side of the chest to drain the air and water from chest cavity.

PW6 Dr. Rajesh Valeja, Senior Consultation (Surgery), Balaji Action Hospital, Delhi stated that the appellant was admitted with alleged history of road accident with polyroma and has undergone surgery (exploratory laparotomy with mediastinal dissection with diaphragmatic hernia repair with tube thorastomy) on 28.1.2014. The appellant stayed in ICU and was discharged on 5.2.2014 and the nature of injury was grievous.

Counsel for the appellant has also relied upon judgment 2020(4) SCC 413, **Kajal Vs. Jagdish Chand**, wherein Hon'ble the Supreme Court regarding the principle of just and fair compensation has observed as under :-

"5. The principles with regard to determination of just compensation contemplated under the Act are well settled. The injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as :-

- (i) loss of earnings;
- (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges, etc.;

- (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and
- (iv) loss of future earning capacity.

Damages can be pecuniary as well as non-pecuniary, but all have to be assessed in rupees and paise.

6. It is impossible to equate human suffering 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 suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, the compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages."

Counsel for the appellant has argued that in this case, against the compensation of Rs.14,70,000/- awarded by the High Court, the Hon'ble Supreme Court has enhanced the compensation to

Rs.62,27,000/-, therefore, proportionately, the compensation in this case be also enhanced.

Counsel for respondent-Insurance Company could not dispute the preposition of law. It is also not disputed that the Insurance Company has neither challenged the findings of the Tribunal or the issue of negligence or violation of the policy, if any.

After hearing the counsel for the parties, I deem it appropriate to enhance the compensation in the following manner:-

Age	32 years	
Period of hospitalization	10.1.2014 to 23.1.2014, 24.1.2014 to 5.2.2014.	
Occupation	R.O. Camper water supplier	
Sr.No.	Heads of Claim	Amount
01.	Loss of Income during treatment	Nil
02.	Medical Expense	
	(i) Medicines	Rs.5,09,241/-
	(ii) Hospital Charges including implant (remained admitted for 14 days)	Rs.1,00,000/-
	(iii) Attendant Charges	Rs.30,000/-
	(iv) Special diet	Rs.30,000/-
03.	Transportation	Rs.30,000/-
04.	Pain and suffering	Rs.1,00,000/-
05.	Disability	Nil
06.	Loss of earning capacity	Rs.1,00,000/-
07.	% of loss of annual earning capacity due to permanent disability	Nil
08.	Reduction in life expectancy/loss of amenities	Nil
09.	Loss of prospect of marriage	Nil
	Total	Rs.8,99,241/-

Thus, in this way, the appellant is entitled to Rs.3,50,000/- by adjusting the amount under the head ‘attendant charges’, ‘Special Diet’, ‘Transportation’ and ‘Pain and sufferings’ already awarded by the

Tribunal and in this way, the claimant is entitled to Rs.3,50,000/- over and above Rs.5,49,241/- awarded by the Tribunal.

The Insurance Company will pay the enhanced amount along with interest of 7.5% per annum, within a period of two months from today, failing which the Tribunal will be liable to pay the interest @ 12% per annum as awarded by the Tribunal.

Disposed off, accordingly.

July 25, 2022
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No