IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1065-2017 (O&M)

Reserved on 28.10.2022

Date of pronouncement: November 9, 2022

Sandeep .... Appellant

Versus

Satish and others .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Kulvir Narwal , Advocate,
with Mr. Satish Kumar, Advocate,
for the appellant.

Mr. Rajbir Singh, Advocate, for
Mr. Sanjeev Goyal, Advocate,
for respondent No.3-Inusrance Company.

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HARKESH MANUJA, J.

The present appeal lays challenge to award dated 07.10.2016 passed by the learned Motor Accident Claims Tribunal, Rohtak (in brevity, ‘the Tribunal’), whereby compensation of Rs.12,47,142/- has been awarded to the appellant/ claimant along with interest @ 7.5% per annum.

Brief facts of this case are that on 03.04.2015 at about 11:30 pm appellant/ claimant was standing near Hissar Over Bridge on Hissar Bye Pass, Sukhpura Chowk, Rohtak. One Anil kumar, along with his cousin brother Rajender, was coming back to his house at Shastri Nagar, Rohtak from Sukhpura Chowk in his car bearing No. DL-3C-BF-3031. When they reached near appellant, Anil stopped his car, stepped down from it and started to talk with the appellant. In the meantime, a Santro Car bearing No. HR-02U-2627 came from the back side at a high speed and dashed against both of them. In this accident, Anil and appellant-Sandeep both sustained multiple injuries on their person. Appellant-claimant was shifted to PGIMS Rohtak, and remained admitted there upto 24.04.2015, however, when he did not recover the injuries, he was advised rest at house or to take treatment from some specialist hospital. Regarding this incident, FIR No. 151 dated 04.03.2015 u/s 279,337,304A IPC was also registered at Police Station, Rohtak.

The appellant/ claimant being injured filed claim petition before learned Tribunal praying for grant of compensation to the tune of Rs.50,00,000/- on account of injuries suffered by him in the accident alleging rash and negligent driving of respondent No.1. It may be pointed out here that the appellant having been rendered mentally feeble, the claim petition was filed through his father being natural guardian.

After going through the claim petition and evaluating the evidence led by both the parties, learned Tribunal arrived at a conclusion that the accident occurred on account of rash and negligent driving of respondent No.1. In order to compensate the appellant, learned Tribunal assessed his functional disability to the extent of 50% and awarded compensation in the following manner :-

Sr. No.	Nature	Amount in Rupees
1.	*Annual Income (10000x12)*	*Rs.1,20,000/-*
2.	*50% permanent disability*	*Rs.60,000/-*
3.	*Multiplier of 18*	*Rs10,80,000/-*
4.	*Medical expenses*	*Rs.17,142/-*
5.	*Damages for pain and suffering*	*Rs.50,000/-*
6.	*Attendant charges*	*Rs.50,000/-*
7.	*Loss of Marriage prospects*	*Rs.50,000/-*
	TOTAL:	*Rs. 12,47,142/-*

Being aggrieved against the award dated 07.10.2016, the present appeal has been preferred by the appellant/ claimant for enhancement of compensation.

Learned counsel for the appellant/ claimant contends that since appellant/ claimant suffered 100% permanent disability due to the said accident, therefore, assessment of functional disability to the extent of 50% is unreasonable and is liable to be enhanced. He further contends that notional income assessed by learned Tribunal is also on the lower side and future prospects have also not been granted while computing "loss of future earnings". He also contends that no compensation has been awarded under other heads like '*loss of amenities'*, '*loss of expectation of life'*. He again contends that compensation awarded under other pecuniary and non-pecuniary heads is also inadequate.

On the other hand, learned counsel for respondent No.3-Insurance Company submits that there is no evidence qua functional disability of appellant/ claimant, therefore, considering the injuries suffered by him and other facts and circumstances of the case, he has been adequately compensated and hence, present appeal is liable to be dismissed.

I have heard learned counsel for the parties, perused paper-book as well as records of the case and while examining the facts of this case and granting compensation under different heads, I need to abide by the principles of law laid down in "**R.D.Hattangadi Vs. Pest Control (India) (P) Ltd.",** reported as (1995) 1 SCC 551; "**Raj Kumar Vs. Ajay Kumar"**, reported as (2011) 1 SCC (Civ) 164 as well as "**Pappu Deo Yadav Vs. Naresh Kumar and others"**, reported as AIR 2020 SC 4424. However, as in the present case, a young person of 20 years has become mentally retarded due to head injuries, therefore, while assessing compensation, this Court shall be guided by the approach taken by Hon'ble Apex Court, in **Master Ayush Vs. The Branch Manager, Reliance**

General Insurance Co. Limited, passed in **Civil Appeal Nos.2205-2206 OF 2022** as well as **Kajal Vs. Jagdish Chand and Others** passed in **Civil Appeal No. 735 OF 2020.** As observed in these cases, though calculating the actual loss in such cases is beyond the capacity of any Court, while assessing the just compensation, effort shall be directed on reducing the monetary burden on the family, specifically parents.

I find force in the arguments advanced by learned counsel for the appellant/claimant. The disability certificate has been brought on record as Ex.PW-8/A, which shows that due to this accident the appellant suffered 100% permanent disability qua his whole body. The disability certificate has been verified by Dr. Ishwar Singh Punia (S.M.O. and Ortho Surgeon, Civil Hsopital, Rohtak), who while appearing as PW-8 categorically deposed that patient has become mentally retarded- IQ 58% and suffered 100% permanent disability in relation to whole body.

Apparently, learned Tribunal fell into an error while assessing the functional disability to the extent of 50%. This approach, in my opinion, is completely mechanical and entirely ignores realities. In fact, the Court should not adopt a stereotype approach, but instead, consider the matter taking into account the realities of life. In the present case, patient has become mentally retarded, which has resulted in complete loss of income earning capacity. The extent of his permanent disability was assessed by the board at 100%, however, learned Tribunal has halved it to 50% while computing functional disability without specifying any basis for doing so. A person who has lost his mental capacity for performing even a low IQ level task, will not be able to pursue any vocation as mental retardation puts the patient in a complete vegetative condition. In the present case, appellant has neither been able to file the case nor make a statement on his behalf due to his prevailing condition. Therefore, the learned Tribunal has erred while assessing the functional disability of the appellant @ 50%, and it should have been assessed @ 100% in the circumstances of present case.

So far as income of appellant/ claimant is concerned, he has passed course of fitter and considering his qualification, learned Tribunal notionally assessed his income to be Rs.10,000/- per month. In my opinion, it is just and reasonable and therefore, it is kept intact.

Also, by applying principle of law laid down in **"Pappu deo Yadav's"** (supra) case and **"National Insurance Company Vs. Pranay Sethi and others"**, reported as 2017(4) RCR (Civil) 2009, appellant/ claimant being 20 years of age, future prospects @ 40% should also be granted.

While calculating the compensation for attendant charges in this case, learned Tribunal awarded a meager sum of Rs.50,000/- for attendant throughout his life, while it should have taken into consideration that the appellant, who under normal circumstances would have been a support for his family would now require the assistance of another person throughout his remaining life. Therefore, attendant charges are being calculated on the basis of multiplier method as stipulated in **Master Ayush's case** (Supra) and **Kajal's case** (Supra). Assuming the attendant charges at the nominal rate of Rs.4,000/- per month and applying the multiplier of 18, it comes to Rs. 8,64,000/- (4000 X12 X 18).

Learned Tribunal failed to award any compensation on account of special diet, transportation and future medical treatment. Considering the condition of the appellant it cannot be denied that he would continue to require the treatment in future as well and further expenses will also be incurred on special diet, transportation and other ancillary activities.

Therefore, Rs.1 Lakh is awarded under the head of future medical treatment which shall cover expenses for special diet as well as transportation.

Further, a meager amount of Rs. 50,000/- has been awarded under the head of “damages for pain and suffering. However, it also needs to be considered that a serious injury not only permanently imposes physical limitations but also inflicts deep mental agony upon the victim. The victim’s trauma of living in the world different from the one he or she was born into, should always be kept in mind of judges while adjudicating such claim petitions. Hon’ble Apex Court while granting compensation under non-pecuniary heads in **Master Ayush’s case** (Supra) and **Kajal’s case** (Supra) followed **Malikarjun vs. Divisional Manager, The National Insurance Company Limited and Ors.** passed in **Civil Appeal No.7139 of 2013,** whereby, it has been observed as follows:

> *“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.”*

Therefore, as the disability in this case is 100%, Rs.6 Lakhs compensation is granted under non-pecuniary heads.

Learned Tribunal has awarded Rs.50,000/- on account of loss of marriage prospects, however, it failed to take into consideration the fact that considering the condition of the appellant, his marriage prospects have not merely lowered down rather there is no chance of him entering into a marriage, therefore, compensation on this account should have been on higher side and thus Rs.2 Lakhs is granted as compensation under this head.

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 of deceased (Rs.10,000 x 12)*	*Rs. 1,20,000/-*
2.	*Add 40% of Future prospects*	*Rs. 48,000/-*
3.	*Total Income (Rs.1,20,000/- + Rs.48,000/-)*	*Rs. 1,68,000/-*
4.	*Multiplier of 18 as per age of 20 years (Rs.1,68,000/- X 18)*	*Rs. 30,24,000/-*
5.	*Loss of future earning capacity/ income [100% (percentage disability) of total income]*	*Rs. 30,24,000/-*
6.	*Medical Expenses*	*Rs. 17,142/-*
7.	*Non-Pecuniary Heads (Pain and sufferings, Disability, loss of amenities and enjoyment of life)*	*Rs.6,00,000/-*
8.	*Attendant charges*	*Rs. 8,64,000/-*
9.	*Loss of marriage Prospects*	*Rs.2,00,000/-*
10.	*Future medical treatment including special diet and transportation.*	*Rs.1,00,000/-*
	Total Compensation	*Rs.48,05,142/-*
	Amount Awarded by the Tribunal	*Rs.12,47,142/-*
	Enhanced Amount	*Rs.35,58,000/-*

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 others Vs. 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 claims 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.

November 9, 2022 **(HARKESH MANUJA)**
anil **JUDGE**

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