

231

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3337-2017 (O&M)

Reserved on: 08.12.2022

Pronounced on: December 13, 2022

Naveen Kumar

..... Appellant

Versus

Vikas Chander and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Prabhjot Kaur, Advocate, for
Mr. Ashish Yadav, Advocate, for the appellant.

Mr. Jitender Singh, Advocate, for
Mr. Atul Yadav, Advocate respondent No. 1 and 2.

Mr. Eklavya Darshi, Advocate, for respondent/Insurance Co.

HARKESH MANUJA, J.

The present appeal lays challenge to award dated 04.11.2016 passed by the learned Motor Accident Claims Tribunal, Gurgaon (in brevity, 'the Tribunal'), whereby compensation of Rs. 20,18,957/- has been awarded to the appellant/claimant along with interest @ 7.5% per annum.

Brief facts of the case are that appellant suffered grievous injuries in an accident on 24.06.2015. Due to this accident his right leg had to be amputated from above the knee and there were two fractures in his left leg resulting in compartment syndrome. Claim petition filed by him was partly allowed by the learned Tribunal after holding that accident was caused due to the rash and negligent driving of Respondent No 1. Learned Tribunal after assessing his monthly notional income at Rs. 6,000 per month and adjudicating his permanent disability as his functional disability @ 85%, awarded compensation in the following manner :-

Sr. No.	Nature	Amount in Rupees
1.	Medical expenses	Rs. 14,33,157/-
2.	Loss of future earning	Rs.5,50,800/-
3.	Attendant charges, and Special Diet	Rs.40,000/-
4.	Transportation	Rs,5,000/-
5.	Pain and Suffering	Rs 25,000/-
	TOTAL:	Rs. 20,87,957/-

Being aggrieved against the award dated 04.11.2016, the present appeal has been preferred by the appellant/claimant for enhancement of compensation.

Learned counsel for the appellant contends that though, income of appellant was assessed @ Rs.6,000 per month, however learned Tribunal erred while deducting 50% on account of personal expenses, as this deduction is applicable only in death cases; and not in injury cases.He further submits that when the appellant is alive, there is no reason for deducting this amount. He also contends that future prospects have also not been given by the learnedTribunal. Learned counsel further contends that though the appellant was hospitalized for a long time, compensation awarded on account of attendant charges, special diet and transportation were extremely on the lower side. He concludes his argument by praying that considering the gravity of disability suffered by appellant,compensation awarded under non-pecuniary headings is also not sufficient and further no compensation has been awarded for loss of marriage prospects.

Per contra, learnedcounsel for the respondents Insurance Company as well as driver/owner contends that in the facts and circumstances of the case, compensation awarded by the learned Tribunal is just and fair.

I find force in the arguments raised by the learned counsel for the appellant that this is not a death case, where the expenses, which deceased would have incurred on himself, are liable to be deducted from the compensation amount. In injury cases, the victim is still alive and he would continue to incur expenses on himself and concept of deduction on account of personal expenses is alien to injury cases. Therefore, no amount is liable to be deducted from the compensation on account of personal expenses. Further in view of **Pappu Deo Yadav (supra)** and **"National Insurance Company Ltd. Vs. Pranay Sethi and others"**, **2017(4) RCR (Civil) 1009**, as the age of the deceased at the time of accident was 18 years and he was in private employment, future prospects @ 40% of the income are awarded.

Appellant remained hospitalized from 26.06.2015 to 29.06.2015 in Lord Krishna Hospital and from 30.06.2015 to 29.07.2015, in Artemis hospital Gurgaon on account of injuries suffered in this accident. Apart from that, due to amputation of right lower limb above knee and fractures on both bones of left leg, he must have needed services of attendant not only during hospitalization but for a long time even after that. Further, in the statement of PW9- Dr Neeraj Yadav, Orthopedic Artemis hospital, it has come on record that appellant is still under his treatment as on 21.7.2016. Therefore, compensation on account of 'attendant charges' and 'special diet' is enhanced to Rs. 50,000. On the same basis, the compensation awarded on account of 'transportation' is also extremely on lower side and Rs. 20,000 is awarded under this head.

In the statement of PW9- Dr Neeraj Yadav, it has also come on record that appellant will need to undergo for surgery in future for implant

FAO-3337-2017 (O&M)

removal in his left leg and therefore, Rs. 30,000 is awarded for 'future medical expenses'.

In this accident, appellant suffered multiple poly trauma and received injuries in both lower limbs and had pneumothorax and acute renal failure secondary to multiple muscle crush injuries. In view of the grievous injuries of the right lower limb, above knee amputation was done on 04.07.2015. He suffered two fractures in the left lower limb, resulting in compartment syndrome. He also had ischemic hepatitis because of decreased blood supply to the liver. When the appellant suffered such grave injuries in the prime of his youth whereas at this tender age when he was supposed to enjoy his life to the maximum and explore new fields, he has been left with an amputated right leg and left leg having implants. Therefore, in my considered opinion, compensation awarded under non-pecuniary headings is meager amount and in the facts and circumstances of this case, he is entitled for just and fair compensation on this account as well. Therefore, he is awarded Rs.100,000 on account of 'pain and suffering', Rs. 85,000 on account of 'disability' and Rs. 1 lakh for 'loss of amenities and enjoyment of life'.

I also find substance in the argument advanced by learned counsel for the appellant that in next few years, he would be of marriageable age, but in view of the disability suffered at this age his marriage prospects would be adversely affected. Sight cannot be lost of the fact that Indian Society is very conservative while arranging the marriages and the physical status and the avocation of the prospective groom are prime considerations. In my considered opinion, on this count as well, the appellant should be adequately compensated and accordingly Rs.1,00,000/- is granted on account of loss of prospect of marriage.

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.72,000/-
2.	Add 40% of Future prospects	Rs.28,800/-
3.	Total Income	Rs.100,800/-
4.	Multiplier of 18 as per age of 18years(Rs. 100,800/- X 18)	Rs.18,14,400/-
5.	Loss of future earning capacity/ income85% (percentage disability) of total income]	Rs.15,42,240/-
6.	Medical Expenses(as awarded by learned Tribunal)	Rs.14,33,157/-
7.	Pain and sufferings	Rs.100,000/-
8.	Disability	Rs.85,000/-
9.	Loss of amenities and enjoyment of life	Rs.1,00,000/-
10.	Attendant charges and Special Diet	Rs.50,000/-
11.	Transportation	Rs 20,000/-
12.	Loss of marriage Prospects	Rs.1,00,000/-
13.	Future Medical Expenses	Rs 30,000/-
	Total Compensation	Rs.34,60,397/-
	Amount Awarded by the Tribunal	Rs.20,18,957/-
	Enhanced Amount	Rs.14,41,440/-

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

FAO-3337-2017 (O&M)

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.

December 13, 2022
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(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>