IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5092 of 2011 (O&M)
Date of Decision : April 22, 2022

Davinder Singh

….Appellant

Versus

Dev Raj and others

…..Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Abhimanyu Kalsi, Advocate for
Mr. Rakesh Dhiman, Advocate
for the appellant.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for respondent No.3/Insurance Company.

PANKAJ JAIN, J.

The claimant is in appeal seeking modification of the Award dated 14th February, 2011 passed by the Motor Accidents Claims Tribunal, Gurgaon (for short, the Tribunal) in Claim Petition No.56 of 2010 whereby he has been awarded a sum of Rs.40,000/- on account of injuries suffered by him in a motor-vehicular accident dated 21st January, 2010.

2. As per the claim petition, on 21st January, 2010 around 2.50 PM, the petitioner was going to meet his brother, who was admitted in hospital. When he reached near Sethi Hospital, an Esteem Maruti Car bearing No.HR-26W-1900 driven by respondent No.1 struck the petitioner from behind resulting in multiple injuries to him. He was taken to Tirath Ram Hospital, Gurgaon and then to Ortem Hospital Rampura District Gurgaon. As per the petitioner, he suffered permanent disability to the extent of 3% owing to dislocation of his right hip joint. Disability

Certificate has been proved on record as Exhibit P-3. It was claimed that the appellant is an agriculturist having total income of Rs.10,000/- per month from agriculture and dairy farming. The claim petition was contested by the respondents.

3. Ld. Tribunal found that accident, in question, took place on account of rash and negligent driving on the part of respondent No.1 which resulted in injuries to the claimant. On Issue No.2, Ld. Tribunal granted an amount of Rs.6000/- on account of permanent disability suffered by him to the extent of 3%. Rs.20,000/- was granted to him on account of mental agony, pain and sufferings, transportation charges, attendant charges, special diet etc. Under the pecuniary loss, Rs.12,000/- was granted to the appellant @ Rs.4000/- per month for three months. Rs.2500/- was paid as expenses incurred in the hospital. It is finding on Issue No.2, which is impugned in the present appeal.

4. Having heard Ld. Counsel for the parties and after carefully perusing the record of the case, this Court finds that the Award passed by the Tribunal deserves to be modified.

5. Apex Court in the case of **'K. Suresh vs. New India Insurance Company Limited and another, (2012) 12 SCC 274'** observed that –

> *".....Section 168 of the Motor Vehicles Act, 1988 (for brevity 'the Act') stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for a court of law to determine "just compensation" which is neither a*

bonanza nor a windfall, and simultaneously, should not be a pittance."

6. In the case of **'Raj Kumar vs. Ajay Kumar and another', 2011 (1) SCC 343**, the Apex Court analyzed the concept of pecuniary damages and non-pecuniary damages in the case of injury cases. It was held that a person is not only held to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. Thus meaning thereby that injured is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. In Para No.6 of the **Raj Kumar's case** (supra), Apex Court detailed pecuniary damages and non-pecuniary damages under the following heads :-

"6....Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;
(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi)Loss of expectation of life (shortening of normal longevity)."

7. This Court is of the view that the Tribunal erred in not granting anything to the appellant for loss of future earnings on account of permanent disability. Bare sum of Rs.20,000/- has been granted on account of mental agony, pain and sufferings, transportation charges, attendant charges and special died, which deserves to be modified.

8. The claimant an agriculturist and dairy farmer by occupation suffered permanent disability in hip joint. In **Raj Kumar's case** (supra), Apex Court has held that the proportion of permanent disability is not always equal to loss of future earnings on account of permanent disability. Apex Court explained the concept by formulating illustrations to show that many a time a permanent disability of 10% may lead to loss of future earnings on account of permanent disability to the extent of 50%. In this case, the permanent disability suffered in hip joint by an agriculturist to the extent of 3% is to be taken as 25% loss of future earnings on account of permanent disability, as in the considered opinion of the Court, the case would fall in Illustration 2 formulated in **Raj Kumar's case** (supra). Thus, loss of future earnings shall be on the basis of multiplier method. The salary of the claimant by the Tribunal has been taken to be @ Rs.4,000/- per month. The disability *qua* the earning capacity is taken to be as 25% thus, the loss of future earning is Rs.1000/- per month. At the time of accident, the appellant was 40 years of age, multiplier of 15 will be applicable as per **'Smt. Sarla Verma & others vs. Delhi Transport Corporation & another' (2009) 6 SCC 121**. In the light of guidelines laid down in

<u>'National Insurance Company Limited vs. Pranay Sethi and others', (2017) 16 SCC 680</u>, he is entitled for 40% for future prospects. Thus, loss of future earnings on account of permanent disability shall come to Rs.1,80,000/-.

9. Keeping in view the fact that the appellant remained under treatment for more than three months, he is entitled for an amount of Rs.50,000/- on account of mental agony, pain and sufferings; Rs.20,000/- as transportation charges; Rs.15,000/- as special diet; and Rs.20,000/- as attendant charges.

10. In view of the aforesaid discussion, the Award passed by the Ld. Tribunal is modified to the aforesaid extent.

11. The total compensation be calculated accordingly and paid to the claimant/appellant.

12. Needless to say that any amount already paid to the claimant shall be set off.

13. The instant appeal, accordingly, stands disposed off.

14. All the pending miscellaneous applications, if any, are also disposed off.

April 22, 2022 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

DEEPAK KUMAR
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of this document