IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 610/2018

Date of decision: 06.12.2022

Dr.Alka Yadav

……..Appellant

Vs.

Vijay Singh and others

……..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjay Mittal, Advocate for the appellant

Mr.Sanjeev Kodan, Advocate for respondent no.3- Insurance Company

Nidhi Gupta,J.

Present appeal has been filed by the injured claimant seeking enhancement of compensation of Rs. 59,89,000/- awarded to her by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') vide Award dated 11.7.2017 passed in MACT Petition No. 61RT of 2015/2016 filed under Section 166/140 of the Motor Vehicles Act, 1988 (for short 'the Act').

Brief facts of the case are that on 6.12.2014 at about 5.30 p.m., when the claimant/appellant was heading towards her house at Majra Kalan from Mahendergarh on her Scooty being driven by her on extreme left side of the road at moderate speed as per traffic rules and when she reached within the revenue estate of Village Majra Kalan near Aravali School, then a bullet motor cycle bearing registration No. HR-34F/8505 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1 at a high speed in rash and negligent

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manner came from behind and hit her Scooty as a result of which she fell down on the road causing her multiple and grievous injuries besides damages to the Scooty. The accident was witnessed by Rajpal son of Phool Chand, who with the help of one Sant Lal shifted the claimant/appellant to General Hospital, Mohindergarh, wherefrom due to her serious condition, she was taken to Medanta Hospital, Gurgaon where she was operated upon with insertion of nails, screws and plates etc.

It is the pleaded case of the appellant that the police did not take any action in the matter despite ruqa having been sent by Medical Officer, General Hospital, Mohindergarh. Therefore, FIR was lodged on 28.12.2014 after Rajpal had returned from Medanta Hospital. Subsequently FIR No. 654 dated 28.12.2014 was registered at PS Mohindergarh.

It is further stated that the appellant at the time of accident was 26 years of age and was a qualified B.A.M.S. Doctor who was working at Shanti Hospital, Narnaul as well as at Rao Ram Chander Memorial Senior Secondary School, Kanina as visiting doctor and thereby earning Rs.18,000/- and Rs.15,000/- per month respectively. It was further pleaded that Rs.35 lakhs had already been spent on the treatment and the treatment was still going on.

Upon appraisal of all the pleadings and the evidence placed before it, the learned Tribunal recorded the finding that the accident took place due to the rash and negligent driving of the driver of the offending motorcycle. Accordingly, compensation was awarded as follows:-

Medical Expenses:	Rs.20,39,000-00
Future Medical expenses	Rs. 50,000-00
Pain and suffering and enjoyment of life	Rs.3,00,000-00
Special diet/future diet	Rs. 30,000-00
Conveyance/future conveyance	Rs. 60,000-00

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Attendant charges	Rs.9,00,000-00
Loss of income/future loss of income	Rs.25,10,000-00
Loss of amenities	Rs. 1,00,000-00
Total	Rs. 59,89,000-00

Ld. Tribunal further held that respondents No. 1 to 3 shall be jointly and severally liable to pay the compensation, which shall be mainly indemnified by respondent No. 3 insurance company, as the offending motorcycle was insured and driving license of the driver was found to be valid. Interest at the rate of 9% per annum was granted from the date of filing petition till actual realisation of the awarded amount. Ld. Tribunal further directed that out of the awarded amount, 50% award amount be kept in the form of fixed deposit in any nationalised bank fetching maximum interest for period of three years. The FDR be made in the name of the claimant and her husband Sanjay Yadav to be operated jointly as either or survivor.

It is submitted by the counsel for the appellant that the Tribunal is in patent error in assessing the salary of the appellant @ Rs.12300/- only per month on the basis of minimum wages payable at the relevant time in State of Haryana; whereas the income of the appellant should have been taken to be at least Rs.15,000/- per month if not Rs.33,000/-. Learned counsel for the appellant further submits that 40% of the income should have been given to the appellant as future prospects. Third submission of the learned counsel for the appellant is that it is not in dispute that the appellant has suffered 89% permanent physical disability and therefore, attendant charges @ only Rs. 2000/- per month for the next 25 years amounting to Rs.9 lacs are inadequate. In this regard, learned counsel relies upon judgment of this Court in case of '**Parveen vs Vikram and others' 2016(2)RCR(Civil)717;** and of the Hon'ble Supreme Court in '**Abhimanyu Partap Singh v Namita Sekhon and another' 2022(3)**

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RCR(Civil)557 to submit that in the afore-cited cases the Hon'ble Courts have awarded exemplary compensation in cases like the present one where the extent of disability is tremendous.

Para 18 of the above said judgment **Abhimanyu Partap Singh supra** reads as under: -

> "18. In the head of medical expenses, the MACT or the High Court has not awarded any compensation presumably because the mother of the claimant who was minor at the time of accident may have claimed the amount of medical expenses being an IAS officer. But now the claimant has become major, and looking to the nature of injuries, future medical expenses that includes the attendant charges, use of diapers due to loss of urination senses is required to be calculated including future medical expenses. The Tribunal awarded Rs.1,92,000/- in the head of attendant charges @ 1,000/- per month. While the High Court proceeded on the premises that the rate of the attendant charges is variable after every five years, however, the Court calculated the amount @ Rs.2,000/- thereafter @ Rs.4,000/- per month for a period of 20 years and accordingly determined Rs.9,00,000/- making enhancement of Rs.7,08,000/- in the said head. As discussed, if we apply the multiplier method and in view of the judgment of Kajal (supra), we accept the rate of attendant charges Rs.5000/- per month for 12 hours, looking to the nature of injuries and disability the claimant is required two attendants at least within 24 hours then the expenses in the head of attendant charges comes to Rs.10,000/- per month. If we apply the multiplier of 18, the amount comes to Rs.21,60,000/-." (Emphasis supplied)

It is also submitted by ld. Counsel for the appellant that the Insurance Company had also filed appeal against the present Award, the same being FAO No. 5560 of 2017, which has been dismissed by a Coordinate Bench of this Court vide order dated 30.8.2017.

Per contra, learned counsel for the respondent Insurance Company vehemently opposes the assertions made on behalf of appellant and submits that the notional income of the appellant as assessed by the Tribunal

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is on the higher side, as also all the amounts awarded by the Tribunal are on the higher side. It is submitted that the accident in the present case had taken place on 6.2.2014, and it is appellant's own case that she has been working even after the accident, and as such, it is clear that she does not require a full time attendant. Therefore, the amount of Rs. 9 lacs awarded for attendant is on higher side. In this regard, Learned counsel refers to salary slips Ex.PW2/A to PW2/D pertaining to the months of August 2015, September 2015, October 2015 and September 2015 and submits that from these salary slips it is clear that it is appellant's own case that she was working even after her accident on 6.2.2014.

I have heard learned counsel for the parties and perused the record in sufficient detail.

In my view there is no error on the part of the Tribunal in assessing the salary of the appellant @ Rs.12,300/- per month as per the minimum wages of an Ayurvedic Doctor in the State of Haryana at the time of accident, for the following reasons. PW2 Manoj Kumar Computer Operator at Shanti Hospital, Narnaul had brought the original summoned records pertaining to the claimant, as per which the claimant is shown to have been working with them from August, 2015 to November, 2015 and drawing a salary of Rs.18,000 per month. Ex.PW2/A to PW2/D were the salary slips and Ex. PW2/E to Ex. PW2/H were the copies of attendance register. However, said witness had admittedly not brought the resume, or the appointment letter issued by the hospital to the appellant. Moreover, PW2 had also candidly admitted that he had not prepared the above said salary slips nor signed them, therefore the same remained unproved. As such, the above evidence/exhibits tendered by the witness cannot be considered a reliable piece of evidence.

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Further, PW3 had brought the original record pertaining to the appellant as per which the appellant had worked in the RRCM Public School from 1st September 2014 to 3rd December 2014 as part time consultant Doctor on salary of Rs.15,000/- per month. However, during cross examination, PW3 could not state whether OPD Record was maintained by the appellant and neither had he brought any record to show that appellant had treated any student and maintained record during the said period. As such contention of the learned counsel for the appellant regarding salary is rejected.

Even further, as per the disability certificate Ex. PW7/A, the appellant has suffered 89% permanent physical disability which is akin to 100% functional disability. Even as per the evidence tendered by Sanjay Yadav PW4 husband of the claimant/appellant, she is in a vegetative state unable to walk, move, speak, eat, or even ease out without assistance. As per the affidavit Ex. PW4A, of PW4, the appellant had left her job due to the injuries sustained by her in the accident on 6.2.2014. In this situation it is clear that the salary slips tendered by PW2 pertaining to the period August 2015 to October 2015 cannot be relied upon. Accordingly, I find no error in the assessment made by the ld. Tribunal regarding the salary of the appellant.

As regards the Attendant charges, which ought to have been granted to the appellant, the learned counsel for the respondent Insurance Company has vehemently opposed the enhancement of the same in view of the fact that it is appellant's own case that she had worked even after her accident. Besides the above mentioned evidence of PW4 Sanjay Yadav, husband of the appellant in his affidavit Ex. PW4/A to the effect that the appellant is "bed ridden like a dead person and not in a position to move, sit, eat and even ease out without assistance'; reference in this regard need also

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be made to PW-7, Medical Superintendent of Civil Hospital and member of the Disability Board, who vide his medical opinion report Ex. PW7/A has stated that the appellant was found to have 89% physically, visually, speech and hearing impairment and being physically and visually impaired she could not hear or utter a word. As noted above, 89% physical disability amounts to 100% functional disability. Further, PW7 denied the suggestion that the disability of the appellant is not of the whole body and curable with the passage of time. It is, therefore, clear that the appellant is unable to do any activity and needs a full time attendant for her whole life. Accordingly, keeping in view the above facts, as also the aforementioned judgements relied upon by learned counsel for the appellant, attendant charges of the appellant are enhanced to Rs.12 lacs.

Ld. counsel for the respondent Insurance Company has very fairly stated that appellant is entitled to 40% on account of future prospect in view of judgment of Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680.**

In view of the above discussion, to the compensation awarded by the ld. Tribunal, an addition of 40% is made by way of future prospects, as also Attendant charges are enhanced to Rs.12,00,000/-. The compensation is thus, reworked as follows: -

Medical expenses	Rs. 20,39,000-00
Future medical expenses	Rs.50,000-00
Pain and suffering and enjoyment of life	Rs. 3,00,000-00
Special diet/future diet	Rs. 30,000-00
Conveyance/ future conveyance	Rs. 60,000-00
Attendant charges	Rs. 12,00,000-00
Loss of income/future loss of income	

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12300+4920 (40% future prospects) = 17,220 x 12x17	Rs.35,12,880-00
Loss of amenities	Rs. 1,00,000-00
Total compensation	Rs. 72,91,880-00
Already awarded by the Tribunal	Rs. 59,89,000-00
Enhanced compensation	Rs. 13,02,880-00

Interest @ 9% per annum shall be payable on the enhanced amount from the date of filing of the claim petition till realization. As directed by the ld. Tribunal, 50% award amount be kept in the form of fixed deposit in any nationalised bank fetching maximum interest for period of three years. The FDR be made in the name of the claimant and her husband Sanjay Yadav to be operated jointly as either or survivor.

Disposed of in the above terms.

(Nidhi Gupta)
Judge

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Whether speaking/reasoned **Yes**

Whether reportable **Yes/No**

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