IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-15887-2018 (O&M)
Reserved on: 04.05.2022
Date of decision: 04.07.2022

MOHIT GARG

..Appellant

Versus

HARI RAM DECEASED THROUGH HIS LEGAL REPRESENTATIVE AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rahul Sharma, Advocate
for the appellant.

Mr. Ashwani Talwar, Advocate
for respondent-Insurance Company.

ANIL KSHETARPAL, J.

1. The claimant prays for the modification of award passed by the Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') while allowing a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the 1988 Act', on account of injuries suffered by him. He after getting licence started practicing as an advocate in the Punjab and Haryana High Court at Chandigarh and other Tribunals in the year 2005. The unfortunate incident took place on 10.05.2012, when he was going to attend, a case on behalf of Central Government before the Armed Forces Tribunal, Regional Bench, at Shimla, along with two other colleagues in his own car. The correctness of findings with regard to the rash and negligent driving of the Tribunal are not in dispute. The only question which arises for adjudication is as to what should be the appropriate amount of compensation.

2. For that purpose, some facts are required to be noticed. On account of accident with a truck, the appellant was admitted in Indira

Gandhi Medical Hospital, Shimla, and thereafter, he was referred to Post Graduate Institute of Medical Sciences at Chandigarh where he was admitted in the Advanced Trauma Centre. He had suffered head injuries and third nerve palsy. The movement of the left eye stopped. He developed Diplopia (double vision) and retina of his left eye was diluted, consequently, his vision (eye sight) fell to 6/36. The appellant also underwent treatment at Neuro Ophthalmology Department in Rajindra Hospital, Patiala. On the directions of the Court, the Medical Board assessed the permanent disability of the appellant which is extracted as under:-

> *"This is to certify that* ***Mr. Mohit Garg*** *son of* ***Shri T.R. Garg****, Age* ***37*** *years old* ***Male*** *Registration No.****1157*** *resident of #* ***419, Sector-21, Panchkula*** *is a case of* ***Ophthalmic disability calculated as 34% (Visual Disability-18%, Cranial nerve palsy-20%) Hearing disability Calculated as 26% as per PTA from PGI Chandigarh. So collective Total disability calculated as 50%.*** *He is physically Disabled/Visual Disabled/Speech & Hearing Disabled and has* ***50% (fifty percent)*** *permanent/temporary, (physical impairment/Visual Impairment/Speech & Hearing Impairment) in relation to his/her* ***Both ears and Left eye involvement****."*

3. The Tribunal has granted compensation under the following heads:-

Sr. No.	***Head of compensation***	***Amount awarded***
1.	*Permanent Disability*	*1,00,000/-*
2.	*Medical expenses*	*43,058/-*
3.	*Pain and Suffering*	*2,00,000/-*
4.	*Loss of Income*	*1,20,000/-*
5.	*Future Loss of Income*	*NIL*
6.	*Nutritious Diet*	*20,000/-*
7.	*Attendant Charges*	*10,000/-*
8.	*Transportation Charges*	*40,000/-*
	Total compensation -	***5,33,058/-***

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book as well as the record.

5. The learned counsel representing the appellant has focused his arguments on denial of loss of future income on the ground that the income of the appellant has been increasing every year, therefore, there is no loss of future income. Under this ground, the Tribunal has not awarded any loss of income. The learned counsel submits that the appellant was working as the Senior Panel Counsel for the Central Government and he was allotted 99 cases before the occurrence of the said accident, during the period of one year immediately before the accident. He submits that thereafter, he was not allotted any case for a period of one year as he had met with an accident. He further submits that the appellant apart from the other loses, has suffered loss of amenities and will have to engage a driver during his entire life. He submits that the statement of Dr. Jagdeep, Medical Officer, General Hospital, Sector 6, Panchkula, is to be read in the correct perspective. He submits that Dr. Jagdeep has only stated that the appellant can read with his right eye which has normal vision. However, he submits that the appellant has not only suffered double vision but also he has been diagnosed as a case of Oculomotor Nerve Palsy. He submits that if because of the accident the appellant had not suffered any disability, he would have grown at a much faster pace. He submits that the gestation period for a practising advocate is sufficiently long and the appellant was only seven years old in the practice when the unfortunate accident took place.

6. On the other hand, the learned counsel representing the Insurance Company contends that the appellant has already been granted sufficient compensation and the Court should not interfere in the amount assessed by the tribunal.

7. At this stage, it is appropriate to notice that the Tribunal refused to grant loss of future income because the income of the appellant

for successive years has seen gradual growth. At this stage, it would be appropriate to note the income depicted in Income Tax Returns. In the Financial Year 2010-11, the gross income is Rs.2,20,000/-. During the Financial Year 2011-12, the gross income is Rs.3,29,066/- and in Financial Year 2012-13, the gross income is Rs.4,70,150/-, whereas, during the Financial Year 2013-14, the gross income is Rs.8,65,043/-, in Financial Year 2014-15, the gross income is Rs.11,73,877/- and Financial Year 2015-16, the gross income is Rs.12,58,247/-, in Financial Year 2016-17, the gross income is Rs.14,87,929/-.

8. No doubt, the income of the appellant has consistently grown. However, if the unfortunate incident had not taken place and he had not suffered the permanent disability, he may have grown more rapidly. While assessing the compensation, the Tribunal is required to apply some amount of guess work based on the logic and common sense. It is well known that after the initial gestation period is over, the lawyers practising in the High Court or bigger cities, start earning handsomely. The appellant was barely into his fifth year when he started his filing his Income Tax Return. No doubt, at that time, the income was Rs.2,26,960/-. It is also proved on the file that the Central Government empanelled him as the Senior Panel Counsel to defend it in the Armed Forces Tribunal. He was also being allocated the outstation cases. He was maintaining a car as well. In such circumstances, the prospect of future increase in the income at a much faster pace cannot be ruled out. In order to assess the loss of income , the Tribunal is required to adopt a certain method. In the Financial Year 2011-12, the appellant submitted his Income Tax Return on 24.07.2014 (after the accident), the Court has refused to rely upon the same. It has been pointed out that major part of the income of the appellant was from the fees received

from the Central Government. No doubt, the Income Tax Return was filed subsequent to the accident, however, it cannot be overlooked only on that account, particularly, when the law required the filing of the Income Tax Return subsequently. It is appropriate to note that in the Financial Year 2010-11, he had shown his income as Rs.2,20,000/- and in Financial Year 2011-12, he showed that his gross total income was Rs.3,29,066/-. Thus, assessing the income on the basis of the Financial Year 2011-12, the appellant was having a gross income of Rs.27,500/- per month. As per the disability certificate, the appellant has suffered 50% permanent disability in relation to his both ears and the left eye. For the whole body, such assessment can be taken as 1/3rd. Therefore, the per month loss of the income would be Rs.9,170/-. Such loss will have to be increased on account of increase in the income due to future prospects as laid down in the judgment passed by the Five Judge Bench in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC Online SC 1270***. The appellant was barely 33 years old at the time of accident. He was at his prime age. Therefore, the increase in the future prospects shall be 40%. After adding the aforesaid amount in monthly loss, the per month loss comes to Rs.12,838/-. After applying the multiplier of 12, the yearly loss comes to Rs.1,54,056/-. Keeping in view the age of the appellant, the appropriate multiplier would be 16. Hence, the total amount comes to Rs.24,64,896/-.

9. As regards engagement of the driver, it may be noted here that no evidence in this regard has been produced. As regards the loss of amenities, the same is assessed at Rs.1,00,000/-. Consequently, the compensation assessed by the Tribunal shall stand increased by Rs.25,64,896/- which shall be payable to the appellant along with interest @

7.5% per annum from the date of filing of the claim petition till its realization apart from what was assessed by the Tribunal.

10. With all these observations, the appeal stands allowed.

11. All the pending miscellaneous applications, if any, are also disposed of.

04th July, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned *: Yes/No*

Whether reportable *: Yes/No*