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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-311-2019 (O&M)
DATE OF ORDER: 15.12.2022

Jasbir Singh …..Appellant

Vs.

Amit and others …..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Naresh Kumar, Advocate
for the appellant.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate for
Respondent No.3-Insurance Company.

Nidhi Gupta, J.

CM-1196-CII of 2019

This application has been filed under Order 41 Rule 27 read with Section 151 CPC for placing on record additional evidence by way of Income Proof of appellant dated 15.10.2018 issued by Tehsildar, Jind (Annexure A1); and statement of PW5 Dr. S.S. Sangwan, Director, Ayushman Bhav Health Institute, G.T. Road, Panipat (Annexure A2).

In view of the submissions made in the application, the same is allowed and Income Proof of appellant dated 15.10.2018 issued by Tehsildar, Jind (Annexure A1) and statement of PW5 Dr. S.S. Sangwan, Director, Ayushman Bhav Health Institute, G.T. Road, Panipat (Annexure A2) are taken on record.

Main Case

This appeal has been filed by the claimant-injured seeking enhancement of compensation of Rs.6,38,510/- awarded to him by the Motor Accident Claims Tribunal, Jind (hereinafter referred to as "the Tribunal") in MACT Case No.97 of 2016 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") vide Award dated 09.08.2018.

Learned Tribunal on appraisal of all the pleadings and evidence led before it concluded that the claimant-injured had suffered 70% disability on account of the injuries suffered by him in the accident that took place on 14.06.2015 due to the rash and negligent driving of respondent No.1-Amit, driver of the Santro car bearing registration No.HR-51N-2700 (hereinafter referred to as "the offending vehicle"). Learned Tribunal on basis of the medical bills Exhibit P6 to Exhibit P40 and Exhibit P40 to Exhibit P120 and Exhibit P105 to Exhibit P129 placed on record by the appellant awarded Rs.2,62,510/- towards medical expenses incurred by the appellant on his treatment. As the claimant failed to produce on record any documentary proof regarding his income and occupation, learned Tribunal took the income of the deceased to be Rs.8,000/- per month, and due to 70% disability his capacity of earning was presumed to be reduced to only 25% and therefore, the annual income of the claimant was taken as Rs.24,000/-; taking the age of the claimant to be 44 years, multiplier of 14 was applied; and Rs.20,000/- was granted on account of pain and suffering; Rs.20,000/- towards transportation, and total compensation ofRs.6,38,510/- was awarded in the following manner:-

1. Medical expenses	Rs. 2,62,510/-
2. Loss due to disability	Rs. 3,36,000/-
3. Pain and suffering, special etc.	Rs. 20,000/-
4. Transportation	Rs. 20,000/-
Total	Rs. 6,38,510/-

The respondents were held liable to pay the compensation jointly and severally.

It is submitted by learned counsel for the appellant-claimant that the appellant was earning Rs.20,000/- per month and therefore, the learned Tribunal has taken his income on the lower side. Further, learned counsel refers to the testimony of PW7 MRC Pala Ram, PGIMS, Rohtak who deposed that as per the record, the appellant was admitted at PGIMS, Rohtak on 01.12.2015 and was discharged on 09.12.2015 and the hospitalization of the appellant was also proved on record as Exhibit P103. Learned counsel also refers to testimony of PW5 Dr. S.S. Sangwan, Director Ayushman Bhav Health Institute, G.T. Road, Panipat who brought the original treatment record of the appellant and deposed that the appellant had been admitted in his hospital with the history of road side accident with diagnosis of open soft tissue defect with segmented non-union of tibia right leg because of which the appellant was operated upon on 21.07.2016 and discharged on30.07.2016. As per the record produced by PW5 Dr. S.S. Sangwan, the appellant was again admitted on 06.03.2017 and discharged on 11.03.2017 with operation involving sinus excision and curettage in the hospital. It is stated that the appellant is still undergoing regular follow up treatment and has to be operated again for fracture of tibia and fibula because of presence of infection in the bone for which the appellant will incur additional cost of Rs.1,00,000/- excluding drugs. PW5 also proved discharge summary Exhibit P4 and Exhibit P5 and hospital bills Exhibit P6 to Exhibit P40. Learned counsel for the appellant also refers to Exhibit P104 which is the disability certificate of the appellant whereby he was found physically disabled up to 70%. It is accordingly submitted by learned counsel for the appellant that in view of the above facts loss of income should be treated as 100% instead of 70% as the appellant is unable to do any agricultural work any longer. Learned counsel also submitted that vide application for income certificate Annexure A1 dated 10.10.2018, it was stated by the appellant before the Tehsildar, Sub-Division, Jind that his income for the year 2014-15 was Rs.2,50,000/- from dairy milk/cattle and an income certificate to this effect be provided to him by the Tehsildar, Jind.

In response, it is submitted by learned counsel for respondent-Insurance Company that as per the record, the appellant was found physically disabled up to 70% due to Post Traumatic Compound fracture of both bones of right leg with bone loss with total knee stiffness with non-functional right lower limb below knee. It is therefore stated that there is nothing on record to suggest that the appellant is confined to bed and unable to move. As regards Annexure A1, learned counsel questions why the same was not produced by the appellant before the learned Tribunal. It is very fairly stated that the loss of income of the appellant can be taken to be 40% instead of 25%, and Rs.1,00,000/- may also be awarded by way of future treatment.

I have heard learned counsel for the parties.

On the basis of the facts on record and the submissions made before me, in my view it will serve the ends of justice if the compensation admissible to the appellant is re-worked as follows:-

	MACT	Enhanced
Medical expenses	Rs. 2,62,510/-	Rs. 2,62,510/-
Special diet	--	Rs. 20,000/-
Attendant expenses	--	Rs. 20,000/-
Transportation expenses	Rs. 20,000/-	Rs. 30,000/-
Pain and sufferings	Rs. 20,000/-	Rs. 50,000/-
Loss of income during treatment (3 month)	--	Rs. 30,000/- (10,000 x 3)
Loss of enjoyment of life	--	Rs. 30,000/-
Future Medical expenses	--	Rs. 1,00,000/-
Permanent Disability	Rs. 3,36,000/- (Rs. 8,000/- x 25% x 12 x 14)	Rs. 6,72,000/- (Rs. 10,000/- x 40% x 12 x 14)
Total compensation	Rs. 6,38,510/-	Rs. 12,14,510/-
Enhancement	Rs. 5,76,000/-	

Rate of interest at the rate of 7.5% will remain unchanged as determined by the learned Tribunal.

The appeal is accordingly disposed of in above terms. Pending applications if any, stand disposed of.

15.12.2022 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned **Yes/No**
Whether reportable **Yes/No**