

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**300****FAO No.1187 of 2019 (O&M)****Reserved on : 10.04.2023****Date of Decision : 17.04.2023**

Jaswant Singh

....Appellant

VERSUS

Rachit Gulati and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Arora, Advocate for the appellant.

Mr. Vinod Chaudhri, Advocate for respondent No.3.

ALKA SARIN, J.

1. The present appeal has been preferred by the injured claimant-appellant challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the 'Tribunal') vide award dated 29.10.2018.

2. The claimant-appellant approached the Tribunal averring that on 05.06.2016 he was going from Anandpur Sahib to Nurpur Bedi and while driving his motorcycle bearing registration No.PB-12-K-7310, at a normal speed and on the correct side of the road, when he reached near village Singhpura, he stopped and parked his motorcycle on the extreme left side of the road for drinking sweet water from a *Chhabeel*. In the meantime, at about 01.30/02.00 p.m., a car bearing registration No.HP-36-A-9655, which was being driven in a rash and negligent manner by respondent No.1, came from Nurpur Bedi side at a very high speed without blowing any horn and struck against him. Due to the impact the claimant-appellant fell and received various injuries. The claimant-appellant further averred that he

remained admitted in various hospitals for about a period of one year. FIR No.79 dated 12.08.2016 was also lodged under Sections 279, 337, 338 and 427 of the Indian Penal Code, 1860 at Police Station Nurpur Bedi. The claimant-appellant further stated that he is 30 years of age and was running a coaching centre and also doing tuition work.

3. The claim was contested by respondent Nos.1 and 2 by denying the factum of the accident. Further, it was denied that the claimant-appellant received any injuries or spent any amount on his treatment. Respondent No.3-Insurance Company also filed its written statement denying the factum of the accident. The Tribunal, on the basis of the evidence on the record, awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Injury and Pain	Rs.1,00,000/-
2	Medical expenses, treatment, hospitalization, transportation and Misc. expenses	Rs.5,82,208/-
3	Special Diet	Rs.50,000/-
4	Loss of earning during period of treatment	Rs.2,00,000/-
5	Future Medical Treatment	Rs.50,000/-
6	Loss of prospective income	Rs.1,54,000/-
7	Loss of amenities and general damages	Rs.50,000/-
	Total compensation	Rs.11,86,208/-
	Interest	7.5% per annum

4. Aggrieved by the quantum of compensation awarded, the present appeal has been preferred by the injured claimant-appellant.

5. During the pendency of the appeal, CM-6024-CII-2021 has been filed by the claimant-appellant for permission to lead additional evidence. The additional evidence now sought to be led is the disability

certificate issued by the Medical Board, Government Medical College and Hospital, Sector 32, Chandigarh showing the disability of the claimant-appellant to being 51%. Learned counsel for respondent No.3-Insurance Company has stated that he does not wish to file any reply to the said application.

6. On merits, learned counsel for the claimant-appellant would contend that the compensation awarded is on the lower side. It is submitted that though the disability was assessed to the extent of 77% before the Tribunal, however, as per latest disability certificate, the disability of the claimant-appellant may be assessed as 51%. Learned counsel has contended that the claimant-appellant remained admitted in hospital for a period of almost a year and the compensation awarded under the various heads is on the lower side. It is further the contention that no amount has been awarded towards loss of future prospects nor any multiplier has been applied.

7. *Per contra* learned counsel for respondent No.3-Insurance Company has contended that the Tribunal had assessed the compensation taking the disability of the claimant-appellant as 77%, however, since the disability now stands reduced to 51%, the compensation awarded to the claimant-appellant ought to be reduced.

8. I have heard learned counsel for the parties and have perused the record of the Tribunal with their able assistance.

9. In the present case it has come in evidence that the claimant-appellant was initially taken to CHC, Singhpur from where he was referred to Civil Hospital, Rupnagar. However, the claimant-appellant was got admitted in Kailash Hospital, Anandpur Sahib where he remained admitted for a long time. At Kailash Hospital, he was operated upon and rods were

inserted in his right multiple fractured leg but after insertion of rods in his leg the infection got worse. Thereafter, the claimant-appellant was taken to Max Hospital, Ropar and subsequently to the Government Medical College and Hospital, Sector 32, Chandigarh and other private hospitals for better treatment.

10. PW3 Dr. Saurav Sharma of Kailash Hospital deposed as under:

“On 05.06.2016 patient Jaswant Singh Bela, age 29 years son of Mohinder Singh, resident of Ward No.6, Hargobind Nagar, District Rupnagar was admitted in our hospital as a case of fracture segmental femur with right tibia fracture with pulmonary embolism (breathing difficulty). He was operated on 05.06.2016 for the fracture femur and on 17.06.2016 for the fracture tibia. He was discharged on 24.06.2016. After a month, debridement was done over the right thigh to treat infection over the fracture site. Such infection occurred so many times and patient had been coming to my hospital time and again for its treatment for one month. Once, the bone gets infection, it is very difficult to overcome such infection in a short period. It may take an year to resolve it”.

11. PW5 Dr. Surjit Singh of Max Hospital, Ropar deposed as under:

“On 08.10.2016 patient Jaswant Singh son of Mohinder Singh, resident of Hargobind Nagar, Ropar was admitted in my hospital for the treatment of fracture

right femur bone and right tibia bone for which he was earlier operated in private hospital at Anandpur Sahib. He was having infection non union of right femur bone along-with non union of right tibia bone. He was operated upon thrice in the form of removal of nail and refixation of the fracture with ex-fix including cleaning of the infection. He was discharged on 29.10.2016. Rs.51,029/- was charged in cash excluding medicines and other treatment from the hospital. At the time of discharge, patient was still under treatment and was not fully cured.”

12. PW7 Dr. Sandeep Gupta, Associate Professor, Department of Orthopaedic, GMCH, Sector 32, Chandigarh deposed as under :

“Claimant Jaswant Singh was presented to us with diagnosis of infected non union of fracture right femur thigh bone. He was operated twice by me in first surgery, which was done on 10.4.2017, infected bone was removed, the fracture was stabilized by antibiotic nails and are antibiotic cement spacer which was put in the defect. The second surgery was done on 31.05.2017. Antibiotic nails and cement spacer were removed. The fracture was definite fixed with interlock nail, along-with plate. The bone defect was filled with bone graft taken from patient's own pelvic bone. Patient was subsequently discharged on 14.06.2017. The patient is still under follow up treatment with me. There is still a

stiffening of the leg and if such stiffening continues, then the patient may require another surgery. There is shortening of leg which is mentioned in disability certificate which was issued by our hospital. The pace of recovery is on the expected lines”.

13. The disability certificate now produced on the record as Annexure A-1 though shows that the permanent disability has been reduced to 51%, however, it also mentions under the head ‘Diagnosis’ as under:

“Fracture right femur with fracture right both bone leg with fracture right Patella with stiff knee with shortening.”

14. The claimant-appellant, who runs a coaching centre, is required to stand for a long period and the stiff knee with shortening would definitely have affected his performance. The disability of the claimant-appellant has been assessed as 51%, however, his functional disability is assessed as 25%. The income of the claimant-appellant as per income tax returns has been shown as Rs.4,00,000/- per annum which comes to about Rs.34,000/- (rounded off) per month. Since the disability has affected the vocation of the claimant-appellant to a certain extent, an addition of 40% towards loss of future prospects keeping in view the age of the injured as per judgment of Hon’ble Supreme Court in the case of **Pappu Deo Yadav vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** ought to be made. The Tribunal has not applied any multiplier which, keeping in view the age of the claimant-appellant, could be ‘17’. The claimant-appellant in the present case, as per evidence on the record, remained admitted in hospital and underwent 08 surgeries and hence the loss of income for one year based on

the income tax returns of the would have to be assessed as Rs.4,00,000/- per annum. The amount under the head ‘medical bills and future treatment’ has not been challenged by the claimant-appellant and the same is hence maintained. An amount of Rs.1,00,000/- has been awarded by the Tribunal under the head ‘pain and suffering’ which is on the lower side keeping in view the long hospitalization and the fact that the claimant-appellant was operated upon 08 times during the period of one year. The amount under the head ‘pain and suffering’ is accordingly enhanced to Rs.2,00,000/-. An amount of Rs.50,000/- has been awarded by the Tribunal towards ‘loss of amenities of life’. This Court deems it appropriate to award an amount of Rs.2,00,000/- towards ‘loss of amenities of life’. An amount of Rs.50,000/- has been awarded by the Tribunal towards ‘special diet’ and the same is maintained. No amount has been awarded towards ‘attendant charges’. The claimant-appellant remained admitted in various hospitals and hence the ‘attendant charges’ are awarded on the basis of minimum wages for a period of one year which would come to Rs.86,400/- [Rs.7210/- (rounded off to Rs.7200/-) x 12].

15. In view of the above discussion, the enhanced compensation to which is the claimant-appellant would be entitled is re-worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income	Rs.4,00,000/-
2	Loss of annual income as per 25% functional disability	[4,00,000 x 25/100] = Rs.1,00,000/-
3	Future prospects @ 40%	[1,00,000 + 40,000] = Rs.1,40,000/-
4	Multiplier of 17	[1,40,000 x 17] = Rs.23,80,000/-
5	Medical Bills	Rs.5,82,208/-
6	Future Treatment	Rs.50,000/-
7	Pain and suffering	Rs.2,00,000/-

8	Loss of amenities of life	Rs.2,00,000/-
9	Special Diet	Rs.50,000/-
10	Attendant Charges	Rs.86,400/-
	Total Compensation	Rs.35,48,608/-
	Amount Awarded by the Tribunal	Rs.11,86,208/-
	Enhanced amount	Rs.23,62,400/-

16. The enhanced amount of compensation shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

17. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

17.04.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO