

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

240

FAO-700-1994

Date of decision: 28.11.2023

Baldev Kumar Sharma

.....Claimant/Appellant

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : None for the appellant.

Mr. Jagdish Manchanda, Addl. A.G., Haryana.

Mr. V.K. Garg, Advocate
for respondent No.5-Insurance Company.

AMAN CHAUDHARY, J.

1. The present appeal has been filed by the claimant-appellant for enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') vide award dated 19.10.1993, on account of injuries received by him in a motor vehicular accident.

2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch. Since, the case is pending for the last more than 29 years, learned State counsel and learned counsel for respondent No.5 have no objection, in case the same is decided on basis of the available record.

3. It has been averred in the grounds of appeal that the injured-appellant was 20 years old and bachelor at the time of his accident, in which he had suffered injuries and remained admitted in the hospital for 02 months and after discharge, he used to visit for follow up treatment.

After the accident, he became 35% permanent disabled, due to which, he was unable to walk properly but only a meager amount of Rs.1,00,000/- was awarded by the Tribunal. No amount has been paid for the expenses incurred for attendant during hospitalization and also for loss of amenities of life. The amount awarded under the head of pain and suffering is also on the lower side.

4. On the other hand, learned State counsel and learned counsel for respondent No.5 have opposed the present appeal by stating that just and reasonable compensation has already been awarded to the appellant, which requires no enhancement.

5. Heard and perused.

6. There is no dispute with regard to the accident that was caused by respondent No.3, driver of the offending bus of Haryana Roadways-respondent No.2, wherein the appellant, who was 20 years old and bachelor, had suffered multiple injuries, resulting in serious consequences. As far as the liability fastened upon the driver and owner of the offending vehicle, to be joint and several, is concerned, it is pertinent to mention that no challenge to the same has been made by them and thus, this issue does not warrant any further examination. Perusal of the award reveals that the appellant had suffered injuries on the right leg and thigh. PW6 Dr.KD Sharma, stated that the appellant remained admitted in the hospital from 23.03.1991 to 30.05.1991 and he was operated upon approximately 8 times. PW3 Dr. Ashok Sarwal, Orthopaedic Surgeon, proved disability certificate Ex.PA, issued by Board of Doctors of Civil Hospital, Ambala City, as per which, on account of the injuries caused, the muscle power of right leg and thigh of the appellant was reduced and he suffered permanent

physical disability to the extent of 35%. The Tribunal has awarded a sum of Rs.32,000/- for expenditure on medical treatment; Rs.35,000/- for permanent disability and Rs.33000/- for pain and suffering, loss of earning and for adverse effect on marriage prospects.

7. A gainful reference can be made to **Sidram vs. Divisional Manager, United India Insurance Co. Ltd. and another**, 2023(1) RCR (Civil) 44, wherein Hon'ble the Supreme Court observed that, "This Court has emphasized time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives." Further, while allowing the appeal, the compensation was enhanced by taking into consideration the following:

"56. The evidence on record indicates that the appellant suffered paraplegia due to the accident. Paraplegia is a form of paralysis of lower body. It restricts everyday routine more particularly the physical activity and leads to (i) deprivation of simple pleasures and amenities of life, (ii) 100% loss of earning capacity, (iii) long term secondary complications requiring continuous care, medical treatment and hospitalization, (iv) feeling of helplessness, depression, anger, stress, anxiety, etc. In short, paraplegia impairs physical, mental and psychological health and has devastating impact on the social and financial well being of the victim."

57. In the case on hand, the appellant was in the business of selling utensils and used to travel to various villages to sell the same. With this disability in the form of paraplegia being suffered by the appellant, it is not possible for him now to walk a long distance or stand for a long period. His business could be said to have been gravely impacted. Further, the appellant at the time of accident was just 19 years old....."

Xx xx xx xx

(9) Marriage Prospects

99. The Tribunal held that the appellant was young, and due to the physical disability, his marriage prospects are now almost nil. The Tribunal awarded to Rs. 20,000/- under this head. The High Court upheld the amount of Rs. 20,000/-.

100. In Sanjay Kumar (supra), this Court observed as under:

“14... On the point of loss of marriage prospects, we feel that it is a major loss, keeping in mind the young age of the appellant and the High Court has gravely erred in not awarding adequate compensation separately under this head and instead clubbed it under “loss of future enjoyment of life” and “pain and suffering”. We thereby award Rs 75,000 towards loss of marriage prospects...”

101. In Ibrahim v. Raju and Others, (2011) 10 SCC 634, this Court held:

“19. On account of the injuries suffered by him, the prospects of the appellant's marriage have considerably reduced. Rather, they are extremely bleak. In any case, on account of the fracture of pelvis, he will not be able to enjoy the matrimonial life. Therefore, the award of Rs 50,000 under this head must be treated as wholly inadequate. In the facts and circumstances of the case, we feel that a sum of Rs 2 lakhs should be awarded to the appellant for loss of marriage prospects and enjoyment of life.”

(10) Loss of Amenities

104. The Tribunal held that an amount of Rs. 30,000/- should be awarded towards loss of amenities. The High Court upheld the amount of Rs. 30,000/- as awarded by the Tribunal. The claim of the appellant towards loss of amenities is Rs. 50,000/-.

105. This Court in the case of Pappu Deo Yadav (supra), observed:

“6. The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions.

[Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683]”

106. In R.D. Hattangadi (supra) it has been held:

“12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of

sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

x x x x

17.When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life.....”

110. Vijaykumar Babulal Modi (supra), the High Court of Gujarat observed as under:

“It appears that the claim under this head is to the tune of Rs.3 lac. However, the Tribunal has not awarded any sum under the head 'loss of amenities'. We are of the opinion that this head must take into account all aspects of a normal life that have been lost due to the injury caused. As per R.D. Hattangadi's case (supra), this includes a variety of matters such as the inability to walk, run or sit, etc. We include here too the loss of childhood pleasure such as the ability to freely play, dance, run, etc., the loss of ability to freely move or travel without assistance. Then, there is the virtual impossibility of marriage as well as a complete loss of the ability to have sex and to have and nurture children.”

111. In view of the aforesaid, we award an amount of Rs. 50,000/- for the loss of amenities taking into consideration the fact that the appellant was 19 years old at the time of the accident, and also considering the nature of injuries suffered by him and the extent of his disability.

112. The total compensation awarded by us under different heads is as under:

“1.	Loss of earning due to disability :	Rs.7,77,600/-
2.	Loss of earning for 6 months:	Rs.48000/-
3.	Medical expenses	Rs.1,55,000/-
4.	Future medical expenses	Rs.2,16,000/-
5.	Attendant charges	Rs.4,32,000/-
6.	Litigation charges	Rs.50,000/-
7.	Loss of conveyance	Rs.50,000/-
8.	Pain and suffering	Rs.1,00,000/-
9.	Marriage prospects	Rs.3,00,000/-
10.	Loss of amenities	Rs.50,000/-
	Total	Rs.21,78,000/-”

8. Hon’ble The Supreme Court in **Mohd. Sabeer @ Shabir Hussain vs. Regional Manager, UP State Road Transport Corporation**

2023(1) RCR (Civil) 349, wherein the permanent disability had been caused

to the claimant, a 37 year old man, as his right lower limb had been hindering his mobility proving functional disability severely impacting his earning capacity and having to use prosthetic limb, awarded Rs.38,70,120/- (including Rs.2,00,000/- for pain and suffering, Rs.15000/- special diet, Rs.2,00,000/- loss of amenities of life) by observing that it is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that “just compensation” must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.

9. Keeping in view the peculiarity of facts and circumstances in light of the aforesaid dictum of law, this Court finds that for the ends of justice to be adequately met, the amount of compensation awarded to the appellant deserves to be and is enhanced thus:

- i. Pain and suffering: Rs.1,00,000/-
- ii. Medical treatment and for follow up to: Rs.50,000/-
- iii. Loss of amenities of life: Rs.50,000/-
- iv. Marriage prospects: Rs.1,50,000/-
- v. Loss of income: Rs.30,000/-
- vi. Attendant, special diet and transportation : 50,000/-
- vii. For physical permanent disability to the extent of 35% : Rs.70,000/-

10. Accordingly, the enhanced amount of compensation of Rs.4,00,000/- over and above the amount of Rs.1,00,000/- already awarded by the Tribunal, alongwith interest @ 7.5% per annum shall be paid to the claimant-appellant within a period of two months from the date of receipt of

a certified copy of this judgment, failing which, the amount shall accrue an interest at the rate as already awarded by the Tribunal.

11. Modifying the award to the aforesaid extent, the present appeal is disposed of.

12. Registry is directed to send a copy of the order to the concerned Tribunal for necessary compliance.

28.11.2023
Hemant

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No