

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

230

FAO-1113-1995 (O&M)

Date of decision : 23.11.2023

Smt. Harjinder Kaur

.....Appellant

Versus

Mohinder Singh and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: None for the appellant

Mr. Ram Avtar, Advocate for the 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, Hoshiarpur (for short 'the Tribunal') vide award dated 04.08.1994, on account of the injuries received by her 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 in the year 2011. Since the case is pending for the last more than 28 years, the counsel for the insurance company has no objection, in case the same is decided on basis of the available record.
3. Heard and perused.
4. There is no dispute with regard to the accident that was caused by respondent No.2, driver of the offending vehicle owned by respondent No.1. So far as the fact of accident and manner of its taking place, as well as liability fastened to be joint and several are concerned, it is pertinent to mention that no challenge to the same has been made and thus, this issue does not warrant any

further scrutiny.

5. With regard to enhancement of the compensation, though it being a reconstructed case, only copy of award being available but, in view of *ex debito justitiae* to do real and substantial justice, for the administration of which alone, the Courts exist, the matter is being decided on the basis thereof. Concededly, the injured-appellant remained admitted in the hospital from 13.02.1991 to 20.02.1991 and after discharge, she used to visit for follow up treatment. She had suffered severe grievous injuries in the said accident. Dr.Jarnail Singh, who had medico legally examined, proved that the claimant-appellant suffered injuries below her left eye. As per injury report Ex.PW4/B, she suffered fracture of fifth rib. From the award, it is apparent that no amount has been paid for the expenses incurred for attendant during hospitalization and also for loss of amenities of life.

6. The judgment in **Sidram vs. Divisional Manager, United India Insurance Co. Ltd. and another**, 2023(1) RCR (Civil) 44, would be worthwhile to refer, wherein Hon'ble the Supreme Court observed that, "This Court has emphasised 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

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/-” |

7. 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 was further observed that it has been reiterated 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.

8. Considering 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 to: Rs.30,000/-
- ii. Medical treatment and for follow up : Rs.25,000/-
- iii. Loss of amenities of life: Rs.25,000/-
- iv. Attendant, special diet and transportation charges: 25,000/-

9. Resultantly, the enhanced amount of compensation of Rs.75,000/-, over and above the amount of Rs.30,000/- already awarded by the Tribunal, 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. The component of interest payable on the enhanced amount shall be 7.5% per annum from the date of filing of the present appeal, till its realization.

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

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

23.11.2023
gsv/ashok

(AMAN CHAUDHARY)
JUDGE

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