

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

236

FAO-1805-1996

Date of decision: 30.11.2023

Sukhbir Singh

.....Claimant/Appellant

Versus

Vijay Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Vishal Garg Narwana, Advocate
for the appellant.

Mr. Vinod Chaudhri, Advocate
for respondent No.3-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, Gurgaon (for short 'the Tribunal') vide award dated 22.01.1996, on account of injuries received by him in a motor vehicular accident.

2. Learned counsel contends that the injured-appellant, who was a young person, met with an accident, wherein he had suffered multiple injuries and remained admitted in the hospital for under-going treatment and various operations were performed upon him. After the accident, he became 60 to 65% permanently disabled, as his face had become disfigured, jaw broken and tongue cut due to which he was unable to even chew the food. However, he has been awarded a meager amount of Rs.1,74,000/- by the Tribunal. No amount has been awarded towards loss of income, enjoyment of amenities of life; future expenses on follow up treatment etc.

3. On the other hand, learned counsel for respondent No.3 has opposed the present appeal by stating that just and reasonable compensation has already been awarded to the appellant, which requires no enhancement.

4. Heard and perused.

5. There is no dispute with regard to the accident that was caused by respondent No.1-driver of the offending vehicle, wherein the appellant, 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 scrutiny.

6. Perusal of the award reveals that the appellant had suffered multiple injuries and had taken treatment from various hospitals including Veena Nursing Home, Jaipur, Golden Hospital, Man Hospital and VK Desai Hospital, Bombay. He was in the business of property dealing. PW12 Dr.Raj Kumar, stated that there were six fractures on the appellant. He was operated twice regarding fracture of right femour. It has been categorically recorded in the Award that PW12 Dr.Raj Kumar had assessed overall disability to the extent of 60 to 65% without there being any mention that it was permanent or curable and due to injuries on which part of the body. The Tribunal has awarded a sum of Rs.1,64,182/- on account of the said accident and Rs.10,000/- for pain and suffering.

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

(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.25,000/-
- ii. Medical treatment and for follow up to: Rs.25,000/-
- iii. Loss of amenities of life: Rs.25,000/-
- iv. Loss of income: Rs.25,000/-
- v. Attendant, special diet and transportation : 25,000/-
- vi. For disability to the extent of 65% : Rs.65000/-
- vii. For medical bills etc. already awarded Rs.1,64,000/-

10. Accordingly, the enhanced amount of compensation of

Rs.1,80,000/- over and above the amount of Rs.1,74,000/- 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.

(AMAN CHAUDHARY)
JUDGE

30.11.2023
Hemant

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