

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**243****FAO-2328-2022 (O&M)****Date of decision: 03.03.2023****Gurnam Singh****...Appellant(s)****Vs.****Jaswant Singh @ Shunty & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ishan Singh Cooner, Advocate for
 Mr. Jagram Singh Cooner, Advocate for the appellant.

NIDHI GUPTA, J.

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.1,01,555/- awarded by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as "the learned Tribunal") vide Award dated 13.12.2019 passed in Claim Petition No.RBT-392 MACP of 2017 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

2. Learned Tribunal on the basis of pleadings and evidence placed before it concluded that claimant/appellant had received injuries in a motor vehicular accident that took place on 21.03.2017 due to rash and negligent driving of motorcycle bearing registration No.HR-01AQ-6237 (hereinafter referred to as "the offending vehicle") being driven and owned by respondent No.1 and insured by respondent No.2. Learned Tribunal awarded compensation as noted above along with interest @ 7.5% per annum from the date of filing the petition till its actual realization. Respondents were held jointly and severally liable to pay the aforesaid compensation amount.

3. Learned counsel for the appellant seeks enhancement of compensation inter alia on the ground:

a) that claimant/appellant has suffered functional disability of 25% and thus, compensation awarded by learned Tribunal is on lower side;

b) that only Rs.5,000/- each has been granted towards attendant charges and special diet which is on lower side;

c) that prior to accident, the appellant was working as a labourer and earning Rs.15,000/- per month. However, due to disability suffered, his earning capacity has been considerably reduced and therefore, future prospects @ 10% ought to have been awarded by applying multiplier factor;

d) that appellant spent around Rs.2 lakh on treatment in various hospitals however, only Rs.6,555/- has been granted under the head of medical expenses;

e) that Rs.10,000/- granted for transportation and Rs.25,000/- for pain & suffering are also on lower side;

f) that interest @ 7.5% per annum has been granted whereas the same should be 12% per annum from the date of accident itself.

4. No other argument is made on behalf of the appellant.

5. I have heard learned counsel for the appellant.

6. a) Perusal of record of the case shows that the claimant/appellant was medico-legally examined by PW1-Dr. Aseem Goel, Medical Officer, Civil Hospital, Ambala City who deposed that the appellant has suffered fracture of right leg for which he was operated on 31.03.2017 and discharged on 02.04.2017. As per disability certificate (Exhibit P3), the appellant has suffered disability to the extent of 25%;

b) PW4-Dr. Gaurav Singla has admittedly, stated in his evidence that disability of 25% suffered by the appellant is not permanent in nature and can improve with physiotherapy. In view of this undisputed fact, I find that the amount of Rs.50,000/- granted towards loss of enjoyment of amenities of life, and Rs.25,000/- granted towards pain & suffering, is just and fair;

c) It has further come on record that the appellant had produced medical bills (Exhibit P8 to Exhibit P24) for a total amount of Rs.10,755/-. Of these, learned Tribunal had rejected bill (Exhibit P8) for a sum of Rs.4,200/- finding the same to be doubtful as there was overwriting and cutting over the said bill which did not even bear any proper signatures or stamp on said overwriting. Other bills amounting to Rs.6,555/- were computerized receipts from Government Medical College & Hospital, Sector 32, Chandigarh and also shop situated in premises of said hospital, which were duly reimbursed by the learned Tribunal. Learned counsel for the appellant is unable to explain the above said overwriting and therefore, I find no error in the reasoning of the learned Tribunal in this regard;

d) No doubt, the appellant had undergone operation for fracture of right leg however, as borne out from the above-noted uncontroverted evidence of PW4 Dr. Gaurav Singla, there is no permanent disability suffered by the appellant, and even the 25% disability is likely to improve with time.

7. No doubt Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. All that has to be determined in the facts of a given case is, that the compensation accorded is 'just'. In my considered view, in the present case, the learned Tribunal has awarded a very 'just' compensation, which is in accordance with the law laid down by the Hon'ble Supreme Court and therefore, does not warrant the interference of this Court. In case of ***KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176***, the Hon'ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

8. I find the compensation awarded by learned Tribunal to be just and fair in the facts and circumstances of the present case. No ground is made out to interfere in the impugned Award. Accordingly, present appeal is hereby, dismissed.

9. Pending application(s) if any also stand(s) disposed of.

03.03.2023

Sunena

(Nidhi Gupta)
Judge

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