

2023:PHHC:154849

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-568-1998 (O&M)
Date of Decision: December 04, 2023

Balram Shakti

...Appellant

VERSUS

Vijay Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.A.S.Gill, Advocate
for the appellant.

Mr.D.P.Gupta, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation granted by learned Motor Accident Claims Tribunal, vide Award dated 16.11.1997, on account of the injuries sustained by him, in a motor vehicular accident, which took place on 12.02.1994.

On appraisal of the evidence adduced, learned Tribunal had granted compensation to the extent of Rs.1.5 lakh to the appellant.

The essential facts, to be noticed are as follows:-

That, on 12.02.1994, the appellant-claimant along with Sh.Gulshan Arora, Advocate and Sh.K.C.Sharma (respondent No.2) was proceeding to Chandigarh for briefing another lawyer, engaged by respondent No.2, in

FAO-568-1998

some civil revision petition. They were travelling in a Mahindra Jeep bearing registration No.PB-08J-0471, belonging to respondent No.2, which was driven by respondent No.1-Vijay Kumar. The appellant-claimant was sitting on the front seat. The driver of the jeep was driving the vehicle at a fast speed and when they reached near village Dahan Kaleran, another vehicle was seen coming from the opposite side and to avoid head-on collision, respondent No.1-driver of the jeep, steered his vehicle towards extreme left side and struck against a stationary trolley, causing injuries to the appellant-claimant, who was taken to hospital. Ultimately, the left eye of the appellant had to be removed, on account of the injuries suffered by him.

However, respondents No.1 and 2, in their joint statement, had denied about the accident having caused due to negligence of respondent No.1. Rather, they pleaded that a tractor trolley came from a bye-road all of a sudden, at a turning point and then tractor trolley dashed against the jeep, from the side. The accident, as such, was caused due to the negligence of driver of the tractor trolley and not on account of negligence on the part of respondent No.1, while driving the jeep.

The appellant-claimant himself stepped into witness box as PW-4. Besides, deposing about the factum and manner of taking place of the accident, he had also deposed about the injuries suffered by him and on account of the injury on his eye, there was complete loss of vision. He further deposed about having remained out of practice, during the course of treatment and having incurred expenses of Rs.50,000/- on his treatment. He produced the copies of income tax returns, which are Ex.PD and Ex.PE, thereby showing, that he was earning Rs.10,000/- per month.

FAO-568-1998

Furthermore, Sh.Gulshan Arora, Advocate, who was also one of the occupant of the ill-fated jeep, had corroborated the version of the claimant and denied about the tractor trolley, having struck against the jeep, while coming on from the side lane.

Apart from aforesaid, even, PW-2 Dr.G.S.Malhi, Rajan Memorial Hospital, Jalandhar, has been examined, who has deposed about having examined claimant Balram Shakti, on 02.05.1994 and found complete loss of vision of left eye and certificate issued by him is Ex.PA. PW-3 E.Rai Singh, CMC Hospital, Ludhiana, on the basis of the record, deposed about the appellant-claimant to have remained admitted in their hospital from 13.02.1994 to 21.02.1994. The hospital charges were Rs.11,746/- for the treatment. Discharge slip is Ex.PB, Ex.PC and Ex.PD are the bills. Ex.PF is the photostat copy of the bed-head ticket. Both the aforesaid witnesses were not cross-examined.

Besides the aforesaid evidence, the disability certificate was also tendered into the evidence, which is Ex.PX.

However, no evidence was adduced at the behest of the respondents.

In the light of the aforesaid evidence, at the very outset, learned counsel for the appellant has assiduously submitted that learned Tribunal, while working upon the compensation, has overlooked the fact of the appellant-claimant being a practising advocate. Learned Tribunal had not considered the extensive use of eyes made by an Advocate, while preparing the cases for presentation in the Courts. In this regard, the aspect of functional disability has also been overlooked. Even, the earnings have been

taken on a lower side. No compensation has been granted for future medical treatment. As such, it is submitted that the compensation, so granted, calls for extensive enhancement.

On the other hand, learned counsel for the insurance company has submitted that just and reasonable compensation has been granted by learned Tribunal and the appeal sans merit.

At the very outset, it is pertinent to reiterate that the concept of ‘just compensation’ under Section 168 of the Motor Vehicles Act. It is settled proposition of law, now through catena of decisions, including the one, rendered by the Hon’ble Supreme Court in *Pranay Sethi’s case*, that compensation must be fair, reasonable and equitable. Further, the determination of quantum is a fact dependent exercise, which must be liberal and not parsimonious. It must be emphasized that the compensation is more comprehensive form of pecuniary relief, which involves broad-based approach.

The Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation, as per the contemporaneous position of an individual which should be essentially forward-looking. A person is not to be compensated for the injuries suffered, due to the accident, but also for the loss suffered, on account of the injury and his inability to lead the life, he/she led prior to the life altering event. It should always be kept in mind that the measure of compensation, must reflect a genuine attempt of the law, to restore the dignity of the being. Thus, the Courts should, as such, strive to provide a realistic recompense, having regard to the

FAO-568-1998

realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his/her life, on account of disability, so suffered. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count but the functional disability, on account of injury sustained, can always be on higher side.

Though, it is impossible to equate human sufferings and personal deprivation with money, but however, the Act enjoins upon the Courts to do so, in an attempt to help restore the self dignity of the claimant, by awarding '**just compensation**'. In *Sarla Verma's case*, the Hon'ble Supreme Court held that the just compensation is adequate compensation and the award must be just that-'**no less and no more**'.

Keeping in view the aforesaid principles in the backdrop, now let us move to the facts of the case in hand. Undisputedly, the appellant-claimant is a practicing lawyer. On account of the accident having taken place, due to rash and negligent driving of the ill-fated jeep by respondent No.1, the appellant-claimant had sustained an eye injury, which resulted into removal of his left eye. As already noticed aforesaid, besides himself stepping into witness box, the appellant has examined another occupant of the ill-fated jeep i.e. PW-1 Sh.Gulshan Arora and also examined PW-2 Dr.G.S.Malhi, who has deposed about having examined the appellant and having issued the certificate, thereby, stating about complete loss of vision. PW-3 E.Rai Singh deposed about admission of the appellant, in the CMC Hospital on 13.02.1994 and his discharge on 21.02.1994, after treatment. He

Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77

FAO-568-1998

has proved the record of his treatment also, which reveals about complete damage to the eye ball, which ultimately, resulted into complete loss of that eye and he was provided with an artificial eye ball. Also, from the record, it is evident that prior to the removal of the eye ball, the appellant had also sought medical advice/treatment from Dr.Rajindra Prasad Centre for Ophthalmic Sciences, New Delhi (AIIMS) and it is so evident from Ex.PG. Some treatment was also availed from Sangha Eye Hospital and Dr.Sohan Singh Eye Hospital, Jalandhar and Amritsar respectively, as evident from Mark 'A' and 'B'. In the certificate Ex.PA, proved by PW-2 Dr.G.S.Malhi, it is evident that there was complete loss of vision in the left eye because of penetrating injury in RTA and it was observed that there is no chances of revival of eye sight. The disability was assessed to be 50% by this witness.

Not only this, even the disability certificate issued under the signatures of Civil Surgeon, Jalandhar, has been proved in evidence as Ex.PX. Perusal of the same reveals that the *left eye enucleated with prosthesis implated with dis-figmentation of left eye*. The percentage of the disability was assessed as 40% and that too permanent in nature.

In the backdrop of the aforesaid, also it is pertinent to mention that the fact of accident, as such, was not disputed by respondents No.1 and 2, but however, even though, in the written statement, they had disputed about the accident having not been caused due to negligence of respondent No.1-Vijay Kumar and thus, disputed the manner of taking place of the accident, while stating about the fault to be on the part of driver of the tractor trolley, which came from the bye-lane and struck against the ill-fated jeep, but however, it is pertinent to mention that no evidence of any kind to

so substantiate this plea has been led by the respondent. Even, no appeal, as such, had been filed, at the instance of the persons, who were made liable.

In the given circumstances, in view of the evidence, brought on record, at the instance of the appellant-claimant, it stands established that accident had taken place due to rash and negligent driving of the ill-fated jeep by respondent No.1, which resulted into eye injury, which led to the replacement of the natural eye with an artificial eye of the appellant-claimant. It is also pertinent to mention that though, doctor has been examined by the appellant, but no cross-examination, as such, has been conducted, with regard to the manner of injury, so caused. In the light of the same, the evidence led by the appellant-claimant stood unrebutted.

In view of the evidence brought on record, learned Tribunal had considered various aspects for working upon the compensation, which are as follows:-

Pain and suffering	:	Rs.30,000/-
Loss of Amenities	:	Rs.40,000/-
Loss of expectation of life	:	Rs.15,000/-
Disfigurement	:	Rs.10,000/-
Inconvenience & Discomfort	:	Rs.15,000/-
Expenditure on treatment	:	Rs.15,000/-

Besides the aforesaid, on the count of loss of earnings, while taking into consideration the assertion about the appellant-claimant having remained away from his work, for a period of three months and on the basis of the income, being little above Rs.8000/-, in view of the income tax returns, another sum of Rs.25,000/- was assessed as loss of earnings.

However, no compensation was granted on the count of prospective loss of

FAO-568-1998

earnings. In total, the amount of compensation granted was to the extent of Rs.1,50,000/-.

Considering the same, as per settled prevalent law, the compensation, so worked upon, by learned Tribunal calls for re-appraisal.

Undisputedly, it is established the appellant-claimant is a practising lawyer. Also, from the evidence on record, it stands established that the appellant-claimant had sustained injuries in the motor vehicular accident, which led to his admission in CMC, Ludhiana and thereafter also, he received treatment from AIIMS, New Delhi, Sangha Eye Hospital, Jalandhar and Dr.Sohan Singh, Eye Hospital, Amritsar. Also, it stand established that there was complete loss of vision and there was permanent disability and his natural left eye was replaced by an artificial eye. Considering the avocation followed by the appellant-claimant and looking at the kind of injuries, he sustained, it has to be kept in mind that lot of reading and writing work, is required to be conducted by an Advocate for preparation of the cases of his clients to be presented in the Courts. As such, there is extensive use of the eye for conducting of the said process. There is no doubt that with removal of left eye, replaced with an artificial eye, the appellant's occupational prospects have been adversely affected. In the given circumstances, there is no reason as to why the functional disability, be not assessed as 50%. Besides the same, the appellant is also entitled to future prospects. It is established that the appellant-claimant was 44 years old, at the time of accident. Considering the age of the appellant, as per ***Pranay Sethi's case***, addition of 25% has to be made, towards future prospects.

FAO-568-1998

Also, as per Sarla Verma's case, considering the age of the appellant, multiplier to be applied is '14'.

Learned Tribunal had considered the earnings of the appellant-claimant to be Rs.8000/- per month, as per income tax returns. However, the income tax returns also shows the earnings, which are inclusive of the expenditure part also. Considering it to be so, in modest estimate, the earnings of the appellant-claimant, at the relevant time, are taken to be Rs.5,000/- per month. In the light of the said conclusion, the amount of compensation is to be re-appraised.

While taking the earnings of the appellant-claimant to be Rs.5,000/- per month and making addition of 25%, which is to the extent of Rs.1250/-, the earnings comes to be Rs.6250/- per month, annual whereof comes to be Rs.75,000/-. The appropriate multiplier to be applied is '14' and after multiplying the same with 50% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss of earnings, in view of the extent of disability, so suffered, is assessed as $\text{Rs.75000} \times 14 \times 50 / 100 = \text{Rs.5,25,000/-}$.

On account of medical treatment, so undertaken, considering the bills as well as considering the fact of the check-ups by the appellant-claimant from various outstations, an amount of Rs.15,000/- was granted, but however, considering the check-ups got done from the various places i.e. Jalandhar, Amritsar, New Delhi, which are evident from the record, this amount of expenditure stands enhanced to **Rs.30,000/-**.

On the count of 'pain and suffering', the compensation granted by learned Tribunal is on lower side, which now stands enhanced to

Rs.50,000/-.

On account of injuries sustained in the accident, the appellant, must have been put on special nutritious diet, for some period of time and thus, on this count, another amount of **Rs.10,000/-** is granted.

Furthermore, for some period of time, after the accident, in the minimum and even, looking at his condition with disability and more particularly, looking at the kind of injuries sustained, the appellant-claimant must have been looked after by a bye-stander/attendant throughout. Even if, the appellant-claimant was being looked after only by his family members, then also, it should be noted that they could perform the role of care-giver, only by diverting their own time, from any form of gainful employment, which could have generated some income. Thus, on the count of 'attendant charges', a sum of **Rs.10,000/-** is granted.

Inevitable consequences of the replacement of the eye also calls for future medical exigencies. Artificial eye having been provided to the claimant is bound to have its own problems, which calls for medical consultation and treatment. Thus, in view of the future medical exigencies, another amount of **Rs.1 lakh** is granted.

Besides the aforesaid, on account of injury sustained, which led to replacement of natural eye with an artificial eye, there is bound to be restrictive movement of the appellant-claimant. He may not be in a position to drive a vehicle himself and also, there would have been some restrictive social movements. Thus, on this count, another sum of **Rs.20,000/-** is granted.

Accordingly, the appellant-claimant is held entitled for compensation as under:-

Loss of earnings due to disability	:	Rs.5,25,000/-
Treatment expenditure	:	Rs.30,000/-
Pain & suffering	:	Rs.50,000/-
Special Diet	:	Rs.10,000/-
Attendant charges	:	Rs.10,000/-
Future medical exigencies	:	Rs.1,00,000/-
Restrictive movements	:	Rs.20,000/-
Total	:	Rs.7,45,000/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.7,45,000-1,50,000=Rs.5,95,000/-**. On the enhanced amount of the compensation i.e. **Rs.5,95,000/-**, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Accordingly, the impugned Award dated 16.11.1997 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

December 04, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes