

2023:PHHC:067750

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4289-2008 (O&M)
Date of Decision: May 10, 2023

Manohar Singh

...Appellant

VERSUS

Man Singh @ Nande and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Onkar Rai, Advocate
for the appellant.

Mr.Paul S. Saini and Ms.Komaljit Kaur, Advocates
for respondent No.3-insurance company.

ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 17.09.2008 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted, on account of the injuries sustained by appellant-claimant Manohar Singh, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.4,60,000/-, on account of injuries sustained by the appellant, in the accident, in question.

Being dissatisfied with the compensation, so granted, the appellant-claimant has filed the present appeal for seeking enhancement of the compensation.

So far as, the fact of accident and manner of taking place of the same as well as the fixation of the liability of the respondents, as such, are not disputed, as none of the respondents, so made liable, have challenged the Award.

In this backdrop, learned counsel for the appellant-claimant has assiduously submitted that appellant-claimant had suffered permanent disability and is unable to perform, even everyday activities and he requires constant support, even for the confined life, he has been forced to live after the accident. Since, he has become invalid, it is submitted that the compensation awarded by learned Tribunal is on lesser side. Even though, the appellant-claimant had suffered 90% disability, as per the disability certificate Ex.P238, but even then, the compensation had been granted in a mechanical manner, which works upon as Rs.2000 per percentage of the disability. Learned Tribunal has not taken into consideration, the impact of permanent disability, not only to his income generating capacity but also about non-quantifiable implications, on the life of the appellant-claimant. Further, it is submitted that no care has been taken of the future expenses to be incurred by the appellant for his treatment and arrangement of prosthetic limb. Even, the compensation granted on various other counts, as detailed in the Award, is on lower side. As such, a prayer has been made for acceptance of the appeal and extensive enhancement of the compensation, so granted by learned Tribunal.

On the other hand, learned counsel for the insurance company has refuted the claim of the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed

upon. It is further submitted that the compensation, so granted, is just and reasonable. As such, it is submitted that the appeal sans merit and deserves to be dismissed.

In *Smt.Sarla Verma vs. Delhi Transport Corporation and anr.*, **2009(3) RCR (Civil) 77**, the Supreme Court held that the '**just**' compensation is adequate compensation and the Award must be just that- '**no less and no more**'. The plea of the victim suffering from a cruel twist of fate, when asking for some more, is not extravagant, but it is for seeking appropriate recompense, to negotiate with the unforeseeable and the fortuitous twists, in his impaired life. Therefore, while the money awarded by the Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the Courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding '**just compensation**'.

A three Judges' bench in *Jagdish Vs. Mohan and others*, **2018 (4) SCC 571**, while considering the enhancement of compensation awarded, vis-a-vis, injuries suffered by the victim, a reference was made to the decision rendered in *Laxman vs. Divisional Manager, Oriental Insurance Co. Ltd.*, **2012 ACJ 191 (SC)**, wherein, the Hon'ble Apex Court, has held as under:-

“(12) The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead normal life and enjoy amenities, which we would have enjoyed but for disability caused due to the accident.”

Considering the facts of the case, the disability, which was worked upon as '90%', was taken to be total disability by the Hon'ble Supreme Court and thereupon, enhancement was made.

Now, reverting to the case in hand. It is specific claim of the appellant-claimant that he had sustained serious multiple fractures and injuries on his left hand, left elbow, left arm, left upper chest, head injury, vascular injury and compound fracture in forearm, which has caused permanent disablement.

When the appellant had stepped into witness box as PW-5, he had categorically deposed about the detail of the injuries, so suffered by him and also about his having remained admitted in the hospital from time to time and having undergone three successive operations. He also deposed about his left arm to have been amputated. Even, Dr.V.K.Gupta, Orthopaedic Surgeon, Escorts Hospital, had been examined as PW-1, who had proved the discharge summaries as Ex.P1 to P3 and OPD consultations Ex.P4 to P6. Besides the same, Dr.Rajeev Singhal had been examined as PW-8, who proved the disability certificate of the appellant as Ex.P238.

From the medical evidence adduced by aforesaid witnesses as well as from the recitals of the disability certificate, it stands amply established that the appellant had sustained extensive injuries, for which he had undergone operations and ultimately, his left arm was amputated. Even, in the disability certificate, there is mention made '*AE Amputation left with united # upper end of humurous left and paralysis of shoulder muscles*' and on the basis thereof, permanent disability was assessed as 90%.

Although, the aforesaid evidence, as such, was taken into consideration by learned Tribunal, but while working upon the same, the avocation, so followed by the appellant, as such, was not worked upon. It is specific claim of the appellant that he was indulging in stenography and typewriting. In his affidavit, he stated about running a typing coaching centre and earning Rs.10,000/- per month. However, no satisfactory evidence, with regard to running of typing institute, has come on record. Moreover, the appellant-claimant, who himself is author of the FIR, had deposed therein about himself to be working in a private company. As such, no satisfactory evidence, has come on record, about the appellant-claimant to be running a typing institute. Even, if it be so, then also, it is pertinent to mention that National Trade Certificate of the appellant has been proved as Ex.P164, which depicts about completion of the Training Course at Industrial Training Institute, Palwal in the trade of Stenography and that too of English language.

Considering the same, definitely, the appellant must be indulging into stenography only, even if, he is working in the private company. Considering the same, the earnings, can be worked upon as skilled worker and as per the minimum wages, operative at that time, in the State of Haryana, the earnings, as such, ought to be taken as Rs.4030/- per month.

The injuries as spelt out in the disability certificate, do stand connected to the medical record proved in evidence. The amputation of left arm of the appellant, as such, also stands duly proved. The undergoing of

the successive operations, on account of injuries sustained, as such, also stands amply established.

It is pertinent to mention that as per matriculation certificate Ex.P163, the date of birth of the appellant is 19.10.1970 and thus, on the date of accident i.e. 19.02.2007, he is established to be about 37 years old.

Keeping in view the nature of the injuries, so sustained, the disability, so suffered, in view of the age of the appellant-claimant, at the relevant time, his youthful dreams, pertaining to his growth in a private sector, may be as Stenographer only and future hopes have been snuffed to a great extent by the serious accident. He has been incapacitated, to such an extent that he cannot live a normal life, henceforth. In fact, he could not indulge into stenography, on account of amputation of his left arm.

Considering the aforesaid circumstances, which the appellant-claimant had to face, on account of injuries sustained in the accident, the attempt should always be made to provide a realistic recompense, having regard to the 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 life, on account of his physical disability.

In any case, the test for determining the effect of permanent disability, on future earning capacity, involves the following 3 steps, as laid down in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343* and reiterated in *Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796*, where, it was concluded that the ascertainment of impact of disability has to be seen,

FAO- 4289-2008

firstly to ascertain, what activities the claimant could carry on in spite of the permanent disability and what he could not do, as a result of the permanent disability. The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age and the third step is whether the claimant is totally disabled from earning any kind of livelihood, or whether, in spite of the permanent disability, he could still effectively carry on the activities and functions, which he was earlier carrying on, or further, whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions, so that he continues to earn or can continue to earn his livelihood.

As already observed aforesaid, the appellant in fact, was taken to be a skilled worker as he was indulging into stenography. On account of amputation of his left arm, he shall not be able to continue with this avocation and resultantly, this injury, so suffered, has impact on his source of earnings. However, at the same time, it has to be considered that it was amputation of left arm and this proves that the functional disability of the appellant, will severely impact his earning capacity.

Considering the facts and circumstances, the loss of future earning capacity, ought to be calculated, in modest estimate at 60%.

It is well settled position of law that in cases of permanent disablement caused by the motor vehicular accident, the claimant is entitled to not just future loss of income, but also future prospects. Considering the same and also taking the age of the appellant to be 37 years, further addition

of 40% on the count of 'future prospects' ought to be made, in the extent of earnings.

Considering the aforesaid aspects, the compensation, so worked upon by learned Tribunal requires re-appraisal.

As already observed aforesaid, while taking the earnings of the appellant-claimant as **Rs.4030/-** per month, his annual income comes to be **Rs.48360/-**. To the said amount, addition of 40% is to be made as 'future prospects', which comes to be **Rs.19,344/-**. Thus, the total income comes to be **Rs.48360+19344=Rs.67,704/-**. As already observed aforesaid, the functional disability is taken as **60%**. Considering the age of the appellant, by applying the multiplier of '15' as held in *Sarla erma's case (supra)* and also multiplying the same with **60%** of the disability and dividing the same by 100, as per standard multiplier process, the loss of earnings comes to be **Rs.67704x15x60/100=Rs.6,09,336/-**.

Besides the aforesaid, in view of the various bills, proved by way of examination of the witnesses, as detailed in the Award, the expenditure incurred, on the treatment of appellant is **Rs.2,23,000/-**. The transportation charges, on the basis of bills, comes to be **Rs.37,000/-**.

However, keeping in view the nature of injuries, sustained by the appellant and his hospitalization, off and on, during the course of treatment as well as manner of treatment given and considering the amputation of his left arm, on account of 'pain and suffering', the amount of **Rs.15,000/-** as granted by learned Tribunal, is a meagre amount, which stands further enhanced to **Rs.50,000/-**. Considering the aforesaid, even the

compensation, on count of ‘special diet’ and ‘attendant charges’, is also on lesser side and the same stands enhanced from Rs.5,000/- to **Rs.50,000/-**.

Besides the aforesaid, it is pertinent to mention that in the case of amputation of left arm, prosthetic limb must be required by the appellant.

The Hon'ble Supreme Court in *Mohd. Sabeer @Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation, 2023(1) RCR (Civil) 349*, while considering the case of injury sustained in a motor vehicular accident and the prosthetic limb required, had observed that provision has to be made for the purchase and maintenance of the prosthetic limb. Considering the age of the injured, provision for three prosthetic limbs, in his lifetime, was made, apart from the maintenance cost.

Thus, taking guidelines from the aforesaid decision, in the present case, considering the fact of the appellant to be young man of 37 years, at the time of accident and considering his need for prosthetic limb as well as need for its replacement, in future and the maintenance thereof, another sum of Rs.4 lakh is granted.

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

Loss of earnings	:	Rs.6,09,336/-
Medical bills	:	Rs.2,23,000/-
Transportation charges	:	Rs.37,000/-
Pain & suffering	:	Rs.50,000/-
Special diet and Attendant charges	:	Rs.50,000/-
Purchase and maintenance of prosthetic limb	:	Rs.4,00,000/-
Total	:	Rs.13,69,336/-

With the above observations, the present appeal stands allowed. The impugned Award dated 17.09.2008 stands modified, to the extent, as indicated aforesaid. Apart from this modification regarding enhancement of compensation, the interest component, as ordered in impugned Award, shall remain same.

May 10, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No