

2023:PHHC:087042

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4330-2006 (O&M)
Date of Decision: July 12, 2023

Sunil Kumar

...Appellant

VERSUS

Chellu Ram and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vikramjeet Singh, Advocate
for the appellant.

Mr.Suman Jain, Advocate
for respondent No.3-Insurance Company.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation, granted, on account of injuries sustained by him, in a motor vehicular accident, which took place on 12.12.2004.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.1,25,000/- to the appellant.

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

At the very outset, learned counsel for the appellant-claimant

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submitted that in the accident in question, the appellant-claimant had sustained grievous injuries. While in the witness box as PW-1, he has deposed about the details of the injuries suffered by him in the accident in question. He also deposed that he remained admitted in Apna Hospital for 22 days, where, he was operated and thereafter, he remained admitted in Anand Hospital and still, he is under treatment. He also deposed about POP having applied on his right leg. For operations were conducted and bone grafting was done. He had spent huge amount on the said treatment. Further, learned counsel for the appellant submitted that appellant-claimant was working as Mason and was earning Rs.5,000/- per month. Now, on account of disability, his chances of further progress in the life have been badly effected. Rather, he cannot stand, sit, squat and in these circumstances, the compensation, so worked upon by learned Tribunal is miserably on lower side.

Thus, learned counsel for the appellant has made a prayer for extensive enhancement of the compensation, so awarded by learned Tribunal.

On the other hand, learned counsel for the Insurance Company has refuted the claim the appellant-claimant, while asserting that on the basis of evidence, brought on record, the extent of compensation, so granted, is just and reasonable. Thus, he submits that the appeal sans merit and deserves to be dismissed.

To so substantiate the detail of the injuries sustained in the accident in question, appellant-claimant himself stepped into witness box as PW-1 and he has categorically deposed about having received multiple,

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grievous and serious injuries on his person. He also deposed that he had remained admitted in hospitals, time and again and had spent huge amount on his treatment. Besides the same, he also deposed about following avocation of 'Raj Mistri' and earning Rs.5,000/- per month. Besides the aforesaid, the claimant has also examined PW-2 Dr.Vikas Goel, Orthopaedic Surgeon, Apna Hospital, who has categorically deposed about admission of the appellant-claimant in their hospital on 12.12.2004 with diagnosis of fracture both bones leg right compound and he was operated for the same and was discharged on 02.01.2005. He was re-admitted on 28.01.2005 for removal of fixator and POP application and was discharged on 30.01.2005. Furthermore, the doctor also proved the bills relating to the expenditure, so incurred, for the treatment, which are Ex.P1 and Ex.P2. He also categorically deposed that medicines purchased by the patient were not included in the medical bills. He also proved the bill Ex.P3. The doctor deposed about bills Ex.P4 to Ex.P58, which are medical bills, relating to the implants and medicines purchased and he deposed that the same were consumed in the treatment of the patient.

Furthermore, the claimant has also examined PW-3 Dr.Himansu Anand, Anand Orthopaedic Centre, Kurukshetra, who has deposed about the admission of appellant-claimant in his hospital on 24.03.2005, as a case of four month old infected gap, non union right leg with discharging sinuses. He further deposed that he treated the patient firstly on 06.04.2005, where he did thorough debridement and applied fixator and then again, after the active infections have subsided, he had put bone graft on 15.04.2005 and patient was discharged on 05.05.2005. He also deposed about having charged

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Rs.24,810/- from the patient, on account of the treatment. He also deposed about fixator to have been removed on 30.06.2005 and further, he had also applied POP. Furthermore, he had stated that the patient was on regular follow up and his fracture had united though the infection was persisting.

PW-4 Jai Bhagwan, who was also occupant of the ill-fated motorcycle, at the relevant time of accident, has also deposed about sustaining of injuries by the appellant-claimant, in the accident in question.

Further, the medical bills which have been proved are Ex.P122 to Ex.138.

Besides the aforesaid, the disability certificate, which has come on record is Ex.P118, which states about physical disability to have been assessed as 14% and it was observed therein, that there was limitation of movement of right knee 5%, limitation of movement of right ankle 6% and muscle wasting of right leg 3%.

Such being the evidence, coming on record, which clearly speaks about duration of the treatment of the appellant-claimant, for his ailment, the compensation, so worked upon to the extent of Rs.1,25,000/- is definitely on lower side. Rs.91,150/- has been given, on the count of medical expenditure, on the basis of the medical bills, so proved. While considering the extent of disability as per Ex.P118, the appellant-claimant has been held to be entitled to Rs.14,000/-. Also, the earnings of the appellant-claimant has been taken to be Rs.2,400/- per month and for a period of six months, loss of earnings, have been worked upon as Rs.14,400/-. Besides the same, Rs.5,400/- has been granted while taking pain and suffering, transportation charges, special diet, attendant charges etc.

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as united head. In total, an amount of Rs.1,25,000/- was granted as compensation, which is definitely on a lower side and requires re-appraisal.

Before proceeding further, it is pertinent to mention that the Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be justly determined. The measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Yardsticks of compensation should not be so abysmal, as to lead one to question, whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Thus, it is required that the Court should be mindful of the circumstances, as spelt out from the evidence and reach the conclusion about the extent of earnings, on the basis thereof. While computing the compensation, the approach of the Court has to be broad based. Needless to say, it would involve some guess work, as there cannot be any mathematical exactitude or a precise formula, to determine the quantum of compensation. In determination of compensation, the fundamental criteria of '**just compensation**' should be inhered.

In *Smt.Sarla Verma vs. Delhi Transport Corporation and anr.*, 2009(3) RCR (Civil) 77, 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**'. In the light of the same, the Courts should make a genuine attempt to help restore the self-dignity of the victim of the accident.

In this backdrop, now adverting to the case in hand. It should be

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noted that the appellant-claimant had asserted his age to be 19 years, at the time of accident. He claimed himself to be working as 'Mason' and earning Rs.5,000/- per month. He has categorically so stated, while deposing in the witness box. However, it should be noted that on account of documentary evidence, not coming on record, to establish his avocation, learned Tribunal had considered earnings of the appellant-claimant as a casual labourer and on the basis of the same, it was taken to be Rs.2,400/- per month. However, it is essential to note that if no documentary evidence has been adduced on record, regarding the extent of earnings, so coming forth, it does not ipso facto, lead to the conclusion about the victim to be working as mere casual labourer.

Certain circumstances, spelt out from the evidence adduced ought to be taken into consideration to make assessment about the financial status of the appellant-claimant. In the present case, it should be noted that as already detailed aforesaid, the appellant-claimant, soon after the accident, had remained admitted in two different hospitals, at first instance. He had undergone various operations, on account of fracture of both of his legs and this treatment was undergone by him for a period of nearly six months, after the accident. Huge amount of expenditure has been incurred on his treatment, the bills, whereof, have been proved, which are in his name and co-relate to the period of his treatment. Considering the same, it reflects that appellant-claimant had an affluent background or in the minimum, belonging to the middle class of the society and if it be so, he cannot be equated with the mere casual labourer.

From the medical bills, which have been proved in evidence,

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learned Tribunal had appropriately taken the same into consideration and worked upon the compensation to the extent of Rs.91,150/-. As evident, the total of the medical expenditure incurred during hospitalization and the treatment undergone, which have been proved on record is Rs.91,150/-. The fact of admission of the claimant, soon after the accident in Apna Hospital and then, in Anand Hospital and the extent of expenditure incurred on his medical treatment itself, is a big pointer about the victim to have reasonably good background. Thus, considering this very fact, by making some guess work, proximate to the reality and more particularly, raising no doubt about his being working as 'Mason', in view of his categoric deposition, the earnings of the appellant-claimant, can conveniently be taken to be above casual labourer and thus, his earnings appropriately are taken to be Rs.5,000/- per month, as so asserted by him. In view of this conclusion, the compensation, so worked upon, by learned Tribunal calls for re-computation.

As detailed aforesaid, from the testimonies of both the doctors, who have been examined by the appellant-claimant and also considering the testimony of the appellant, it stands amply established that soon after the accident, appellant-claimant remained admitted in hospital for a sufficiently long time. It also stand established that he had suffered fracture of both bones, right leg compound and undergone treatment on the basis thereof. He was operated for the same and was discharged, at first instance, on 02.01.2005. He then re-admitted on 28.01.2005 for removal of fixator and was discharged on 30.01.2005. Not only till this date, but however, further also, the appellant-claimant was admitted in Anand Hospital on 24.03.2005, as a case of four month old infected gap non union right leg with discharging

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sinuses. PW-3 Dr.Himansu Anand has categorically deposed that patient was firstly treated on 06.04.2005, when debridement was done and fixator was applied and after the active infections had subsided, he had done bone grafting on 15.04.2005 and the patient was discharged on 05.05.2005. Furthermore, he has also deposed about the patient to have been coming for follow up treatment. Thus, from the testimonies of aforesaid witnesses, coupled with the testimony the appellant-claimant, it stand established that the appellant-claimant had undergone treatment for a period of about six months, after he sustained injuries, in the accident in question.

No doctor has been examined to prove the disability certificate Ex.P118 and the same has been only tendered into evidence and therefore, it has been submitted that it should be discarded. However, this submission is palpably wrong.

It is well settled principle of law that Motor Accident Claim Tribunal, is not a regular court, in a strict sense of the term. In fact, proceedings before the Tribunal, are in nature of an enquiry and the Judge presiding said Tribunal, can adopt any suitable procedure, in his discretion. It is settled proposition of law that the strict rules of pleadings and rules of evidence, do not apply to such cases and in case, there is any doubt regarding the genuineness of the any document, the evidence of the claimant himself, should be construed sufficient to prove such documents.

In the light of the same, the disability certificate, even though, has been tendered in the statement, as such, can be taken into consideration. Even, the medical bills, which are in the name of the appellant-claimant and co-relate to the period of his treatment, ought to be taken into consideration.

Very true, as now also pointed by learned counsel for the insurance company that the disability certificate Ex.P118, there is no mention made about the injury to be permanent or temporary. May it be so, but however, looking at the kind of injuries, sustained in the accident in question and also about the limitation of movement, as spelt out and also the operations undergone by the appellant-claimant, definitely, disability ought to have continued for a period of at least few months, after his treatment, which ought to have impact upon functional capacity of the appellant-claimant. Considering the same, this Court deems it appropriate to grant at least **Rs.25,000/-**, on account of disability.

Besides the same, it should be noted that learned Tribunal had granted a sum of Rs.14,400/- for loss of earnings, while considering the same for a period of six months. While so calculating the earnings had been assessed as Rs.2,400/- per month. However, as already observed aforesaid, the avocation, so followed by the appellant-claimant is that of 'Mason' and his earnings are taken to be Rs.5,000/- per month. Though, learned counsel for the appellant has placed reliance upon *Sidram vs. The Divisional Manager, United India Insurance Co. Ltd. and another, 2023(1) RCR (Civil) 44*, thereby, making a prayer for compensation for future prospects, but however, it is pertinent to mention that in the aforesaid case, it has been held that the injured are entitled to future prospects in the case of permanent disablement, incurred as a result of motor vehicular accident. However, in the present case, no permanent disability, as such, has been proved by the appellant-claimant and therefore, the aforesaid submission is not tenable. But anyhow, it should be noted that till the month of May 2005, appellant-

claimant had remained under active treatment of the doctors. He has undergone various operations. Even, the fixator was affixed and the same was also removed. He had suffered infections also, on the basis thereof. Considering this extent of injuries, as detailed aforesaid, in the earlier portion of the judgment, in modest estimate, the appellant-claimant must have remained off work for at least a period of eight months and thus, the loss of earnings comes to be **Rs.5,000x8=Rs.40,000/-**.

Furthermore, learned Tribunal had granted a sum of Rs.5,400/-, for the consolidated head, towards pain and suffering, transportation, special diet, attendant charges etc. This amount is also a meagre amount and it also requires bifurcation under each head.

On account of such injuries sustained by the appellant at the young age of 19 years, he definitely has undergone trauma and thus, on the count of ‘pain and suffering’, a sum of **Rs.30,000/-** is granted. He also must have spent good amount for having nutritious diet and thus, on the count of ‘special diet’, a sum of **Rs.15,000/-** is granted. The appellant-claimant must have been looked after by one person, during the course of his treatment and thus, on the count of ‘attendant charges’, a sum of **Rs.15,000/-** is granted. The appellant-claimant must have spent amount on the mode of conveyance, used during the period of his treatment and thus, on the count of ‘transportation charges’, another sum of **Rs.15,000/-** is granted.

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

Disability	:	Rs.25,000/-
Loss of earnings	:	Rs.40,000/-
Pain & suffering	:	Rs.30,000/-

Special diet	:	Rs.15,000/-
Attendant charges	:	Rs.15,000/-
Transportation charges	:	Rs.15,000/-
Medical bills	:	Rs.91,150/-
Total	:	Rs.2,31,150/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.2,31,150-1,25,000=Rs.1,06,150/-**. On the enhanced amount of the compensation i.e. **Rs.1,06,150/-**, 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.

With the above observations, the appellant's appeal stands allowed. The impugned Award dated 19.04.2006 stands modified, to the extent, as indicated aforesaid. Apart from this modification regarding enhancement of compensation, the remaining terms of the impugned Award, shall remain same.

July 12, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No