

2023:PHHC:122340

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1297-2012 (O&M)
Date of Decision: September 18, 2023

Rakesh Kumar

...Appellant

VERSUS

Hari Krishan and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

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

Mr.Madhu Sharma, Advocate
for respondent No.3-insurance company.

ARCHANA PURI, J.

This appeal arises out of the motor accident claim, following the serious injuries suffered by the appellant-claimant, on 01.11.2008, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.5,81,595/- to the appellant.

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

So far as, the fact of accident and manner of its taking place as

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well as the liability, so fastened, are concerned, it is pertinent to mention that no appeal has been filed by the persons, so made liable, to challenge the Award and thus, findings so arrived, has attained finality.

The essential facts are as follows:-

On the fateful day, i.e. on 01.11.2008, at about 2.30 p.m., appellant-claimant Rakesh Kumar was standing on rough portion of the Mukerian-Talwara road at T-point, on its correct side. Mohan Rana was sitting behind the scooter of Rakesh Kumar. One Devinder Singh was going on his motorcycle to Old Talwara, while taking Vikash Kumar as his pillion rider. When they had reached T-point, one Mini Bus bearing registration No.PB-07Q-6960 of Prince Bus Service, came from Mukerian side and struck against Rakesh Kumar, Mohan Rana and their scooter, as a result of whereof, Rakesh Kumar and Mohan Rana sustained injuries. The driver of the Mini Bus had revealed his name as, 'Hari Krishan'. Thereafter, injured Rakesh Kumar was taken to BBMB Hospital, Talwara. Considering his serious nature, he was referred to Medical College, Amritsar, but however, the relatives of injured, had taken him to Satyam Hospital, Jalandhar, where he remained admitted from 01.11.2008 to 08.01.2009 as indoor patient.

In the given backdrop, learned counsel for the appellant-claimant underscores that the appellant-claimant had suffered 50% permanent disability and is unable to perform everyday activities and he requires constant support, even, for the confined life, he has been forced to live after the accident. He has since become invalid and as such, the compensation so granted by learned Tribunal is miserably on lower side.

Further, learned counsel for the appellant submits that the

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Tribunal has worked upon the compensation, vis-a-vis, permanent disability, in a mechanical manner, while taking it to be temporary. Also, learned Tribunal has not taken into consideration, the impact of permanent disability, upon the life of the appellant-claimant, not only relating to his income generating capacity, being a bright student, at the relevant time, but also about non-quantifiable implications, on the life of the appellant-claimant.

Besides the same, learned counsel for the appellant assiduously submits that looking at the nature of injuries sustained by the appellant, additional medical exigencies are necessitated and expenses are incurred for medical treatment also in future. Also, his marriage prospects have become restrictive and on this count also, he is to be compensated, which fact has been overlooked by learned Tribunal.

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

On the other hand, learned counsel for the Insurance Company has refuted the claim the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. Thus, he submits that the appeal sans merit and deserves to be dismissed.

At the very outset, it is pertinent to mention that the disability certificate had initially, come on record as Mark '205', wherein, it is mentioned to be a case of '*RSA ē IVH ē Multi ribs # Lt. Side ē dislocation of Sterno clavicular joint*'. Further, the disability was assessed to be 60% and note was given about the same to be likely to improve. Even, it was

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opined that re-assessment is recommended, after a period of one year. Subsequently, the appellant-claimant was again re-examined for the purpose of assessment of the disability and subsequent disability certificate is Mark '225', wherein, again it was observed to be case of '*old RSA & IVH & Multi ribs # Lt. Side & dislocation of Sterno clavicular joint*'. 60% disability was assessed and therein also, it was held to be likely to improve and re-assessment was recommended after two years.

Both the disability certificates were brought on record in evidence. Considering the same, learned Tribunal had reached the conclusion that alleged disability is temporary in nature and also considering the pitiable condition of appellant-claimant Rakesh Kumar, when he made appearance before the Tribunal, on the count of disability, compensation was granted to the extent of Rs.60,000/- i.e. @ Rs.1000/- per every 1% disability.

However, at this juncture, it is pertinent to mention that during the pendency present appeal, additional evidence was allowed vide order dated 23.09.2018 and report was called from learned Tribunal, regarding re-assessment of the disability and the disability certificate as well as the medical bills etc. It was ordered that the opportunity be given to both the sides to lead evidence and thereupon, report be furnished. In consonance with the aforesaid direction, learned Tribunal had furnished the report.

During the course of additional evidence, appellant-claimant examined AW-8 Dr.Harinderjit Singh Garg, SMO, ESI Hospital, Hoshiarpur, who had deposed about having examined patient, being member of Board of Doctors, on 01.08.2012 and the patient was found to be a case of *Old Road Side Accident with IVH with multiple rib fracture with left sterno*

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clavicular joint dislocation and after examination, they came to the conclusion about the patient to be having 50% permanent disability, in relation to his imbalance and memory weakness, as a sequel of head injury and multiple injuries. Also, the said witness categorically deposed that this condition is non-progressive and not likely to improve. Further, he deposed that re-assessment was not recommended and that due to the above-said disability, Rakesh Kumar had become permanent dependent upon others. The disability certificate has been proved as Ex.AW8/A. Besides the same, the medical bills in the name of Rakesh Kumar are Ex.PA and Ex.PB, the total whereof comes to be Rs.1349/-.

During the course of evidence before learned Tribunal, Ashwani Kumar, father of the appellant-claimant, in his affidavit, has deposed about details of the injuries sustained by the appellant and further also deposed about manner of hospitalisation and treatment undergone. Not only this, even further, an eye witness to the accident AW-2 Devinder Singh also deposed about injuries sustained by Rakesh Kumar.

Furthermore, the doctors, who had extended treatment to patient Rakesh Kumar have also been examined. Dr.Kamal Rana, (wrongly mentioned as AW-3, now be read as AW-3A), Medical Officer, Satyam Hospital has been examined, who has deposed about admission of patient Rakesh Kumar, in their hospital on 01.11.2008 and his discharge on 08.01.2009. The said doctor deposed about having extended treatment to the patient along with Dr.Rajesh Pasricha. He proved the admission, discharge and treatment slips, issued by their hospital, which are AW3/1 and AW3/2. Further, he also proved the OPD slip of their hospital, which is AW3/3 and

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also deposed about having charged an amount of Rs.2,76,500/-, for the treatment extended to the patient. The bills are Ex.AW3/4 to Ex.AW3/55.

Further, AW-4 Dr.Hemant Seth, Aggarwal Dental Clinic, has also deposed about having extended treatment to the appellant-claimant, with regard to his teeth and he proved the bills, which are Ex.AW4/1 and AW4/2. OPD slip of their hospital is Ex.AW4/3 to AW4/5.

Besides the same, various witnesses have also been examined to prove the bills, with regard to the expenditure incurred on the treatment of the appellant-claimant and also examined AW-7 Raj Chand, who proved the receipts of bills of the Ambulance used for 'to and fro' to the hospital for the treatment.

Thus, from the aforesaid, it becomes evident that the appellant-claimant had suffered extensive grievous injuries, for which, he remained admitted in the hospital for about 2.5 months. Also, education certificate of the appellant have been proved. AW-1 Ashwani Kumar, father of the appellant, had deposed about his son to be studying in +2 class. He was a brilliant topper student and obtained 81.5% in matriculation and medium of instruction was 'English'. However, due to accidental injuries, appellant Rakesh Kumar could not appear in +2 examinations and his career, as such, has been jeopardised. Even, the matriculation certificate has been brought on record as Mark 'RY' and therein, the date of birth of the appellant-claimant has been mentioned as 11.09.1991. Thus, the appellant was in the age group of 17-18 years. His youthful dreams, pertaining to his future hopes and growth in life, were snuffed to a great extent by the serious accident. Youngman's impaired condition, would have definitely impacted

his chances of settlement in life and must have also impacted the life of his family members. Their resources and strength are bound to be stressed by the need to provide full time care to the claimant, at least for good period of time, soon after the accident.

In this backdrop, at the very outset, 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. A person therefore is not only to be compensated for the injury suffered due to the accident but also for the loss suffered, on account of the injury and his inability to lead the life, he led prior to the life altering event. A three Judges’ Bench in *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

“...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our 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 the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law.”

The Courts should, as such, strive 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/her life, on account of his/her physical disability. 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.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Hon'ble Supreme Court in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*.

The efforts of the Courts must always be to substantially ameliorate the misery of the claimant and recognize his actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

As already observed aforesaid, the injured had suffered serious injuries, resulting into permanent disability to the extent of 50%, as per the disability certificate Ex.AW8/A, wherein, it is stated to be case of imbalance and memory weakness, as a sequel of head injury and multiple injuries. It should be noted that prior to Ex.AW8/A, two other disability certificates, Mark '205' and '225' have come on record, and on the basis thereof, this case was assessed to be of temporary disability. However, Ex.AW8/A, categorically states about the condition, so observed of the appellant-claimant, to be not likely to improve and precisely, on this account, re-assessment was not recommended. Thus, it is permanent disability. Even, the concerned doctor has so deposed, as already observed aforesaid. The doctor also observed that due to the said disability, appellant Rakesh Kumar had become permanently dependent upon others.

Considering this kind of ailment, where there is imbalance and loss of memory and that the appellant-claimant had become dependent upon

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others, even though, the disability may be assessed to be 50%, but the kind of injuries, so suffered, make it very restricted for a person like the appellant-claimant, to work and be gainfully employed. Definitely, as evident from the evidence, brought on record, the appellant-claimant was a bright student and was studying in +2, at the relevant time, therefore, chances of his settlement in life, were quite bright. In these circumstances, even though, there was decrease in body functionality, then also, his earnings, as such, cannot be considered as that of unskilled labourer. Considering the educational input of the appellant-claimant, as per certificate, coming on record, while relying upon *Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others, 2023(3) RCR (Civil) 573*, wherein, reliance was further made on *Lalan D. @ Lal and another vs. The Oriental Insurance Company Limited, 2020(4) RCR (Civil) 441*, the income of the appellant, while taking the approximate disability, to be to the extent of 75%, is assessed to be **Rs.6,000/-** per month.

Looking at age of the appellant-claimant to be 17-18 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, 40% has to be added, on the count of 'future prospects'. Thus, the earnings of the injured-appellant comes to be $\text{Rs.6,000} + 2400(40\%) = \text{Rs.8,400/-}$ and annual earnings comes to be **Rs.1,00,800/-**.

In consonance with the *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '18' and also multiplying the same with 75% of disability and dividing the same by 100, as per standard multiplier process, on account of

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the same, the loss is assessed as **Rs.1,00,800x18x75/100=Rs.13,60,800/-**. Accordingly, under the head of loss of earnings, on account of disability, the amount awarded by the Tribunal, is enhanced proportionately to **Rs.13,60,800/-**.

The total of the medical bills, which have been proved before the Tribunal is Rs.4,70,795/-. Besides the same, in additional evidence, two medical bills Ex.PA and Ex.PB, have also been proved, which are to the extent of Rs.1,349/- and therefore, the total of the medical bills comes to be **Rs.4,72,144/-**.

Besides the same, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of the conveyance for 'to and fro' to the hospital, substantial amount must have been spent by the family of the appellant-claimant. Few of the bills have been proved in evidence and taking the same into consideration, on the count of 'transportation charges' a sum of **Rs.50,000/-** is awarded.

Obviously, during the period of treatment and some time thereafter, in the minimum, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, another sum of **Rs.50,000/-** is granted.

Furthermore, for some period of time, after the accident, in the minimum and even, looking at his condition with permanent 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. Though, learned counsel for respondent No.3-insurance company submits that there is no material, as such, produced by the appellant-claimant, on

actual expenses, incurred for the services of the attendant and it is argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability suffered, besides the family members, the appellant-claimant ought to have been looked after by one attendant throughout, as there was need for assisted living. 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.

Considering the same and also taking into consideration, the kind of injuries sustained, the appellant-claimant deserves to be awarded some amount, towards medical expenses, which are inevitable consequence of grievous injuries, suffered by him. Thus, while relying upon *Lalan D.'s case (supra)*, composite amount for attendant charges and also considering the future medical expenses, a lumpsum amount of **Rs.2 lakh** is granted.

On the count of 'pain and suffering', the compensation awarded by learned Tribunal is on lesser side. Keeping in view the factual situation, as spelt out, the compensation awarded, on his count, stands enhanced to **Rs.1,50,000/-**.

No compensation has been awarded on the count of '**loss of marriage prospects**'. Considering the disability, so suffered, it is quite obvious, the marriage prospects of the appellant-claimant have also become very restricted and on this count, he is entitled to be compensated and therefore, the compensation to the extent of **Rs.1,50,000/-**, on this count, is also granted.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.13,60,800/-
2.	Medical Bills	Rs.4,72,144/-
3.	Transportation charges	Rs.50,000/-
4.	Special rich diet	Rs.50,000/-
5.	Attendant charges and and future medical treatment	Rs.2,00,000/-
6.	Pain and suffering	Rs.1,50,000/-
7.	Loss of Marriage prospects	Rs.1,50,000/-
	Total	Rs.24,32,944/-

As such, the compensation, so awarded by learned Tribunal, stands enhanced from **Rs.5,81,595/-** to **Rs.24,32,944/-**.

Accordingly, the impugned Award dated 03.11.2011 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.

September 18, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No