

2023:PHHC:084443

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-6445-2011 (O&M)
Date of Decision: July 05, 2023

Surender Singh

...Appellant

VERSUS

Satbir Sharma and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Pratibha Yadav, Advocate
for the appellant.

None 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 to him, on account of injuries sustained by him, in a motor vehicular accident, which took place on 20.03.2009.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award dated 15.09.2010, had granted compensation to the extent of Rs.1,66,700/-to the appellant-claimant.

At the very outset, it is submitted by learned counsel for the appellant-claimant that even though, the appellant had sustained serious injuries in the accident in question, but however, the compensation granted by learned Tribunal is on lower side. It is submitted that appellant was

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serving as Engineer, prior to the accident in question and his salary was Rs.50,000- per month, but on account of aforesaid accident, he has become permanently disabled. The appellant remained away from his work for 4-5 months, which also caused financial loss. Also, it submitted that a sum of Rs.3 lakh had been spent by him on his treatment as well as intake of special diet, medicines, transportation etc., which fact, has not been taken into consideration by learned Tribunal. Even, the disability certificate has been proved as Ex.P1 and disability was assessed to be 7.5%, but on this count, a meagre amount of Rs.15,000/-has been awarded. Further, it is submitted that on the count of 'pain and suffering', 'transportation', 'mental agony', 'special diet' etc., a consolidated amount of Rs.20,000/- has been granted, which is also on lower side.

Thus, learned counsel for the appellants made a prayer for extensive enhancement of compensation.

In view of the submissions, so made, it is pertinent to mention that in the claim petition, it is the specific claim of the appellant-claimant that he as working as Engineer and earning Rs.50,000/- per month, as salary, but however, to so substantiate, this extent of earnings, no satisfactory evidence has been led. Though, in his affidavit Ex.PW9/A, the appellant stated himself to be Engineer and his salary to be Rs.50,000/- per month, but however, no record relating to his avocation, as such and about the extent of his salary, has come on record. In these circumstances, guess work, as such, has to be made regarding earnings of the appellant.

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. Thus, it is required that the Court should be mindful of the circumstances, as spelt out from the evidence and reach the conclusion about 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 this backdrop, now adverting to the case in hand. It is true that the appellant in his affidavit Ex.PW9/A, has stated about himself to be working as Engineer and earning Rs.50,000/- per month. There is no material coming on record to establish about this extent of salary received by the appellant. However, at the same time, other circumstances, as such, have to be taken into consideration.

From the material coming forth, it is evident that soon after the accident, the appellant-claimant was taken to Mamta Hospital, Gurgaon, where he remained admitted for some time and he had also proved medical bills of his hospitalization and treatment, to the extent of Rs.1,16,694/-. The very fact of going to a reputed hospital and also the extent of expenditure so incurred on his treatment, in itself is a big pointer to reflect about the appellant-claimant to be having reasonably good financial background. Thus, considering this very fact, by making some guess work, proximate to the reality, the earnings of the appellant, as such, cannot be taken as that of

mere casual labourer. In the modest estimate, the earnings of the appellant-claimant, as such, are taken to be Rs.10,000/- per month.

The disability certificate Ex.P1 of the appellant-claimant has been proved through PW-1 Dr.Sumit Malik and the perusal of the disability certificate reveals about his disability to be 7.5%. However, it is mentioned therein about the same to be only Aesthetic loss due to soft tissue/skeletal damage and further, in the note, there is no mention about the likelihood of improvement or not. However, PW-1 Dr.Sumit Malik, who was also member of the Board of Doctors, who had examined the patient and had issued the disability certificate, while facing the cross-examination had stated that the said disability certificate is qua the particular portion and not qua the organ. The disability shown in the certificate, may or may not improve due to passage of time, medication and physiotherapy. In the light of the same, it is further important to note that no further evidence has been led by the appellant-claimant, thereby, asserting about the disability, as such, having not improved further.

In the given circumstances, also it is important to make reference to the discharge card, which is Ex.P31. It categorically states about the diagnosis to the '*RTA ꣳ Head Injury ꣳ multiple facial fracture, IMF & ORIF for facial fractures*'.

PW-7 Dr.Anil Sharma has been examined by the appellant-claimant, who has proved MLR. However, no doctor, as such, has been examined, who had extended treatment to the patient. May it be so, considering the proceedings under the Motor Vehicles Act to be summary proceedings, even the assessment of the injuries, as such, can be made on the

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basis of the documents, coming on record. Perusal of the discharge card specifically stated about the detail of the injuries, for which ORIF was also done. It also shows that appellant-claimant remained admitted in Mamta Hospital from 20.03.2009 to 28.03.2009 and at the time of discharge, numerous medicines were prescribed and he was also advised liquid diet. This is sufficient to consider about the extent of injuries, so suffered by the appellant-claimant, which were mainly on the face.

Keeping in view the kind of injuries sustained by the appellant-claimant, in the accident, the disability, though, has been assessed to be 7.5%, on account of Aesthetic loss, due to soft tissue/skeletal damage, but it is quite evident that ORIF has been done and the facial fractures, so caused, must have affected his physical looks. Though, the functional disability ought to be there to some extent as he must be having difficulty in following his avocation to some extent. Even if it is assumed that disability, as such, may have improved, but for some period of time, the appellant was required to remain away from his work place.

In the light of the aforesaid, the compensation worked upon by learned Tribunal calls for re-appraisal.

Besides the aforesaid, even medical bills have been proved by way of examination of PW-3 Virender Singh, Clerk, who has proved bill Ex.P3, with regard to the purchase made by the appellant-claimant. Furthermore, PW-4 Satbir Sharma, Accountant, Suraj Diagnostic Centre has proved the cash receipt Ex.P4, with regard to CT Scan charges. PW-5 Raj Kumar, Salesman of Pasricha Pharmacy has proved the bills from Ex.P5 to Ex.P25. PW-6 Gajender Singh, Clerk, Mamta Hospital, has proved the bill

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Ex.P26 and OPD bills Ex.P27 to Ex.P30. Even, the receipt of the blood bank has come on record as Ex.P32. The total of the said bills comes to be **Rs.1,16,694/-**. The bills stand sufficiently connected to the appellant-claimant and co-relate to the date of accident and treatment period. As such, the said bill, ought to be taken into consideration.

Considering the facial injuries as sustained by the appellant-claimant, in the accident in question and also about the ORIF having been conducted, as evident from the discharge card, the appellant-claimant definitely had undergone lot of pain and suffering and mental agony. He must have remained on special diet for quite a long period. He must have also been looked after for some period of time by one attendant. Some expenditure ought to have been incurred by the appellant-claimant on transportation also, during the course of treatment.

Considering all the aforesaid facts, the consolidated amount of Rs.20,000/- as awarded by learned Tribunal is quite meagre, which requires, bifurcation and extensive enhancement. Also for some period of time, after the accident, the appellant-claimant must have remained away from his work.

By bifurcating various counts, for which the consolidated amount has been granted by learned Tribunal as well as considering the impact of the disability upon the appellant, not only, in following his avocation, but also on account of his physical appearance, the disability also requires enhancement and as such, the compensation is now worked upon, as herein given:-

1. Disability

Rs.20,000/-

2.	Loss of income for Laid Back period (3 months)	Rs.30,000/-
3.	Special diet	Rs.20,000/-
4.	Attendant charges	Rs.20,000/-
5.	Pain and suffering	Rs.10,000/-
6.	Transportation charges	Rs.20,000/-
7.	Medical Bills	Rs.1,16,694/-
	Total	Rs.2,36,694/-

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.2,36,694-1,66,700 =Rs.69,994/-**.

The enhanced compensation, as now awarded, be disbursed to the appellant-claimant within a period of three months from today onwards. 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 15.09.2010 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

July 05, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No