

2023:PHHC:062267

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO-4542-2012 (O&M)
Date of Decision: May 01, 2023**

Ashok

...Appellant

VERSUS

Sukhbir and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Saurabh Dalal, Advocate
for the appellant.

None for respondents No.1 and 2.

Mr.Sanjeev Kodan, Advocate
for respondent No.3-insurance company.

ARCHANA PURI, J.

The present appeal has been filed by appellant-claimant Ashok, thereby, seeking enhancement of the compensation, so awarded by learned Tribunal vide Award dated 08.02.2012, on account of the injuries sustained by him, in a motor vehicular accident, which took place on 13.01.2010.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.6,44,964/- to the appellant-claimant.

So far as, the fact of accident and manner of its taking place is concerned, it is pertinent to mention that the respondents, who have been

held to pay the compensation jointly and severally, have not challenged the liability, so fastened upon them.

In this backdrop, learned counsel for the appellant-claimant has submitted that the appellant was working as Lecturer-cum-Warden in Swami Nityanand Senior Secondary School, Rohtak and was taking classes for distance education. Ample of evidence has been led to so substantiate this avocation, so followed by the appellant, but however, it has been wrongly discarded by learned Tribunal. Furthermore, also it is submitted that appellant had suffered 71% permanent disability and became unable to follow his avocation and perform his day-to-day activities. He has been forced to live confined life after the accident. Keeping in view the same, it is submitted that instead of working upon the functional disability of the appellant, learned Tribunal had mechanically worked upon the compensation to be granted, solely on account of disability, on the percentage basis, while taking the same to be Rs.2000/- per percentage. It is also submitted that learned Tribunal has not taken into consideration the impact of permanent disability, not only relating to his income generating capacity, but also about non-quantifiable implications, on the life of the appellant-claimant.

Further, it is submitted that loss of earning capacity, on account of injury sustained, as such, has not been worked upon in the proper perspective. Besides the same, learned counsel for the appellant has also submitted that the compensation, so awarded, on various other counts, is also on lower side. Thus, learned counsel for the appellant has made a prayer for extensive enhancement of the compensation, so awarded by learned

Tribunal, while taking into consideration, avocation so followed by the appellant.

On the contrary, 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. In view of the cross-examination of PW-9 Ajit Malik, so examined by the appellant, learned Tribunal has rightly discarded the plea of avocation, so followed by the appellant. Thus, he submits that the appeal sans merit and deserves to be dismissed.

While considering the cases of injury suffered in a motor vehicular accident and if the victim suffers permanent disability, then effort should always be made to award adequate compensation, not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

In *Smt.Sarla Verma's case (supra)*, 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 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**'.

Hence, while computing the compensation, the approach of Court has to be broad based. Needless to say, it would involve some guesswork, 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 *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards was made a three Judges' bench of the Hon'ble Supreme Court, which is reproduced as follows:-

"...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 life, on account of his physical disability. The Courts should

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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.

In *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*, it was held that the Tribunal should not mechanically apply the percentage of permanent disability, as the percentage of economic loss or loss of earning capacity. There are three steps involved in ascertainment of the effect of the permanent disability on the actual earning capacity. Firstly, it has to be ascertained as to 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. The third step is to find out whether the claimant is totally disabled from earning any kind of livelihood, or that in spite of permanent disability, the claimant could effectively carry on the activities and functions, which he was earlier carrying, or that whether, he is prevented or restricted from discharging the activities, which he was previously doing, but could carry out some other activities or same activities, but on a lesser scale.

In this backdrop, now adverting to the case in hand. It is pertinent to mention that even though it was the specific claim of the appellant-claimant that he was working as Lecturer-cum-Warden at Swami Nityanand Senior Secondary School, Rohtak and taking classes for distance education and had also led evidence, on this count, but however, the same has been erroneously discarded by learned Tribunal. In fact, the approach of

learned Tribunal, while computing the compensation was palpably wrong.

While discarding the evidence, so coming on record, qua avocation followed by the appellant, learned Tribunal did not bother further to conclude about the avocation, so followed by the appellant, if not concluded to be working as a Teacher. Without so further concluding about the avocation, so followed by the appellant, it had only worked upon the the extent of compensation, on the basis of **71%** disability, while having mechanical approach of granting **Rs.2000 per percentage** of the disability. However, it is not to be so done. As such, the computation of the compensation, so made, calls for re-appraisal.

At the very outset, it is pertinent to mention that it is a specific claim of the appellant that he was working as Lecturer-cum-Warden in Swami Nityanand Senior Secondary School, Rohtak and was taking classes for distance education. To prove the same, the appellant-claimant had examined **PW-9 Ajit Malik**, who is Clerk in Swami Nityanand Senior Secondary School and had brought the summoned record, relating to the salary of Ashok, claimant. He had categorically deposed about appellant-claimant to be working as TGT Hindu Teacher and receiving **Rs.7,500/-** per month and additional salary of **Rs.3,000/-** for working as Hostel Warden. He also proved the salary certificate Ex.P56 and Ex.P57.

However, learned Tribunal had laid much emphasis, upon the cross-examination of the aforesaid witness and on account of the bank record, relating to the receipt of salary, having not come on record and the payment of salary never being made by way of cheque, it discarded the

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deposition of the aforesaid witness and had reached the conclusion that the cross-examination of the said witness clearly goes to show that he has not been able to justify or prove beyond doubt, about the injured-claimant, working with them as Lecturer-cum-Warden. However, this finding, so concluded, is palpably wrong.

It should always be kept in mind that the proceedings under the Motor Vehicle Act are of summary nature and do not call for high grade appraisal of evidence, as required in criminal cases. The strict rules of evidence are not called for in the summary proceedings. May be so that the salary had not been deposited in the bank and the bank record, as such, is not available, but however, this *ipso facto*, does not make to conclude about the document, so coming forth as Ex.P56 and Ex.57, relating to appellant-claimant Ashok, to be false documents. In fact, Ex.P57 is the salary bill, for the month of December 2009 and for the month of January 2010. It clearly speaks out about receipt of salary by the appellant. No doubt, it is also mentioned that appellant-claimant was earning additional amount of Rs.3,000/- being the Warden of the hostel. It is, definitely, not a permanent assignment as Hostel Warden, but however, it is pointer of an attempt made, on part of the appellant-claimant, towards his further growth.

To establish about taking of the classes for distance education, PW-3 Chand Ram, Clerk, Jat College, Rohtak, had been examined, who had proved the photocopies of the receipts of payments Mark A to Mark C and deposed about the various amounts, having been deposited to the extent of **Rs.4800/-**, **Rs.2400/-** and **Rs.2400/-**, on account of taking of distant

education classes. Very true, as so pointed out that this was not on permanent basis that it was being followed, but however, as observed aforesaid, an attempt was being made by the appellant-claimant to flourish further in the educational field.

While considering the aforesaid material coming forth, in the modest estimate, the earnings of the appellant-claimant, at the relevant time, is taken to be **Rs.7,500/-** per month.

Proceeding further, it should be noted that it is specific claim of the appellant-claimant that he had sustained extensive injuries in the accident in question. PW-1 Renu, wife of Ashok, has categorically deposed about the injuries sustained by her husband, in the accident, which took place on 13.01.2010. She has further deposed that on account of multiple grievous injuries, on his person, including the head injury, it resulted into paralysis, as per the detail given in the MLR. She also deposed about her husband to have remained admitted in PGIMS, Rohtak and then admitted in Apollo Hospital, Delhi from **30.01.2010 to 12.02.2010** and then from **03.04.2010 to 11.04.2010** and remained admitted in Jaipur Golden Hospital from **13.01.2010 to 30.01.2010** and also deposed about the expenditure incurred on his treatment. Even, PW-2 Ashwani, brother of the appellant-claimant, had also deposed about the injuries, so sustained by his brother (claimant).

Besides the aforesaid, even the medical bills, which have been proved by way of examination of various witnesses, as detailed in the Award, ought to be taken into consideration. As such, the amount, so

worked upon learned Tribunal, to the extent of **Rs.4,67,964/-** is hereby affirmed.

To establish about the kind of the injuries sustained, Dr.Sunit Mediratta, Neurosurgeon, Apollo Hospital had been examined as PW-11, who deposed about admission of appellant-claimant in their hospital from **30.01.2010 to 12.02.2010** and secondly, for the period **03.04.2010 to 11.04.2010** for severe head injury. He also deposed that initially, the appellant-claimant was admitted in PGIMS, Rohtak and then treated/shifted to Jaipur Golden Hospital and then referred to their hospital. He also deposed about lower limb and upper limb of left side of the patient was weak and his memory was impaired. He also proved the documents Ex.P59 to Ex.P63, regarding treatment of the appellant-claimant.

The discharge summary, Ex.P60 reveals about the diagnosis to have been found to be '*Head injury with right chronic subdural hematoma and thin subacute left subdural hematoma and small (L) internal capsule, thalamic and mid brain contusion. Right 3rd nerve paresis.*' The procedure done was '*Right frontal burr hole and evacuation of chronic subdural hematoma on 30.01.10.*' The history given in the discharge summary, also reflects about the appellant-claimant to have firstly, in pursuance of road accident, remained admitted in PGIMS, Rohtak and treated conservatively and then he had been **tracheostomised** and then shifted to Jaipur Golden Hospital, New Delhi. There was history of weakness right upper and lower limbs. Likewise, discharge summary of Jaipur Golden Hospital has also been proved as Ex.P61.

Besides the aforesaid, even PW-10 Dr.Pruna Malik, Asstt. Professor, PGIMS Rohtak, had been examined, who deposed about the Board of Doctors, of which she was also a member and had assessed the disability of Ashok, which was to the extent of 71% permanent in nature and copy of the disability certificate had been proved as Ex.P58, wherein, it has been observed that Ashok (present appellant) was suffering from '*Head injury ¯ Rt. Hemiparesis ¯ fixed dilated pupil, not reaching to light ¯ optic disc. Pale (Rt. eye) ¯ Mild mental retardation (I.Q.= 66).*' The aforesaid doctor also deposed that they assessed the disability to the extent of 50% qua intellectual disability, 30% qua visual handicapped and 25% qua Neurosurgery, totalling **71%**, as per rule and formula and she also deposed that it is highly unlikely that patient Ashok Kumar can pursue teaching line further. She further deposed that the patient has difficulty in delayed and immediate recall and he cannot do reverse counting and subtraction.

Considering the aforesaid evidence, so coming on record, to make the assessment of the functional disability of the appellant-claimant, the percentage formula, so adopted by learned Tribunal, is not acceptable. In fact, considering the gravity of the injuries, so sustained, when the appellant-claimant is unable to pursue the teaching line further, his functional disability, can be taken to be **71%**.

Considering it to be so and also considering the assessment of monthly income, to be **Rs.7,500/-**, further working upon, qua loss of earnings has to be made. From the evidence on record, it stands established that the appellant-claimant was **28 years**, at the relevant time. Considering

his age, addition of **40%** ought to be made, on the count of '**future prospects**' in the earnings. Thus, his monthly loss of earnings comes to be **Rs.7500+Rs.3000(40%)=Rs.10,500/-** and annual comes to be **Rs.1,26,000/-**.

While considering the age of the appellant-claimant, at the relevant time, to be 28 years, by application of multiplier of '**17**' as held in *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77* and also multiplying the same with 71% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as **Rs.1,26,000x17x71/100=Rs.15,20,820/-**. Accordingly, under this head, the amount awarded by learned Tribunal is enhanced proportionately.

Now, coming to the medical bills, vis-a-vis treatment undergone by the appellant-claimant, as observed in the earlier portion of the judgment, the amount so granted by learned Tribunal comes to be **Rs.4,67,964/-**. Besides the same, it is also pertinent to mention that learned Tribunal had taken as one head together for transportation, attendant charges and diet and nutrition and granted Rs.20,000/-, under this united head. This amount is on the lower side. Considering the extent of injuries suffered by the appellant-claimant and also considering the duration of period, for which, he ought to have been looked after by his family members and requirement of one person at least to look after him, on account of his ailment, this amount under the united head, stands enhanced to **Rs.1,00,000/-**.

Likewise, considering the aforesaid factors, the compensation to be awarded, on the count of '**pain and suffering**' stands enhanced from

Rs.25,000/- to Rs.1,00,000/- and qua the '**loss of amenities**', the amount, so awarded, is enhanced from **Rs.20,000/- to Rs.50,000/-**.

Considering the same, now the compensation payable to the appellant-claimant, is re-appraised as herein given:-

Loss of earnings	:	Rs.15,20,820/-
Medical expenses	:	Rs.4,67,964/-
United head (as observed aforesaid)	:	Rs.1,00,000/-
Pain & Suffering	:	Rs.1,00,000/-
Loss of amenities	:	Rs.50,000/-
Total	:	Rs.22,38,784/-

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.22,38,784-6,44,964 =Rs.15,93,820/-**.

Accordingly, the impugned Award dated 08.02.2012 stands modified, to the extent, as indicated aforesaid. Keeping in view the interest rates having been reduced drastically, on the enhanced amount of the compensation i.e. **Rs.15,93,820/-**, 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. The remaining terms of the impugned Award shall remain the same.

In view of above observations, the appeal stands allowed.

May 01, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No