IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5296-2012 (O&M)
Date of Decision: August 28, 2023

Ramesh Chand @ Ramesh Kumar through LRs
...Appellant

VERSUS

Mahipal and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

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

Mr.Amit Jaiswal, Advocate
for respondent No.3.

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ARCHANA PURI, J.

This appeal arises out of the motor accident claim, following the serious injuries suffered by the appellant-claimant Ramesh Chand @ Ramesh Kumar (since deceased), on 25.09.2004, on account of rash and negligent driving of three-wheeler bearing registration No.HR-64-0745, being driven by respondent No.1-Mahipal.

Vide impugned Award dated 02.12.2006, learned Tribunal had decided three claim petitions, with regard to the injuries sustained in the same by appellant Ramesh Chand @ Ramesh Kumar, Dheer Singh as well as Dolu Ram.

So far as, present appeal is concerned, on appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had granted compensation to the extent of Rs.1, 55,000/- to the appellant.

Aggrieved by the same, the present appeal has been preferred by the appellant-claimant (who died during the pendency of the appeal) for seeking compensation under several heads, where no amount has been awarded and also for enhancement of the amount awarded by learned Tribunal, under different heads.

At the very outset, it is pertinent to mention that so far as fact of accident and manner of taking place of the same as well as the liability of the driver, owner and insurer of the offending vehicle to be joint and several, are concerned, no appeal, as such, has been filed by the persons, who were made liable, to challenge the Award and thus, the finding so arrived, has attained finality.

It is only an appeal, filed by the injured-claimant for seeking enhancement of the compensation.

Appellant-claimant Ramesh Chand @ Ramesh Kumar, on the fateful day i.e. 25.09.2004, suffered serious injuries, resulting into permanent disability. To so establish the kind of injuries sustained by the appellant, in the accident in question, apart from the appellant-claimant Ramesh Chand, himself stepping into witness box as PW-1, has also further examined various doctors. PW-4 Dr.R.D.Chawla, Medical Officer, General Hospital, Kaithal, had deposed about having medico-legally examined Ramesh on 25.09.2004 and proved medico legal report, which is Ex.P3.

Furthermore, claimant had also examined PW-5 Dr.S.K.Jain, Orthopaedic Surgon, CHC, Luharu, who deposed about having examined Ramesh Chand and it was found that the patient was having amputation of right thigh at lower 1/3rd level (he was an old case of vascular injury). For this amputation 80% disability with respect to lower limb was assessed. He further deposed that it was an old case of fracture neck surgical hummus with mal union. There was also restriction of movement with wasting with periarthritis shoulder joint. For this, 33.5 percent disability was assessed with respect to limb. Furthermore, the disability certificate has been proved as Ex.P6 and Discharge and follow up card of the appellant in the PGI, Chandigarh has been proved as Ex.P14, which reveals about the detail of the injuries, suffered by the appellant-claimant and surgical procedures undergone by him, which stand co-related with the detail, as given in the disability certificate.

At the very outset, it is pertinent to mention that appellant-claimant Ramesh Chand @ Ramesh Kumar had filed the present appeal for seeking enhancement of the compensation granted by learned Tribunal, for the injuries sustained by him, in a motor vehicular accident. During the pendency of the claim petition, the appellant-claimant had died and his LRs were brought on record. Even though, it is submitted that the death of the appellant-claimant was on account of injury sustained in the accident in question, but there is no material, as such, brought on record, to establish about the injuries, sustained in the accident, to be connected to the cause of his death.

In this backdrop, it is pertinent to mention that Motor Vehicle Act is in the nature of social welfare legislation and its provisions make it clear that the compensation should be '**justly**' determined. 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 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***.

As already observed aforesaid, the injured had suffered serious injuries, resulting into permanent disability. Even though, in the disability certificate, it has been observed that disability was to the extent of 83% of lower limb and to the extent of 33.5% with regard to the left upper limb, but however, considering the same, erroneous observation has been made by learned Tribunal, about no medical expert having been examined, who had stated that appellant will not be able to carry on the said occupation i.e. working at a jewellery shop. It is categoric claim of the appellant-claimant that he was running a jewellery shop and was earning Rs.10,000/- per month. However, income tax returns have been proved as Ex.P7 and Ex.P8. The income tax returns for the period 2002-2003 Ex.P8, reveal about the earnings of the appellant-claimant to be Rs.61,750/- per annum and Income tax returns for the period 2003-2004 reveals about the earnings of the appellant-claimant to be Rs.65,250/-.

On account of the injuries sustained in the accident in question, more particularly, amputation of leg, above thigh, definitely, such kind of injuries, are bound to have its own impact, on the body functionality of the appellant-claimant. Considering this kind of condition of the appellant-claimant, the loss of income, ought to be there. Considering, all these aforesaid factors, the permanent disability, can conveniently be taken to be 60% and looking at the injuries, so sustained in the accident in question, is bound to cause loss of earnings, apart from disfigurement, as concluded by learned Tribunal.

Considering all the aforesaid factors and taking a clue from the Income Tax returns, coming on record, the monthly earnings of the appellant-claimant is taken to be Rs.5,500/- per month, which comes to be Rs.66,000/- per annum. However, as observed, aforesaid, the extent of permanent disability of the body is taken to be 60%. By multiplying the earnings, so assessed with 60% of the disability and dividing the same by 100, as per standard multiplier process, the loss of earnings is assessed as Rs.66000x60/100=Rs.39,600/-.

From the income tax returns, it is evident that the date of birth the appellant-claimant was 04.04.1961. As such, he was approximately, 43 years old, at the time of accident. Keeping in view the age, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the suitable multiplier to be applied in the present case is ‘14’. Applying the same, the compensation, on the count of ‘loss of earnings’ comes to be **Rs.39,600x14=Rs.5,54,400/-**.

Besides the aforesaid, various bills of expenditure, so incurred, relating to the treatment undergone by the appellant, which have been duly proved, comes to be **Rs.49000/-**. Besides the same, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of conveyance 'to and fro' to the hospital, substantial amount must have been spent by the family of the appellant-claimant. On this count also, another sum of **Rs.5,000/-** is granted.

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.10,000/-** is granted.

Furthermore, for some period of time, after the accident, in the minimum, on account of permanent disability suffered, the appellant-claimant must have been looked after by one bye-stander/attendant. Though, learned counsel for insurance company submitted that there is no material, as such, produced by the appellant-claimant, on the 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 assistant living. Even if, the appellant-claimant was being looked after 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, a sum of **Rs.10,000/-** is granted, on the count of 'attendant charges'.

Looking at the kind of the injuries sustained by the appellant-claimant, which made him invalid to some extent and also caused disfigurement, there has to be respectable grant of compensation, on the count of 'pain and suffering' and the same is hereby granted as **Rs.50,000/-**.

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

1.	Loss of earnings	Rs.5,54,400/-
2.	Medical Bills	Rs.49,000/-
3.	Conveyance charges	Rs.5,000/-
4.	Special rich diet	Rs.10,000/-
5.	Attendant charges	Rs.10,000/-
6.	Pain and suffering	Rs.50,000/-
	Total	**Rs.6,78,400/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.6,78,400-1,55,000=Rs.5,23,400/-**.

Accordingly, the impugned Award dated 02.12.2006 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award as well as interest component, shall remain the same. The amount of compensation be disbursed to the LRs of the appellant in equal proportions.

However, in consonance with the order dated 21.04.2023, vide which the delay in filing the appeal was condoned, the LRs of appellant-claimant shall not be entitled to interest for the period of 2000 days (delay in filing the appeal).

With the above observations, the present appeal stands allowed.

August 28, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**