IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-4776-CII-2019 in/and
FAO No.1078 of 2013 (O&M)
DATE OF DECISION : 30th JANUARY, 2023

Naveen Kumar

…. Appellant

Versus

Ombir and others

…. Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Kartar Singh Malik-I, Advocate for the appellant.

Mr. Vipul Sharma, Advocate for
Mr. Subhash Goyal, Advocate for respondent No.3.

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RAJBIR SEHRAWAT, J. (Oral)

CM-4776-CII-2019 and CM-3798-CII-2020

The application i.e. CM-4776-CII-2019 has been filed for adducing additional evidence.

Reply by way of application i.e. CM-3798-CII-2020 has been filed. The same is taken on record.

Since, the main case itself is being decided today, therefore, both the applications have been rendered infructuous and are disposed of as such.

Main Case

The present appeal has been filed by the appellant/claimant challenging the award dated 14.12.20211 passed by the Motor Accident Claims Tribunal, Sonipat (for short, the Tribunal), alleging insufficiency of the compensation awarded to the appellant on account of the injuries suffered by him in the motor vehicle accident.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts, as given in the claim petition, are that on 23.05.2009 the claimant had started from the fields of his maternal uncle from village Kharkhoda on his motor-cycle. When he reached on the road near a temple, then three-wheeler bearing HR-46A-2883, being driven by respondent No.1 in a rash and negligent manner came from the opposite side. The said three-wheeler struck against the motorcycle of the claimant. As a result, the motorcycle of the claimant fell on the road and the claimant suffered grievous injuries, including multiple fractures. As result of impact, he became unconscious. The accident was witnessed by one Jagbir Singh. On hearing the noise, his maternal uncle had also come on the spot of accident. Thereafter, Naresh and Jagbir had taken the claimant to General Hospital Sonipat, from where he was referred to PGIMS, Rohtak for further examination and treatment. The claimant remained admitted in hospital till 27.05.2009. Regarding the said accident, an FIR No.211 dated 24.05.2009 was also registered under Sections 279 and 337 IPC at Police Station Kharkhoda on the statement of claimant. With these facts, the claim petition was filed by asserting that the claimant was a healthy and energetic young man who has become disable on account of the accident. The appellant used to earn about ₹15,000/- per month. After the accident, the claimant remained bed-ridden for a long time and incurred an amount of ₹2.00 Lacs for the treatment. Accordingly, on account of loss of income and money spent on treatment, the claimant claims an amount of ₹15.00 Lacs as compensation.

In the evidence, the claimant led documents regarding the medical treatment, as well as, the police record. On the other hand, the respondent Nos.1 and 2, i.e. the driver and owner, closed their evidence after tendering the cover note of insurance policy as Ex.R2, the driving licence as Ex.R3, route permit as Ex.R4 and the copy of Road Tax Certificate as Ex.R5 and the copy of registration certificate was also tendered as Ex.R6. The respondent No.3-Insurance company closed its evidence after tendering the copy of insurance policy as Ex.R1.

After hearing the parties and assessing the material on record, the Tribunal awarded an amount of ₹2,58,800/- which included an amount of ₹35,000/- on account of medical expenses as per the bills produced, an amount of ₹35,000/- on account of pain and suffering. The Tribunal had taken the notional income of the claimant at ₹4,000/- per month. Therefore, an amount of ₹16,000/- was awarded on account of loss of income during the period of treatment. For further loss, the Tribunal had taken the functional disability to be 20%. Hence, the loss of income for that purpose was assessed to be ₹800 per month. The multiplier of 18 has been applied. Accordingly, an amount of ₹1,72,800/- has been awarded on account of future loss of income.

Arguing the case, the counsel for the appellant has submitted that the income of the appellant has been assessed on lower side. Moreover, even the claimant has not even been compensated for loss as per the disability as deposed by the treating doctor. Still further, it is submitted that the claimant has not been granted the benefit of future prospects. It is further submitted that since the claimant was an eligible bachelor at the time of accident and because of the accident he has lost the marriage prospects. Therefore, he deserves to be compensated even on that count. The appellant has been granted a very low compensation amount on account of pain and suffering. Even the medical bills have been wrongly discarded by the Tribunal. The compensation deserves to be enhanced even on that count.

On the other hand, the counsel for respondent No.3-Insurance Company has submitted that the compensation has rightly been assessed by the Tribunal. No enhancement is called for. Qua the plea raised by the counsel for the appellant, the counsel for respondent No.3 has submitted that the appellant remained in hospital only for five days. Even the disability was not functional because it is only a disability with lower limb of right side. No income or avocation of the appellant has been proved on record, therefore, the Tribunal was not required to resort to any guess work so as to grant unnecessary benefit to the appellant. The counsel has further submitted that the disability certificate was valid only for two years. The said disability certificate itself said that the condition of the appellant was likely to improve. Nothing has been placed on record by the appellant to show that his condition had not improved, or that it had gone bad after passing of period of initial two years. The counsel has further submitted that since the income itself is not proved, therefore, there is no question of grant of benefit on account of loss of future prospects. Hence, it is submitted that the appeal deserves to be dismissed.

Having heard the counsel for the parties, this Court finds substance in the arguments raised by the counsel for the appellant. The date of accident happens to be 23.05.2009. Therefore, even by a crude estimate, the notional income of the appellant, presuming him even as a labourer and agriculturist cannot be less than ₹4,000/- per month; as has been taken by the Tribunal. Therefore, this Court finds itself in agreement with the income assessed by the Tribunal. However, since the appellant has suffered a disability of 70%, as deposed by the treating doctor, therefore, loss of income has to be assessed at the rate of 70%; for loss of 70% of the functional disability. Although the counsel for the respondent-insurance company has submitted that the disability is not permanent, nor is it functional, however, the testimony of the treating doctor belies this assertion, wherein it has been categorically deposed that the disability incurred by the appellant was 70%. The respondent No.3-insurance company has not even cross-examined the said witness qua the said aspect. Nor is there anything placed on record that the disability has improved any further after the initial treatment. Therefore, the loss of income to the appellant has to be taken at the rate of 70%; for the period beyond the period of treatment.

Moreover, as held by Hon'ble the Supreme Court in the case of ***Sanjay Kumar Versus Ashok Kumar and another, 2014 (1) R.C.R. (Civil) 875***, the injured/claimant has to be granted the benefit on account of loss of future prospects, as well. In that case, the person had incurred 70% disability and Hon'ble the Supreme Court assessed the loss on account of future prospects at the rate of 50%. Therefore, the appellant would have been entitled to the benefit of compensation on account of loss of future prospects at the rate of 50% of his income. However, Hon'ble the Supreme Court in the case of ***National Insurance Company Limited Versus Pranay Sethi and others, (2017) 16 SCC 680,*** has further clarified the aspect of future prospects and has held that in case of notional income, the future prospects can be awarded at the rate of 40% of the income assessed. Accordingly, the appellant is held entitled to compensation on account of loss of future prospects at the rate of 40%. Qua the medical bills admitted for reimbursement, this Court does not find any illegality or impropriety with the findings recorded by the Tribunal. Hence, the amount of compensation on account of medical bills as such is upheld. The compensation awarded on account of pain and suffering, loss of amenities and loss of income during treatment are upheld as granted by the Tribunal. As a result, the appellant/claimant is held entitled to the compensation as given below:

Sr. No.	Head	Amount assessed
1	Income	₹4,000/- per month
2	Loss of income	70% of ₹4,000/- = ₹2,800/-
3	Multiplier @ 18	₹2800/- x 12 x 18 = ₹6,04,800/-
4	Future prospects @ 40%	40% of ₹6,04,800/- = ₹2,41,920/-
5	Medical bills, transportation, attendant and special diet	₹35,000/-
6	Pain and suffering	₹35,000/-
7	Loss of income for four months during treatment	₹4,000/- x 4 months = ₹16,000/-
8	Total	₹9,32,720/-

The present appeal is partly allowed to the extent mentioned above. The interest part would remain the same.

All pending miscellaneous application(s) stands disposed of as such.

30th JANUARY, 2023 **(RAJBIR SEHRAWAT)**
'sandeep' **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*