

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

211

FAO No.1277 of 2013 (O&M)
DATE OF DECISION : 2nd FEBRUARY, 2023

Shyam @ Shamu

.... Appellant

Versus

Kuldeep and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Ms. Gurpal Kaur Dulat, Advocate
for the appellant.

Mr. Sukhdeep Singh, Advocate,
for respondent Nos.1 and 2.

Mr. Neeraj Khanna, Advocate
for respondent No.3.

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RAJBIR SEHRAWAT, J. (Oral)

The present appeal has been filed by the appellant/claimant challenging the award dated 01.03.2012 passed by the Motor Accident Claims Tribunal, Rohtak (for short, the Tribunal), on the ground of 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 28.10.2008 the claimant along with Sidarth was going on a motorcycle

bearing registration No.HR-12G-9683. The motorcycle was being driven by Sidarth and the appellant was a pillion rider. When they reached near Hoshiyare Akhara, a Canter of Eicher make bearing registration No.HR-45-0084 (hereinafter referred to as the 'offending vehicle'), being driven by respondent No.1 in a rash and negligent manner came from the side of Delhi and struck against the motorcycle. As a result, the claimant fell down and suffered grievous injuries. Regarding the said accident, an FIR was also registered. With these facts, the claim petition was filed by asserting that the claimant had been rendered 74% physically disabled which has resulted in loss of his earning. Besides that, he had to incur expenses on account of medical treatment running into several lakhs. The appellant had to undergone the agony of pain and suffering and his life has virtually been devastated. With these facts, the claimant had filed claim petition for compensation along with interest.

The respondent No.1, driver of the offending vehicle, had filed written statement, wherein he denied the accident altogether. Beside denying the factum of rash and negligent driving, he had also blamed that; in any case, if the Court comes to the conclusion against him, then he had the valid and effective driving licence. Respondent No.2, the owner, had also filed a separate written statement. Beside this, respondent No.3-Insurance Company also contested the claim petition and had filed a separate written statement submitting therein that the driver of the offending vehicle was not having a valid and effective driving licence at the time of the accident. The FIR was alleged to have been registered in collusion with the police. The accident itself was denied by the respondent-insurance company; as well.

The parties led their evidence. The claimant examined Dr. Pardeep Kamboj, Assistant Professor, PGIMS Rohtak as PW1. The police official was examined as PW2 and mother of appellant, namely, Lokesh was examined as PW3. Beside the oral evidence, the appellant had also led in evidence his disability certificate as Ex.PW1/A, copy of FIR as Ex.PW2/A. The copy of OPD cards were also produced on record as Ex.P1 to P20. The medical bills were adduced as Mark 1 to Mark 66. Thereafter, the evidence was closed. On the other hand, the respondent Nos.1 and 2 closed their evidence after tendering in evidence only the copy of registration certificate of the offending vehicle as Ex.R-1, copy of driving licence of Kuldeep as Ex.R-2 and copy of insurance policy as Mark A. The respondent No.3-Insurance Company did not examine any witness as such and closed the evidence only after tendering in evidence the copy of the driving licence as Ex.R-3; issued by Licensing Authority, Mathura; and copy of registration certificate of motorcycle as Ex.R-4.

After considering the material on record and hearing the parties, the Tribunal awarded a total amount of ₹1,78,000/- which included an amount of ₹1,48,000/- on account of physical disability at the rate of 2% for per degree of disability and an amount of ₹30,000/- for pain & suffering, medical treatment and diet and other miscellaneous charges. The insurance company has been granted the recovery rights against owner. Challenging the said award, the present appeal has been filed by the claimant.

Arguing the case, learned counsel for the appellant has submitted that the approach of the Tribunal has been totally perfunctory. Since, it was a case of permanent disability, therefore, the loss of income

should have been assessed in terms of loss of functional disability resulting into consequent loss of income for entire life. The benefit for loss of future prospects should have been granted. The multiplier method should have been applied for assessing the entire loss of income to the claimant. Beside this, the appellant is also entitled to the enhanced compensation on account of medical bills, pain & suffering, loss of amenities, including the loss of marriage prospects, attendant charges and other miscellaneous charges. The counsel for the appellant has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Kajal Versus Jagdish Chand and others, 2020(2) R.C.R. (Civil) 27***, to support her above contentions.

On the other hand, learned counsel for respondent Nos.1 and 2, driver and the owner, has submitted that the compensation has already been awarded on exaggerated scale. The same does not deserve to be enhanced. Moreover, the recovery rights have wrongly been granted to the insurance company.

Learned counsel for respondent No.3-Insurance Company has submitted that the compensation has rightly been awarded by the Tribunal. No enhancement is call for. Otherwise, since there is no appeal filed by the owner and driver, therefore, the recovery rights are not the subject-matter of the present appeal. Hence, the same deserves to be continued as such. However, the counsel for respondent No.3-insurance company could not dispute the law laid down by Hon'ble the Supreme Court in the case of ***Kajal*** (supra).

Having heard the counsel for the parties, this Court finds that the appellant deserves to be granted compensation by assessing the

income, by applying the multiplier method, as well as, by compensating on all the consequent heads like medical expenses, loss of amenities, pain & suffering, attendant charges and all other allied aspects.

The accident in this case had taken place in the year 2008. Whereas, the accident involved in the case of **Kajal** (supra) had happened in the year 2007 and in that case, Hon'ble the Supreme Court has taken the notional income as ₹4,846/- per month on the basis of minimum wages. Since, the accident in the present case had taken place after about one year i.e. in the year 2008, therefore, the notional income of the appellant is to be assessed as ₹5,000/- per month. The age of the appellant is 13 years only. Therefore, following the aforesaid judgment of Hon'ble the Supreme Court in the case of **Kajal** (supra), the multiplier of 18 is to be applied. The appellant remained admitted in hospital and was under treatment for a period of two months. Therefore, for the duration of the treatment, the appellant is entitled to compensation on account of loss of full income. After the period of initial treatment, the appellant is required to be compensated for the loss of income at the rate of 74% as per the disability certified; and as deposed by the treating doctor. Since, the multiplier method is being applied, therefore, in terms of the above said judgment of Hon'ble the Supreme Court itself, the loss of future prospects is also assessed at the rate of 40% of the annual income of the appellant.

Beside the above, it has come in evidence that the appellant is having implant in the body to enable him to move to some extent. It is common knowledge that putting implant in the body and even that in the lower limbs would not come, in any case, for a cost less than ₹1.00 Lakh.

Therefore, the appellant deserves to be compensated on account of that fact only with an amount of ₹1.00 Lakh. Beside this, the appellant deserves to be compensated for the medicines and allied requirements of treatment and follow up treatment to the extent of ₹50,000/-. Since, the appellant is of 13 years only, therefore, this accident has resulted in loss of amenities, including the loss of marriage prospects, therefore, the appellant is held entitled to ₹2.00 Lakhs on account of loss of marriage prospects as per the judgment of Hon’ble the Supreme Court mentioned above. Since, the case of the appellant is almost on parity with the case involved in the above said case of *Kajal* (supra), therefore, the appellant is to be compensated on account of pain & suffering and loss of amenities as well to the extent of ₹2.00 Lakhs. Accordingly, the appellant/claimant is held entitled to the compensation as given below:

Sr. No.	Head	Amount assessed
1	Income	₹5,000/- per month
2	Loss of income	74% of ₹5,000/- = ₹3,700/-
3	Future prospects @ 40%	40% of ₹3700/- = ₹1480/- (Total ₹3700+1480 = ₹5180/-)
4	Multiplier @ 18	₹5180/- x 12 x 18 = ₹11,18,880/-
5	Loss of income for two months during treatment	₹5,000/- x 2 months = ₹10,000/-
6	For implant treatment	₹1,00,000/-
7	Medicines and allied requirements of treatment and follow up treatment	₹50,000/-
8	Loss of Marriage Prospects	₹2,00,000/-
9	Loss of pain & suffering and loss of amenities	₹2,00,000/-

Sr. No.	Head	Amount assessed
10	Total	₹16,78,880/-
11	Compensation awarded by the Tribunal	₹1,78,000/-
12	Enhancement	₹16,78,880/- – (minus) ₹1,78,000/- = ₹15,00,880/-

The present appeal is allowed to the extent mentioned above. The interest on the above said amount shall be at the same rate as was awarded by the Tribunal.

Since, the owner and driver has not preferred any appeal, therefore, this Court does not find it appropriate to deal with the issue of recovery rights as such. Therefore, that finding is not disturbed; for the time being.

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

2nd FEBRUARY, 2023
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes