

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

**FAO-2538-2013 (O&M)**

**Date of Decision: February 21, 2023**

Harwinder Singh

...Appellant

VERSUS

Kulwant Singh and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Gopal Sharma, Advocate  
for the appellant.

Mr.V.K.Garg, Advocate  
for respondent No.3-Insurance Company.

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**ARCHANA PURI, J.**

Challenge in the present appeal is to the Award dated 20.04.2012 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted, on account of the injuries sustained by appellant-claimant Harwinder, in a motor vehicular accident, which took place on 31.08.2009.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.2,30,000/-, to the appellant-claimant.

Being dissatisfied with the compensation, so granted, the appellant-claimant has filed the present appeal for seeking enhancement of the compensation.

So far as, the fact of accident and manner of its taking place as well as the liability of the respondents, are concerned, it is pertinent to mention that no appeal has been filed by the persons, upon whom the liability has been, so fastened.

In this backdrop, at the very outset, learned counsel for the appellant-claimant has emphatically submitted that on account of injuries sustained in the accident in question, the appellant had sustained disability and is unable to perform day-to-day activities. He requires constant support, even for the confined life, he has been forced to live after the accident. Since, he has become invalid, it is submitted that the compensation awarded by the Tribunal is on lower side. Erroneously, the Tribunal had reached the conclusion that disability, so suffered, would not hamper the appellant-claimant, from earning his livelihood. Even, the extent of disability has not been worked upon in proper manner and the compensation had been granted in a mechanical manner. Besides the same, it is also submitted that learned Tribunal had not taken into consideration the impact of disability, upon the life of the appellant, not only relating to his income generating capacity but also about non-quantifiable implications, on the life of the appellant-claimant.

Thus, learned counsel for the appellant has made a prayer for extensive enhancement of the compensation, so awarded by the Tribunal.

On the other hand, learned counsel for the insurance company has assiduously refuted the claim of the appellant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. He has pointed out to this Court that disability certificate was only to

the extent of 61% and that too, relating to the spine, which required reassessment after period of 5 years and it cannot be said that this extent of disability has made the appellant invalid, as now projected. Thus, learned counsel for the insurance company has submitted that appeal sans merit and deserves to be dismissed.

In *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, 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**'.

A three judges' bench in *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, while considering the enhancement of compensation awarded, vis-a-vis, injuries suffered by the victim, made reference to the decision rendered in *Laxman vs. Divisional Manager, Oriental Insurance Co. Ltd., 2012 ACJ 191 (SC)*, wherein, the Hon'ble Apex Court, has held as under:-

*“(12) The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead*

*normal life and enjoy amenities, which he would have enjoyed but for disability caused due to the accident.”*

Furthermore, while making reference to various case law, it held that the compensation can be granted for disability as well as for loss of future earnings and the first head relates to the impairment of a person's capacity, while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

In this backdrop, now reverting to the case in hand. It is specific claim of the appellant-claimant Harwinder Singh that he has suffered serious injuries, in the accident in question, having caused by respondent No.1-Kulwant Singh, while driving offending car bearing registration No.PB-23H-2059. While in the witness box as PW-2, appellant-claimant Harwinder Singh, in his affidavit Ex.PW2/A, has deposed as per his pleaded case. Besides the same, the appellant-claimant has also examined CW-3 Dr.Kanwar Kishore, who was one of the members of the Board, who had examined the appellant, for the purpose of assessment of the disability. In his affidavit, the said doctor has categorically stated about the issuance of the disability certificate in favour of Harwinder Singh by the Board of Doctors and he also deposed about Harwinder Singh to be 61% disabled. He also proved the disability certificate Ex.P4. Perusal of Ex.P4 reveals that the appellant-claimant was diagnosed to be a case of ***1st. Lumbar Compression fraction with paraparesis***'. It was further stated that he is ***physically handicapped and has 61% (sixty one) percent impairment in relation to his spine***'. It has been rightly pointed out by learned counsel for the insurance company that re-assessment was recommended after a

period of five years, as per Note:2, on the disability certificate and as stated by CW-3 Dr.Kanwal Kishore, in his cross-examination. However, it is pertinent to mention that this disability certificate was issued on 30.07.2010 and therefore, re-assessment, if any, had to be made in the year 2015. However, the claim petition was filed, much prior to the said date and it was decided vide Award dated 20.04.2012. No doubt, as so pointed, 61% of impairment is in relation to the spine and re-assessment had to be made, but however, it is necessary to make mention of the note given on the disability certificate, which reads as '**This condition is not likely to improve**'. Keeping in view this note, the functional disability, as such, has to be seen. The injury is of spine. Erroneously, the Tribunal had concluded that though this disability, would restrict the movement of the claimant-appellant but the same would not hamper him from earning his livelihood. This finding is palpably wrong.

From the ample evidence adduced, it stand established that the injured was working as Barber. Considering the nature of work of the injured, it is quite obvious that he had to stand for good lot of time, while extending services to the customers. A person with spine injury would find it difficult to extend such kind of services. He may not be completely invalid, as so pointed out, but the fact remains that it was 61% disability, which was of **spine**. Considering the same, even though, no evidence, with regard to the re-assessment of the injury, as such, has come on record, but however, fact remains that it was 61% disability of the spine and a note had also been given about the same, that this condition not likely to improve. Considering the same, though, the disability has not been mentioned to be

temporary or permanent by the Doctors, but however, it definitely affects the earning capacity of the injured, who was Barber. His youthful dreams, pertaining to his growth in a private sector and future hopes were snuffed to a great extent by serious accident. Youngman's impaired condition certainly would have impacted his family members. Their resources and strength are bound to be stressed by the need to provide full time care to the appellant-claimant, at least for some period of time.

Considering the aforesaid circumstances, which the appellant-claimant had to face, on account of injuries sustained in the accident, the attempt should always be made 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 disability. In this regard, though learned Tribunal had relied upon the decision rendered in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (2) Civil Court Cases 189(SC)***, but however, it has not worked upon the functional disability and the impact of the same, on his avocation. Learned Tribunal had generally given the compensation to the extent of Rs.50,000/-, for the disability. The appellant's chances of growth in his field of hair dressing, as compared to normal

healthy man, after having become partially invalid, must have been restricted. However, looking at the extent of disability, as spelt out from the disability certificate, even if, functional disability of body, is worked upon in modest estimate, looking at the working efficiency having been effected of the appellant-claimant, the extent of functional disability, can conveniently be taken to be 20%.

Even though, it is the claim of the appellant-claimant that he was earning Rs.10,000/- per month from the avocation of Barber, so followed by him, but however, no satisfactory evidence, relating to the same, has come on record. The appellant has also examined his employer Barinder Kumar as PW-1, who has deposed about himself to be owner of Plaza Hair Dresser shop and that the appellant-claimant was his employee. Though, he had stated that he was paying Rs.10,000/- per month, on contract basis work to the appellant, but however, no documentary proof, relating to payment of salary to the appellant-claimant, as such, has come on record. In the given circumstances, in modest estimate, the earnings of the appellant-claimant, considering him as skilled worker, as such, can be taken to be Rs.5,000/- per month.

To the above-said amount, an addition of 40% is to be made as future prospects, which comes to  $\text{Rs.}5000 + 2000(40\%) = \text{Rs.}7,000/-$  and annual comes to be Rs.84,000/- and by applying the multiplier of '17' as held in *Sarla Verma's case (supra)* and also multiplying the same with 20% of the disability and dividing the same by 100, as per standard multiplication process, on account of the same, the loss is assessed as under:-

Rs.84000x17 = Rs.14,28,000/-  
Rs.14,28,000x20/100 = Rs.2,85,600/-

Accordingly, the amount awarded by the Tribunal, on account of functional disability is now enhanced proportionately from Rs.50,000, to Rs.2,85,000/-.

On account of other heads also, the compensation, so granted by learned Tribunal, requires re-appraisal. The appellant-claimant is now held entitled for compensation as herein given:-

|                                       |   |               |
|---------------------------------------|---|---------------|
| Functional disability                 | : | Rs.2,85,600/- |
| Medical bills and other misc. charges | : | Rs.30,000/-   |
| Attendant charges                     | : | Rs.15,000/-   |
| Special diet                          | : | Rs.10,000/-   |
| Transportation charges                | : | Rs.5,000/-    |
| Pain & suffering                      | : | Rs.15,000/-   |
| Total                                 | : | Rs.3,60,600/- |

With the above observations, the present appeal stands allowed. The impugned Award dated 20.04.2012 stands modified, to the extent, as indicated aforesaid. Apart from this modification regarding enhancement of compensation, the interest component, as ordered in impugned Award, shall remain same.

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|---------------------------|----------------|
| February 21, 2023         | (ARCHANA PURI) |
| Vgulati                   | JUDGE          |
| Whether speaking/reasoned | Yes            |
| Whether reportable        | Yes/No         |