

2023:PHHC:085344

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4015-2013 (O&M)
Date of Decision: July 05, 2023

Chandveer

...Appellant

VERSUS

Angrej Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.D.K.Tuteja, Advocate
for the appellant.

Mr.Vinod Chaudhari, Advocate
for respondent No.3-Insurance Company.

ARCHANA PURI, J.

CM-16228-CII-2013

Present application has been filed for condonation of delay of
67 days in filing the main appeal.

In view of the averments made in the application, same is
allowed and delay of 67 days in filing the main appeal is hereby condoned.

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The present appeal has been filed by the appellant-claimant,
thereby, seeking enhancement of the compensation, granted to him, on
account of injuries sustained by him, in a motor vehicular accident, which

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took place on 08.09.2010.

On appraisal of the evidence adduced, learned Tribunal vide impugned Award dated 15.12.2012, had granted compensation to the extent of Rs.1,94,500/-to the appellant.

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

At the very outset, learned counsel for the appellant-claimant has assiduously submitted that compensation, so granted by learned Tribunal, is quite meagre, which has been worked upon lower side and the same requires extensive enhancement. It is further submitted that the extent of disability suffered by the appellant-claimant and the impact of disability, upon the life of the appellant-claimant, not only to his income generating capacity but also about non-quantifiable implications, has not been taken into consideration. Further, it is submitted that impact of injuries has also not been appraised in appropriate manner, which further resulted into computation of compensation, on lower side.

Further, it has also been pointed out by learned counsel for the appellant that the consolidated amount has been worked upon. Even though, the appellant-claimant had passed through trauma, as he remained admitted in two different hospitals, at different times, on account of injury sustained by him in the accident in question, but however, on the count of 'pain and suffering' also, the amount awarded is on lesser side. The loss of income has been inappropriately worked upon as Rs.10,000/- only. Moreover, qua 'special diet' as well as the 'attendant charges', the amount, so awarded, is

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on lesser side.

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

On the other hand, learned counsel for the insurance company has refuted the claim of the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. As such, it is submitted that the appeal sans merit and deserves to be dismissed.

Before proceeding further, it is pertinent to mention that the Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be justly determined.

A person is not only to be compensated for the injury suffered due to the accident but also for the loss suffered, on account of the injury and his inability to lead the life, he led, prior to the life altering event. A three Judges' Bench in *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

“...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

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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, but however, the impact of the injury has to be taken into consideration to ascertain about the functional disability, having accrued, on the basis of injuries suffered by the victim. There are three steps to be taken into consideration. The first step is to ascertain as to what activities the victim could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability. The next step is to ascertain his avocation, profession and nature of work before the accident and also his age and the further step is that whether the claimant is totally disabled from earning any kind of livelihood, or whether, in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on. If he was so prevented or restricted from discharging his previous activities and functions, but whether, he could carry out the activities and functions on lesser scale and as a result, could continue to earn his livelihood.

In this backdrop, now adverting to the case in hand. It is pertinent to mention that it is the specific version of the appellant-claimant

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that he was 55 years old, at the time of accident and he was indulging in agricultural pursuit and earning Rs.10,000/- per month. It is also his specific assertion, as so stated in his affidavit Ex.PW5/A that he had sustained serious injuries, in the accident in question and on account of the same, he firstly remained admitted in PGIMS, Rohtak on 18.09.2010 and discharged on 19.09.2010. Thereafter, he was admitted in Rockland Hospital, New Delhi from 20.09.2010 to 28.09.2010, for the first time and for the second time, he was again admitted in the said hospital on 07.10.2010 and discharged on 21.10.2010. Thereafter, he also took treatment as OPD patient. He has categorically deposed about his being an agriculturist and earning Rs.10,000/- per month, which loss he has suffered, after the accident in question.

Very true, as so pointed by learned counsel for the respondent-insurance company that qua the indulgence of the appellant-claimant in agricultural pursuit and extent of his earnings, as so asserted, no documentary evidence, as such, has come on record. However, even if it be so, then also, the clear and specific testimony of appellant, with regard to his indulgence in agricultural pursuit, as such, cannot be overlooked. However, as now asserted by learned counsel for respondent No.3, the earnings of the appellant-claimant, as such, cannot be taken to be as that of a casual labourer. Certain other circumstances coming forth, during the course of evidence, also has to be taken into consideration.

As already observed in the claim petition and so stated by the appellant in his affidavit and also, on the basis of the medical evidence, which shall be discussed in the later portion of the judgment, it is evident

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that soon after the accident, the appellant remained admitted firstly in PGIMS, Rohtak and thereafter, he remained admitted in Rockland Hospital, New Delhi and the extent of expenditure incurred on his treatment and the bills of Rs.1,13,500/-, coming on record, in itself is a big pointer to reflect about the appellant-claimant, to be having reasonably good financial background. Precisely on this account, he cannot be equated with mere casual labourer and his earnings cannot be assessed as minimum wages, prevailing at the relevant time. Thus, considering the same, by making some guess work, proximate to the reality, the earnings of the appellant-claimant, ought to be taken above the casual labourer and in modest estimate, it can conveniently be taken to be Rs.6,000/- per month.

Proceeding further, it is pertinent to mention that PW-4 Vikram, Medical Record Clerk, PGIMS, Rohtak has been examined, who has proved case file of appellant-claimant, which is Ex.PW4/A. He has also categorically deposed about the admission of appellant in PGIMS, Rohtak, on account of the injuries sustained by him, on 18.10.2009 and discharged on 19.10.2009.

Besides the aforesaid witness, PW-2 Dr.Abhishek Singh, Rockland Hospital has been examined, whose affidavit is Ex.PW2/A. Therein, the said witness has categorically stated about the appellant-claimant to have been admitted in their hospital on 20.09.2010, with the injuries sustained in a road side accident. He further stated that the patient was diagnosed with multiple grievous injuries and multiple fractures including compound comminuted fracture of right distal humerus with fracture right proximal radius fracture inferior pubic rami both sides with

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crush injuries around right elbow. He also stated therein that appellant remained admitted in their hospital till 28.09.2010. Furthermore, he stated that during the period of his admission in the hospital, the patient had undergone debridement of wound over left elbow with sequesterectomy, arthrotomy or right elbow, ORIF of viable fragment with external fixator application around right elbow and repeated antiseptic dressings were done regularly. Furthermore, the said witness also deposed that consequently, the appellant was again admitted in hospital on 07.10.2010 and was discharged on 21.10.2010. During this period, the wound condition of the patient was optimized for operation with regular dressing and wound care. After consulting with the Plastic Surgeon, external fixator re-adjustment with Split Thickness Skin Graft (STSG) with rotation flap was done on 15.10.2010. This witness also proved the face sheet/medical record/bills, amounting to Rs.65,176/- + Rs.37,751/-. Also further, it should be noted that the said witness had stated that patient would have remained unable to squat, walk, climb stairs and to do any manual work with his right hand for two months after injury.

Besides the aforesaid witness, further PW-3 Dr.Raj Singh, PGIMS, Rohtak, has been examined, who was Member of the Medical Board, who had assessed the disability of the appellant-claimant. He has proved the disability certificate, which is Ex.P30, which reads as '*the patient suffered from compound fracture (RT) Elbow. He has permanent disability to the extent of 20% (Twenty percent) Permanent, on account of stiffness of RT Elbow with Osteo Asthetic changes post-traumatic within joints casing with loss of extension (RT) Elbow with flaxion contracture with loss of*

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supination & pronation (RT) elbow and forearm’.

Furthermore, the appellant-claimant, while in the witness box as PW-5, in his affidavit Ex.PW5/A, as already observed aforesaid, has deposed about the extent of injuries sustained by him and also about his admission and treatment undergone by him. Besides the same, various other witnesses have also been examined to prove the medical bills and certain bills have also been tendered into evidence.

Looking at the aforesaid evidence, brought on record, it stands amply established that appellant-claimant had suffered 20% permanent disability, on account of injuries sustained in the accident in question. Though, now it is submitted by learned counsel for respondent No.3 that it was the disability of the part of the body and if the disability of the part of the whole body is taken into consideration, then it is not more than 10%. However, the aforesaid submission is not tenable.

Considering the kind of injuries sustained by the appellant, which have been duly proved by way of examination of the doctors and also considering the avocation, so followed by him, it is quite obvious that the appellant, was required to do manual work, while pursuing his avocation of agriculture. More so, it should be taken into consideration that it was the right hand, which had sustained injury and the kind of fractures and treatment undergone, on the basis thereof, as already observed aforesaid, definitely would have made a substantial impact on his working capacity. Rather, PW-2 Dr.Abhishek Singh, in his affidavit Ex.PW2/A has stated that the appellant would not have been able to sit, squat or climb stairs or to do any manual work with his right hand, at least for a period of two months,

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after the accident. As such, for at least, a period of two months, the appellant would have been off the work, on account of constrained movement, in view of the injuries, sustained on his right hand. Considering the same, the compensation granted on this count, is also on lower side. Even, on the various other aspects, like pain and suffering etc. also, the compensation, so worked upon by learned Tribunal, is on a lower side. Thus, considering the aforesaid factors, the compensation requires re-computation.

At the time of sustaining of injuries in the accident in question, the age of the appellant-claimant was 55 years. Considering the same, the healing process is also bound to take much time and also, even after the healing of the injuries, the working capacity is bound to be affected. Thus, considering the same, the functional disability, appropriately can be taken, as considered by learned Tribunal. Thus, multiplying the loss of income with disability of 20% and dividing the same by 100, as per the standard multiplier process and keeping in view the age of the appellant-claimant, the compensation is now worked upon as $6000 \times 12 \times 11 \times 20 / 100 = \text{Rs.}1,58,400/-$.

On account of injuries sustained, the appellant ought to have remained away from his work place, for a period of at least two months. Considering the same, for the '**Laid Back period**', another amount of Rs.12,000/- is to be granted. Moreover, on the account of injuries, the appellant-claimant must have been put on '**special diet**' and the compensation, so granted by learned Tribunal, on this count, is on lower side and thus, the same is enhanced to Rs.15,000/-.

Further, the appellant had remained admitted in PGIMS, Rohtak, at

first instance and got admitted twice in Rockland Hospital, New Delhi and was operated upon. Definitely, he must have been looked after by one additional hand, during the period of his admission in hospital and recovery process. The compensation, on the count of ‘**attendant charges**’ awarded by learned Tribunal to the extent of Rs.6,000/- stands enhanced to Rs.10,000/-.

On account of injuries sustained on his right hand, the appellant-claimant is bound to have undergone lot of trauma and thus on the count of ‘**pain and suffering**’ also, the compensation, so awarded is on lower side and the same stands enhanced to Rs.30,000/-.

On the count of transportation, as per the bills proved in evidence, learned Tribunal had granted Rs.6,600/- and this calls for no further intervention.

Besides the aforesaid, various medical bills have been proved by way of examination of PWs-1, 6 and 7, certain bills have also been tendered into evidence, the total whereof comes to be Rs.1,13,500/-, which has been rightly taken into consideration by learned Tribunal.

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

1.	Loss of income	Rs.1,58,400/-
2.	Laid Back period	Rs.12,000/-
3.	Special diet	Rs.15,000/-
4.	Attendant charges	Rs.10,000/-
5.	Pain and suffering	Rs.30,000/-
6.	Transportation charges	Rs.6,600/-
7.	Medical Bills	Rs.1,13,500/-
	Total	Rs.3,45,500/-

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to be **Rs.3,45,500-1,94,500 =Rs.1,51,000/-**.

The enhanced compensation, as now awarded, be disbursed to the appellant-claimant within a period of three months from today onwards. 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.

Accordingly, the impugned Award dated 15.12.2012 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

July 05, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No