

2023:PHHC:149791

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4068-2013 (O&M)
Date of Decision: November 23, 2023

Jarnail

...Appellant

VERSUS

Rampal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.P.R.Yadav, Advocate
for the appellant.

Mr.B.K.Bagri, Advocate
for respondent No.2.

None for respondents No.1 and 3.

None for respondent No.4.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation granted to him by learned Motor Accident Claims Tribunal, vide Award dated 17.05.2013, on account of injuries sustained by him, in a motor vehicular accident, which took place on 09.05.2010.

On appraisal of the evidence, brought on record, learned Tribunal had awarded compensation to the extent of Rs.7,64,500/-.

The essential facts, to be noticed, are as follows:-

FAO-4068-2013

On 09.05.2010, at about 10.30 a.m., the appellant-claimant along with Sube Singh, while on a motorcycle bearing registration No.HR-35E-9307, which was driven by Sube Singh, were proceeding from village Hudia Kalan to Kund. When they reached near village Kund, in the meanwhile, a pick-up bearing registration No.HR-47-8039, came from the front side, in a rash and negligent manner and struck into their motorcycle, as a result whereof, appellant as well as Sube Singh had sustained injuries. It is specific assertion of the appellant-claimant that accident was caused, due to the rash and negligent driving of offending pick-up, driven by by respondent No.1-Rampal. After the accident, appellant-claimant was taken to GH, Rewari, from where, he was referred to Mamta Hospital, Gurgaon, where he remained admitted in ICU and thereafter, he was referred to Artemis Hospital, Gurgaon. Also further, it is averred that at the time of accident, the appellant-claimant was 16 years old and he was student of 10+1 class.

To so substantiate his claim, appellant-claimant himself stepped into witness box as PW-3 and in his affidavit Ex.PW3/A, he has deposed in consonance with the pleaded case, with regard to the manner of accident and also about the injuries sustained by him, in the accident in question. Furthermore, the appellant has examined PW-2 Sube Singh, who was driving the ill-fated motorcycle, on the day of occurrence. In his affidavit Ex.PW2/A, this witness has also deposed, in consonance with the pleaded case, about the injuries having sustained by the appellant as well as by himself. PW-1 Abhishek Pandey, Clerk of Artemis Hospital, has brought the record pertaining to appellant, with regard to his admission in their hospital on 09.05.2010 and having discharged on 24.05.2010. The bills

pertaining to medical and other expenses of the appellant were proved as Ex.PW1/1 to Ex.PW1/55 and the amount charged was Rs.5,33,000/-. PW-5 Dr.Shree Ram Karwasra, Medical Officer, GH Alwar, has deposed about medical board having constituted of which, he was a member and proved the disability certificate (Ex.PW5A), which depicts that 50% disability was due to poor remote memory, poor abstraction and poor calculation and 5.5% disability was due to disfiguration of face and thus, the total disability was worked upon as 55.5%. Even, another witness has been examined i.e. PW-4 Rajesh, who has deposed about the fair having charged, to the extent of Rs.6,500/-, vide receipts Ex.PW4/A to Ex.PW4/3. Thereafter, counsel had tendered another bill, which is Ex.P1.

From the evidence, coming forth, it becomes amply established that appellant-claimant had suffered multiple injuries, as a result whereof, he had suffered 55.5% disability, which related to his loss of memory as well as poor abstraction and poor calculation and therefore, definitely, he has become invalid and is unable to perform day to day activities and he also required constant support, for the confined life, he has been forced to live after the accident.

Taking into consideration, the kind of injuries, so sustained and the impact thereof, definitely, the compensation, so worked upon by learned Tribunal is on lower side. The appellant-claimant was student of 10+1 class, at the time, when he met with the accident. He has himself deposed that he could not take admission in 10+2 class and therefore, his career, as such, has been jeopardized. He was in the age group of 16-17 years, at the relevant time. On account of injuries, his youthful dreams, pertaining to his future

hopes and further growth in life, were snuffed to a great extent by the serious accident. As a consequence therefore, chances of his settlement in life, also must have been impacted.

Considering the Motor Vehicles Act to be a social welfare legislation, its provisions make it clear that compensation should be ‘justly’ determined. A person, therefore, 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. Therefore, 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/her life, on account of his/her physical disability. The Courts should be mindful of the fact that though, the physical disability may be on a lesser count but the functional disability, on account of injury sustained, can be on higher side.

The efforts of the Courts, therefore, must always be to substantially ameliorate the misery of the claimant and recognize his actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

Thus, in this backdrop, considering the kind of injuries, suffered by the appellant, as detailed aforesaid, he has been made dependent upon others. The disability has been assessed to be 55.5%. Considering the extent of disability suffered by the appellant-claimant, definitely, his chances of settlement in life and to be gainfully employed, must have become

FAO-4068-2013

considerably restrictive. Considering the same and taking functional disability of the appellant-claimant as 55%, while relying upon *Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others, 2023(3) RCR (Civil) 573*, wherein, reliance was further made on *Lalan D. @ Lal and another vs. The Oriental Insurance Company Limited, 2020(4) RCR (Civil) 441*, the income of the appellant, is assessed to be Rs.5,000/- per month.

Looking at age of the appellant-claimant to be 16-17 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 40% ought to be made, on the count of 'future prospects'. Thus, the earnings of the injured-appellant comes to be Rs.5,000+2000(40%)=Rs.7,000/- and annual earnings comes to be Rs.84,000/-.

In consonance with the *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '18' and also multiplying the same with 55% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss of earnings of the appellant-claimant is assessed as Rs.84000x18x55/100=Rs.8,31,600/-.

The total of the medical bills, which have been proved before the Tribunal is Rs.5,33,000/-.

Besides the same, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of the conveyance for 'to and fro' to the hospital, substantial amount must have been spent by the family of the appellant-claimant. Taking the same into

consideration, the amount of **Rs.50,000/-**, so granted by learned Tribunal is appropriate one.

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.30,000/-** is granted.

Furthermore, for some period of time, after the accident, in the minimum and even, looking at his condition with disability and more particularly, looking at the kind of injuries sustained, the appellant-claimant must have been looked after by a bye-stander/attendant throughout. Even if, the appellant-claimant was being looked after only 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. Thus, on the count of 'attendant charges', a sum of **Rs.30,000/-** is granted.

In view of the kind of injuries, on the count of 'pain and suffering', a sum of **Rs.40,000/-** is granted.

Considering the disability, so suffered, it is quite obvious, the marriage prospects of the appellant-claimant have also become very restrictive and on this count, he is entitled to be compensated and therefore, the compensation to the extent of **Rs.1,50,000/-**, on this count, is also granted.

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

1. Loss of earnings	Rs.8,13,600/-
---------------------	----------------------

2.	Medical Bills	Rs.5,33,000/-
3.	Transportation charges	Rs.50,000/-
4.	Special rich diet	Rs.30,000/-
5.	Attendant charges	Rs.30,000/-
6.	Pain and suffering	Rs.40,000/-
7.	Marriage prospects	Rs.1,50,000/-
	Total	Rs.16,46,600/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.16,46,600-7,64,500=Rs.8,82,100/-**. On the enhanced amount of the compensation i.e. **Rs.8,82,100/-**, 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.

The impugned Award dated 17.05.2013 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

November 23, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No