

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.3053-2016

Date of decision: 01.02.2023

Vinod Gupta

...Appellant(s)

Vs.

Mehar Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rahul Deswal, Advocate for the appellant.

NIDHI GUPTA, J.

Present appeal has been filed by the claimant seeking enhancement of compensation of Rs.92,700/- awarded by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as "the learned Tribunal") vide Award dated 07.11.2015 passed in MACT Case No.RBT-191 of 2014 CIS No.MACP/1665/2013 filed under Section 166 of the Motor Vehicles Act.

Learned Tribunal on the basis of pleadings and evidence placed before it concluded that injured-claimant /appellant had received injuries in a motor vehicular accident that took place on 24.10.2013 due to rash and negligent driving of Hyundai i20 car bearing registration No.HR-05AF-0355 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1/driver, owned by respondent No.2 and insured by respondent No.3 herein. Learned Tribunal awarded compensation as noted above along with interest @ 9% per annum from the date of filing the petition till its actual realization.

Learned counsel for the appellant inter alia submits that in the accident in question, the appellant had suffered multiple grievous injuries including pelvis fracture of his left leg and injuries on both legs. It is submitted that the appellant had undergone prolonged treatment after the accident and had remained admitted at PGI, Chandigarh for a week. It is further submitted that the appellant is still undergoing treatment and has suffered 8% permanent disability.

It is also submitted that the appellant was running a grocery shop however, due to the accident, he was unable to open his shop for at least three months but nothing has been granted to him by way of loss of business.

It is further submitted that now the appellant needs a male attendant but nothing has been granted by way of attendant charges.

It is also submitted that the appellant cannot sit, squat, run or climb up stairs and has to walk with stick and therefore, compensation awarded by the learned Tribunal is abysmally low.

It is further submitted that nothing has been granted towards loss of income, and amount of Rs.5,000/- each awarded towards transportation charges, special diet and pain & suffering are on lower side.

I have heard learned counsel for the appellant.

The learned Tribunal awarded compensation to the appellant in following terms:-

I.	Pecuniary damages	
1.	Loss of income	--
2.	Transport of hospital	Rs.5,000/-
3.	Attendant charges	--
4.	Diet and nutrition	Rs.5,000/-
5.	Medical expenses	
(i)	Costs of medicines	Rs.58,498/-
(ii)	Hospital charges	Rs.11,198/-
(iii)	Surgery	--
(iv)	Consultation charges	--
(v)	Future expenses	--
II.	Non-Pecuniary damages	
6.	Percentage of disability assessed and nature of disability as permanent of temporary. Loss of amenities or loss of expectation of life span on account of disability.	8 per cent as assessed by medical board. It's a permanent in nature. Not applicable.
7.	Pain and suffering	Rs.5,000/-
8.	Loss of prospects of marriage	Not applicable
III.	Disability resulting in loss of earning capacity.	
9.	Percentage of loss of earning capacity in relation to disability. Loss of earning capacity on account of permanent disability	4 per cent (half of given percentage after being taken qua whole body) Rs.8,000/-
Total		Rs.92,696/-

Further, a perusal of record of the case, in particular the evidence led by PW1 Dr.Vinod Kumar, member of the Medical Board constituted to examine case of the appellant, shows that PW1 has stated that total disability suffered by the appellant is 8% which is only qua a particular limb, and therefore, disability qua whole body is 4%. Accordingly, the learned Tribunal on basis of law laid down in ***Ram Kiran Goyal Vs. Sub Divisional Engineer, Mechanical and Others, 2008 (2) The Punjab Law Reporter, 471*** assessed compensation in respect of disability at the rate of Rs.2,000/- for every 1% of disability.

Admittedly, no evidence was led by the appellant in regard to his income, or even to show that he had suffered any loss of income during the period of treatment.

Further, even no evidence was led by the appellant regarding expenses incurred for transportation. However, learned Tribunal has granted Rs.5,000/- under this head.

Also, no evidence has been led by the appellant to show that he required an attendant or had taken the services of one all through his treatment or recuperation. Thus, I maintain the Award in this respect, as well.

Rs.5,000/- awarded towards diet and nutrition is sufficient, cost of medical expenses has been granted as per bills produced and in the facts and circumstances of the case, grant of Rs.5,000/- towards pain and suffering is just and proper.

No doubt Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. All that has to be determined in the facts of a given case is, that the compensation accorded is 'just'. In my considered view, in the present case, the learned Tribunal has awarded a very 'just' compensation, which is in accordance with the law laid down by the Hon'ble Supreme Court and therefore does not warrant the interference of this Court. In case of ***KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176***, the Hon'ble Supreme

Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

Accordingly, for the reasons aforestated, I find no error in the impugned Award.

The present appeal is therefore, dismissed.

Pending application(s) if any also stand(s) disposed of.

01.02.2023

Sunena/joshi

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No