

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(212) FAO-4192-2015 (O&M)
Date of Decision : May 31, 2023

National Insurance Company Limited .. Appellant

Versus

Ravinder Kumar and others .. Respondents

(212-A) FAO-6730-2015 (O&M)

Ravinder Kumar @ Ravinder .. Appellant

Versus

Bashir and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Aseem Aggarwal, Advocate, for the appellant
in FAO No.4192 of 2015 and
for respondent No.3 in FAO No.6730 of 2015.

Mr. Ashish Gupta, Advocate, for respondent No.1
in FAO No.4192 of 2015 and for the appellant
in FAO No.6730 of 2015.

Mr. Rahul Noorie, Advocate, with
Mr. Monit Pal Singh, Advocate, for respondents No. 2 and 3
in FAO No.4192 of 2015 and
for respondents No.1 & 2 in FAO No.6730 of 2015.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-20980-CII-2015 in FAO-6730-2015

As prayed for, the application is allowed.

FAO-4192-2015 and FAO-6730-2015

1. By this common order, two appeals, the details of which have been given in the heading of this order, are being decided as both the appeals have arisen from the same Award.

2. Certain facts need to be noticed herein for the correct appreciation of the issue in hand.

3. On 02.11.2013, injured-claimant Ravinder Kumar, who was driving his motorcycle, met with an accident with another motorcycle having registration No. HR-27D-9672 being driven by one Shahid. The injuries were such that his right leg had to be amputated. Keeping in view the said injury suffered, Ravinder Kumar filed a claim petition before the Motor Accident Claims Tribunal, Gurgaon. Keeping in view the evidence which came on record, the Tribunal vide impugned Award dated 23.02.2015, awarded a sum of Rs.19,25,300/- as compensation to the claimant under various heads.

4. In the appeal preferred by the Insurance Company i.e FAO No.4192 of 2015, the Insurance Company is contending that the compensation awarded by the Tribunal has not been computed in accordance with law as well as facts of the present case whereas, the injured-claimant has filed the appeal i.e FAO No.6730 of 2015 for enhancement of the compensation.

5. Learned counsel appearing on behalf of the appellant-Insurance Company (in FAO No.4192 of 2015) argues that in the present case, the total disability suffered by the victim has been treated as 85%, which is not correct for the reason that, as per the evidence which has come on record keeping in view the statement of the doctor concerned, 85% disability is only of limb which has been amputated whereas, the total disability cannot be treated to be more than 50% hence, the computation of the compensation by the Tribunal is liable to be modified accordingly.

6. Learned counsel for the appellant-Insurance Company (in FAO No.4192 of 2015) submits that in the present case, the future prospects have been awarded @ 50% whereas as the victim was not working in a Government agency having permanent job, the future prospect could only have been awarded @ 40%.

7. Learned counsel for the respondent-Ravinder Kumar (in FAO No.4192 of 2015) does not dispute the said fact and concedes that he has no objection in case the objections raised by the learned counsel for the appellant-Insurance Company are accepted so as to re-compute the amount of compensation.

8. Learned counsel for the claimant while pressing his appeal submits that the income which has been taken into account by the Tribunal while computation of the compensation is Rs. 5,000/- per month, which is even lesser than the minimum wages prescribed by the State of Haryana which was Rs.5,341/- at the relevant time. Learned counsel for the victim further submits that even while assessing the compensation on account of pain and suffering, only Rs.50,000/- has been awarded whereas, as per the

settled principle of law and keeping in view the fact that a leg has been amputated, the same should not have been assessed less than Rs. 2 lacs. Further, learned counsel for the victim submits that only Rs.50,000/- has been given for the loss of prospect of marriage whereas, victim has become permanent handicap hence, the compensation on the said aspect should have been assessed more than Rs.50,000/-.

9. Learned counsel for the injured-claimant Ravinder Kumar submits that the attendant charges have been paid inadequately as, the claimant has lost his limb and needed full time attendant not only for the period when he was in hospital but thereafter also hence, the adequate sum for the attendant charges need to be given.

10. Learned counsel for the Insurance Company has not been able to rebut the said contention of the learned counsel for the claimant.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. It is a settled principle of law that in case no proof of the income has been brought on record, the minimum wages fixed at the relevant period of time by the State is to be taken into account for calculating the compensation. In the present case, the income has been taken as Rs.5,000/- which is less than the minimum wages fixed by the State of Haryana.

13. Learned counsel for the Insurance Company has not been able to rebut that in the facts and circumstances of the present case, the minimum income prescribed under the Minimum Wages Act should have been taken into account.

14. Keeping in view the conceded position of fact that at the relevant period of time, as per the notification of the State, minimum wage fixed was Rs.5,341/-, hence, the wage of the victim is fixed at Rs.5,341/- instead of Rs.5,000/-.

15. Learned counsel for the respondents has not been able to rebut that the compensation awarded under “pain and suffering” as well as “loss of prospect of marriage” is not adequate keeping in view the injury suffered by the victim. Once a leg of the victim has been amputated and he has become permanent disable and cannot walk properly in life, compensation given by the Tribunal on account of pain and suffering is extended to Rs.2 lacs and compensation for loss of marriage prospects is extended to Rs.1,50,000/-.

16. Further, keeping in view the fact that the claimant took held of attendant during his treatment and thereafter also but nothing has been awarded by the Tribunal qua the said aspect, hence, the claim qua the attendant charges is assessed @ Rs.11,00/- per month along with the multiplier keeping in view the settled principle of law.

17. Keeping in view the facts and circumstances of the present case, the income of the victim is assessed as minimum wages prescribed at the relevant time i.e. Rs.5,341/-. The benefit of permanent disability suffered by the victim will be assessed at 50% and the future prospects will also be awarded @ 40%. Similarly, for the pain and suffering, as the victim has undergone amputation of his leg, the same is assessed @ Rs.2 lacs. For the loss of future prospect of marriage, the same is assessed @ Rs.1,50,000/-. The loss of amenities of life which has been assessed by the

Tribunal as Rs.70,000/-, the same will also be enhanced to Rs.1,50,000/-, however, the interest part awarded by the Tribunal @ 7.5% per annum is maintained. Hence, the computation of the final compensation to which the claimant becomes entitled, is reproduced as under:-

Income held	Rs.5,341/-
Multiplier 18	5,341x12x18 = Rs.11,53,656/-
Permanent Disability-50%	Rs.5,76,828/-
Future prospects-40%	Rs.,8,07,560/-
Artificial Lines	50,000/-
Pain and Suffering	2,00,000/-
Loss of marriage prospects	1,50,000/-
Loss of amenities	1,50,000/-
Transportation, Spl. Diet, Attendant	20,000/-
Medical expenses	3,03,262/-
Attendant	1100x12x18 = 2,37,600/-
Total	19,18,421/-

Both the appeals are allowed in above terms.

CM-13405-CII-2015

As the main appeals have been allowed, present application stands disposed of.

CM-20979-CII-2015 in FAO-6730-2015

As the main appeals have been allowed, present application stands disposed of.

May 31, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No