

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-696-2015 (O&M)

Reserved on 15.03.2023

Pronounced on 29.05.2023

Gagandeep

...Appellant

Vs.

Balraj and Others.

...Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present: Mr. Amit Singla, Advocate for the petitioner.

Mr. Tushar Gera, Advocate for
Mr. Rajesh Sethi, Advocate
for respondent Nos. 4 & 5.

SANJIV BERRY, J.

The present appeal has been preferred by the claimant-appellant against the award dated 22.03.2013 passed by the Motor Accident Claim Tribunal, Fatehabad (hereinafter referred to as 'Tribunal').

2. The facts relevant to the present case are that the claimant had filed the claim petition stating therein that on 02.04.2008, he along with other students and teachers of Maharishi Dayanand High School, Bhirdana, Tehsil, District Fatehabad was returning back to Village Bhirdana from Agra by boarding bus No. RJ-10P/3593, but, the vehicle met with an accident with truck bearing registration No. HR-55A-2371 in the area of Girls School, Agroha. At about 04:00 AM, claimant along with others started rescuing the other injured persons from the above mentioned vehicles, in the

meanwhile, offending vehicle bearing registration No. HR-39C-1824 driven by Balraj (respondent No.1) in a rash and negligent manner came from the side of Fatehabad and ramped into people engaged in rescue work which resulted in death of Jai Singh and one Chandi Ram and injuring claimant, Sudhir, Dinesh and few others. The driver of HR-39C-1824 fled from the accident site and left the offending vehicle. A criminal case bearing FIR No. 273 dated 02.10.2008 for the offences punishable under Sections 279, 337, 338, 304-A and 427 of the IPC was registered at Police Station, Agroha, District Hisar. After the accident, he was taken to Maharaja Agrasen Medical College, Agroha and after that admitted in Metro, Sarvodya Multispeciality Hospital and then in Soni Hospital and Trauma Research Centre, Hisar and had spent a sum of ₹5,00,000/- on his treatment. The claimant suffered disability of left lower limb leading to amputation and the same was assessed to 90%. At the time of the accident the claimant was a student having age of 16/17 years. Due to accident he became handicapped and his life had been ruined.

3. The claim petition was contested by the respondents.
4. Based thereupon, claim petition filed by the appellant-injured was allowed by the learned Tribunal holding that the accident occurred on account of rash and negligent driving of respondent No.1. In order to compensate the appellant on account of injury suffered by him, learned Tribunal assessed his functional disability to the extent of 90% and awarded compensation in the following manner:-

Sr. No.	Nature	Amount in Rupees
1.	Pain and suffering/special diet	50,000/-

2.	Treatment expenses	2,85,794/-
3.	Disability (90%)	2,00,000/-
4.	Annual loss of income	3,00,000/-
	Total	8,35,794/-
	Interest	9%

5. Being aggrieved against the award dated 22.03.2013, the present appeal has been preferred by the appellant/claimant for enhancement of compensation.

6. Learned counsel for the appellant contends that the income of the injured and interest awarded has been taken on the lower side, by learned Tribunal. At the time of accident, appellant was a student and was of 16/17 years of age and due to accident leading amputation of left leg amounting to 90% permanent disability. A sum of ₹3,00,000/- is awarded on account of future loss of income and the same is on lower side, ₹50,000/- had been awarded on account of pain, suffering and special diet and is liable to be enhanced, ₹2,00,000/- had been awarded as compensation which is also on lower side, sum spent on treatment of the claimant as ₹2,85 794/- and interest ought to have been awarded @ 18% per annum instead of 9%. He further contended that no compensation awarded on account of mental agony, loss of enjoyment of life, attendant charges, marital prospectus, future prospectus, future treatment and transportation. In support of his contentions, he had relied upon the law laid down by Hon'ble Supreme Court in *Kajal Vs. Jagdish Chand*, Civil Appeal No.735 of 2020 decided on 05.02.2020 and *Mallikarjun Vs. Divisional Manager, The National Insurance Company Ltd. 2013 (10) SCALE 668*.

7. On the other hand, learned counsel for respondents contends that the compensation granted by the learned Tribunal is already on higher side and thus requires no interference. It is further contended by the learned counsel for the respondents that the appellant did not spend any amount on his treatment and if any amount has been spent, Insurance Company is liable to indemnify the appellant in any manner.

8. Heard learned counsel for the parties and perused the record.

9. In the facts of the case, it is apposite to refer to the judgment of the Hon'ble Supreme Court in ***Mohd. Sabeer Vs. UP SRTC 2022 SCC OnLine SC 1701***, wherein the Court had awarded a compensation of Rs.38,70,120/- for permanent disability (including Rs.2,00,000/- for pain and suffering; Rs.15,000/- for special diet and Rs.2,00,000/- for loss of amenities of life) by observing that it is well settled position of law that in cases of permanent disablement caused by motor accident the claimant is entitled to not just future loss of income, but also future prospects (including marriage prospects).

10. In ***Sidram Vs. United India Insurance Company Ltd. (2023) 3 SCC 439***, the Hon'ble Apex Court observed that, "This Court has emphasized time and again that just compensation should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident."

11. In ***Mallikarjun Vs. Divisional Manager (supra)***, the Hon'ble Supreme Court has held that "if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60% Rs.4 lakhs; upto 90% Rs.5 lakhs and

above 90%, it should be Rs.6 lakhs.”

12 In the case of *Abhimanyu Pratap Singh Vs. Namita Sekhon and another, 2022 SCC Online SC 793*, the Hon’ble Supreme Court has held that in case of loss of amenities of life and marital bliss, pain and suffering, loss of enjoyment and loss of expectancy Rs.4 lakhs shall be awarded.

13. Thus, in the light of the aforesaid discussion and applying principle laid down in the aforesaid judgments to the facts and circumstances of the present case, the compensation payable to the claimants is determined as under:-

Sr. No.	Head	Compensation
1.	Pain and sufferring/special diet	Rs.50,000/-
2.	Treatment expenses	2,85,794/-
3.	Disability (90%)	Rs.5,00,000/-
4.	Annual loss of income	Rs.3,00,000/-
5.	Loss of amenities/marital bliss	Rs.4,00,000/-
	Total	Rs.15,35,794/-
	Interest	9% per annum

14. The amount of the enhanced compensation aforesaid shall be payable by respondents No. 1 to 3 jointly and severally with interest @ 9% per annum from the date of filing of the claim petition till its realization. However, the first liability being of respondent No.3- Insurance Company to pay the same, it shall pay the amount of the enhanced compensation to the claimants as stated above after deducting the amount of compensation, if any, paid during course of proceedings.

15. Accordingly the appeal is allowed and the award dated 22.03.2013 passed by Motor Accident Claims Tribunal, Fatehabad, is hereby modified in above terms.
16. Pending application(s) if any also stand disposed of.

29.05.2023
Gyan/S.Sharma

(SANJIV BERRY)
(JUDGE)

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No