

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
218 **FAO-6181-2016 (O&M)**
Date of decision: 22.05.2023

Ishan Suri

...Appellant(s)

Vs.

Bharat Bhushan & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Aayush Gupta, Advocate
for the appellant.

Mr. Rajneesh Malhotra, Advocate
for respondent No.2.

NIDHI GUPTA, J.

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.3,99,718/- granted by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as "the learned Tribunal") vide Award dated 25.04.2016 passed in MACP Case No.128 of 2014 filed under Sections 166 & 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Injured-claimant was 14 years old at the time of accident.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the appellant had been injured in a motor vehicular accident that took place on 03.06.2013 at about 6:45 pm due to rash and negligent driving of motorcycle bearing registration No.HR-07S-9602 (hereinafter referred to as 'the offending vehicle'), being driven and owned by respondent No.1 and insured by respondent No.2. Learned Tribunal awarded

compensation as above along with interest @ 9% per annum from the date of filing the claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellant seeks enhancement of compensation inter alia on the grounds:

a) that the appellant had suffered multiple fractures on his shaft of left femur. It is submitted that the appellant remained hospitalised from 03.06.2013 to 07.06.2013 and is still undergoing treatment. It is submitted that the appellant has spent approximately Rs.3,00,000/- on his treatment;

b) that the appellant has suffered 9% permanent disability due to mal-union of the fracture on his left thigh which, as per opinion of PW4-Dr.Anoop Mehta, is not likely to reduce with physiotherapy and passage of time.

4. Per contra, it is submitted by learned counsel for Insurance Company that as per cross examination of PW4-Dr. Anoop Mehta, he has deposed that disability of the appellant is qua the leg and not qua the whole body and if it were to be taken qua the whole body then the same will be reduced by 30% to only 6%.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties.

7. Learned Tribunal granted compensation in the following manner:

Heads	Amounts
Reimbursement towards medical	Rs.1,54,018/-

expenses	
Amount towards disability	Rs.50,000/-
Amount towards extra nourishment etc.	Rs.10,000/-
Amount towards pain & suffering	Rs.1,00,000/-
Amount towards expenses of one attendant	Rs.30,000/-
Amount towards transport expenses	Rs.35,700/-
Amount towards loss of studies	Rs.20,000/-
Total	Rs.3,99,718

8. Admittedly, the appellant was only 14 years old at the time of accident and has suffered deformity and 9% permanent disability due to malunion of the fracture of his left thigh. As per testimony of PW5-Dr.Dalbir Chauhan, MS Ortho, Alchemist, Panchkula, the appellant had been operated upon by him on 04.06.2013 and again on 07.05.2014. Said witness PW5 had also deposed that the disability suffered by the appellant was likely to be a hindrance in the future life of the appellant.

9. Further, even as per PW4-Dr. Anoop Mehta, Ortho Surgeon, LNJP Hospital, Kurukshetra, the appellant had suffered deformity with mild malunion. PW4 also deposed that the said disability of 9% is not likely to reduce with physiotherapy and passage of time.

10. Needless to say, being only 14 years of age, the appellant has his whole life ahead of him. Due to the injuries suffered in the accident, his studies too would have been adversely affected. Though, the appellant had pleaded before the learned Tribunal that he would have taken up dancing as a profession however, as there was no certainty regarding the same, accordingly, learned Tribunal had refrained from granting loss of future earnings. However, in my view, keeping in

mind that the appellant has been disabled to the extent of 6%, loss of income of 6% ought to be awarded to him.

11. In view of above facts on record, compensation awarded to the appellant is re-assessed as follows by applying multiplier method:-

HEADS	IN APPEAL
Notional income	Rs.5,212/- per month
Annual income	Rs.5,212/- x 12 = Rs.62,544/-
Multiplier	(18) Rs.62,544/- x 18 = Rs.11,25,792/-
Disability	6%
Loss of future earning	Rs.11,25,792/- x 6% = Rs.67,547/-
Marriage prospects	Rs.20,000/-
Loss of amenities	Rs.50,000/-
Total	1,37,547/-
Awarded by MACT	3,99,718/-
Enhanced by	1,37,547/-

12. Accordingly, appeal stands **allowed** in above terms.

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

22.05.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No