

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-6257-2016 (O&M)
Date of Decision: November 08, 2023

Narinder Singh

...Appellant

VERSUS

Ashok Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vaibhav Narang, Advocate
for the appellant.

Mr.Naveen Chopra, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal arises from the Award dated 20.11.2015 passed by learned Motor Accident Claims Tribunal, filed by the appellant-claimant, thereby, seeking enhancement of the compensation granted, on account of the injuries sustained by him, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.6,81,378.16, besides the grant of interest @ 7% per annum to the appellant.

So far as the fact of accident and manner of its taking place, as well as liability fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several are concerned, it is pertinent to mention that no appeal has been filed by the persons, so made liable to challenge the

Award and thus, this issue does not warrant any further scrutiny.

In this backdrop, learned counsel for the appellant-claimant has assiduously submitted that appellant-claimant had suffered permanent disability as there was amputation of right leg and therefore, he has become invalid, more particularly, considering avocation followed by him. It is submitted that various counts, which ought to be taken into consideration, while making assessment of the compensation, on account of impact of permanent disability have been overlooked by learned Tribunal. Also, it is submitted that on account of amputation of right leg of the appellant, additional medical exigencies are necessitated and expenses are incurred for regular medical treatment in future. There is also need of expenditure to be incurred, on account of arrangement of prosthetic limbs, during his lifetime, which has also not been taken care of. Thus, learned counsel for the appellant has made a prayer for extensive enhancement of the amount, so awarded by learned Tribunal.

On the other hand, learned counsel for the insurance company has refuted the claim of the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. In fact, it is submitted that the compensation already awarded is just and reasonable. Thus, he submits that the appeal sans merit and deserves to be dismissed.

The Motor Vehicle Act is in the nature of social welfare legislation and its provisions make it clear that the compensation should be justly determined. It has also been so emphasized by the Hon'ble Courts, time and again and even in *Smt.Sarla Verma vs. Delhi Transport*

FAO-6257-2016

Corporation and anr., 2009(3) RCR (Civil) 77, it was held by the Hon'ble Supreme Court that the 'just' compensation is adequate compensation and that the Award must be just that- 'no less and no more'. 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.

A three Judges' Bench in *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

“...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law.”

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 the lesser count but the functional disability, on account of injury sustained, can always be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Hon'ble

FAO-6257-2016

Supreme Court in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*.

The efforts of the Courts 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 proportions.

Adverting to the case in hand, it is pertinent to mention that accident had taken place on 16.12.2013, while the appellant-claimant along with other police officials, during the course of his performing official duties, after producing the under-trial in the Court, had reached opposite Dana Mandi, Jandiala Guru, stopped the vehicle and got down from the same. When they came back, one Mahindra Xylo bearing registration No.PB-01-8495 driven by respondent No.1-Ashok Kumar, came from the backside and caused the accident, as a result of which, right leg of the appellant got injured and subsequently, his right leg was amputated. FIR bearing No.304 dated 24.12.2013 under Sections 279, 337 and 338 IPC was registered against respondent No.1.

To so substantiate his claim and also to depose about the nature and kind of injuries sustained by him, appellant-claimant Narinder Singh himself stepped into witness box as AW-1 and his sworn testimony, in the form of affidavit is Ex.AW1/A, wherein besides deposing about the manner of accident, he has further deposed about detail of the injuries, suffered by him and the expenditure incurred on his treatment. Even, AW-2 Akash Sharma of Amandeep Hospital has also deposed about the admission of the appellant in their hospital, on account of the accident and injuries on 16.12.2013 and he remained admitted in their hospital, till 06.01.2014. Also, he has proved the various bills, issued by the hospital and deposed about an amount of

FAO-6257-2016

Rs.3,23,878.16 having received by them as expenditure. He further deposed that right leg of the aforesaid patient was amputated.

Not only this, even CW-4 Parveen Kumar has been examined, who is an employee of Otto Bock Health Care India Pvt. Ltd. He has deposed about prosthetic limb having purchased by the appellant-claimant. The invoice of the same is Ex.A3/1 and another invoice for the amount of Rs.30,000/- is Ex.A30. He also deposed that they had received total amount of Rs.3,32,000/- in all, for the sale of artificial device for amputation of right leg.

Furthermore, CW-5 Dr.Sandeep Singh Kalra has also been examined, who proved the disability certificate as Ex.A23. He also deposed that it was a case of amputation of right leg and physical impairment permanent of his right lower limb was assessed to be 85%.

From the aforesaid evidence adduced, it is amply established that in pursuance of the accident, the appellant-claimant had sustained injuries, which resulted into amputation of his right leg and huge amount was incurred on the treatment.

Definitely, there is bound to be decrease in body functionality, which is all the more required to be noticed, keeping in view the avocation followed by the appellant. From the evidence adduced, it stands amply established that appellant is working as Constable in Punjab Police. Also, it stand established that the appellant-claimant had remained admitted in the hospital from 16.12.2013 to 06.01.2014. The appellant-claimant, in his cross-examination has submitted about having availed the medical leave, with pay, for the period, he remained admitted in the hospital.

Though, learned counsel for the insurance company submits that there was no loss of earnings, on account of disability, so suffered, but however, the submission, so made is bereft of merits. It should be noted that the appellant-claimant is working as Constable in Punjab Police. His post is such, which has huge responsibility. There is lot of field work to be done. After amputation of his right leg, even though, the appellant continues to be working in the police department and may have been put on some desk duty, but however, his chances of growth in the career itself have become very restrictive, on account of this amputation. The chances of his promotion to a higher post are definitely affected. On account of disability, besides following his avocation, there are other routine duties, which are required to be performed by a normal human being, which in case of present appellant, must have had its own impact, on account of amputation of his right leg.

Thus, on this account, there may not be any loss of earnings, as the appellant continued to get his salary, but however, his chances of future growth in career, have definitely been affected. Besides the same, as a normal human being also, his movement to carry out various other routine work and also quality of his life, had been affected, as a result of this disability. Thus, on this count, the loss may not be assessed, by virtue of extent of disability suffered by the appellant, but definitely, some estimated amount, proximate to the reality of inconvenience ought to be taken into consideration. Considering the same and also considering the age of the appellant to be 42 years, at the relevant time and having a long life ahead of him, **Rs.3 lakh** shall be appropriate amount to be granted.

On the basis of the bills proved in evidence, learned Tribunal

FAO-6257-2016

had rightly granted an amount of **Rs.6,56,378.16**, towards the medical bills.

On the count of 'pain and suffering', learned Tribunal had granted a sum of Rs.10,000/-, which is on lesser side and thus, it stands enhanced to **Rs.1 lakh**.

On account of injuries sustained in the accident, the appellant, must have been put on special nutritious diet and thus, on this count, the compensation, so granted by learned Tribunal, is enhanced from Rs.5,000/- to **Rs.25,000/-**.

Furthermore, for some period of time, after the accident, in the minimum and even, looking at his condition with permanent 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. Though, learned counsel for insurance company submits that there is no material, as such, produced by the appellant-claimant, on actual expenses, incurred for the services of the attendant and it is argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability suffered, besides the family members, the appellant-claimant ought to have been looked after by one attendant throughout, as there was need for assisted living. 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' the amount of Rs.5,000/- granted by learned Tribunal is enhanced to **Rs.25,000/-**.

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, on the count of 'transportation charges' a sum of **Rs.25,000/-** is awarded.

Besides the aforesaid, it is pertinent to mention that on account of amputation of his right leg, prosthetic limb has been purchased by the appellant, which so stands established from the bills proved by way of examination of CW-4 Parveen Kumar, who is an employee of Otto Bock Health Care India Pvt. Ltd. The appellant also in his affidavit Ex.AW1/A has categorically stated that he had got an artificial leg affixed.

The Hon'ble Supreme Court in ***Mohd. Sabeer @Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation, 2023(1) RCR (Civil) 349***, while considering the case of injury sustained in a motor vehicular accident and the prosthetic limb required, it was observed that provision has to be made for the purchase and maintenance of the prosthetic limb. Considering the age of the injured, provision for three prosthetic limbs, in his lifetime, was made, apart from the maintenance cost. Thus, taking guidelines from the aforesaid decision, in the present case, the appellant-claimant being 42 years, at the time of accident and considering the bill Ex.A23, which is for the amount of Rs.3,32,000/- and also considering the future need for the replacement of the prosthetic limb, an amount of Rs.6 lakh is granted.

Accordingly, the appellant-claimant is held entitled for

compensation as under:-

Permanent disability	:	Rs.3,00,000/-
Medical Bills	:	Rs.6,56,378.16
Pain & suffering	:	Rs.1,00,000/-
Special Diet	:	Rs.25,000/-
Attendant charges	:	Rs.25,000/-
Transportation charges	:	Rs.25,000/-
Purchase of prosthetic limb	:	Rs.6,00,000/-
Total	:	Rs.17,31,378.16

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.17,31,378.16-6,81,378.16=Rs.10,50,000/-**. On the enhanced amount of the compensation i.e. **Rs.10,50,000/-**, 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.

Accordingly, the impugned Award dated 20.11.2015 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 08, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No