

2023:PHHC:125419

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-7287-2015 (O&M)
Date of Decision: September 22, 2023

Ashish

...Appellant

VERSUS

Unnas Khan and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajesh Malik, Advocate
for the appellant.

Mr.Rajesh K. Sharma, Advocate
for respondent No.3-insurance company.

ARCHANA PURI, J.

This appeal arises out of the motor accident claim, following the serious injuries suffered by the appellant-claimant, on 09.11.2013, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.7,36,722/- to the appellant.

Being dissatisfied with the awarded amount, the appellant-claimant has filed the present appeal for seeking enhancement of the compensation.

So far as, the fact of accident and manner of its taking place as

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well as the liability, so fastened, 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, findings so arrived, has attained finality.

The essential facts are as follows:-

That, on the fateful day, i.e. on 09.11.2013, at about 3.30 p.m., appellant-claimant Ashish was going on his motorcycle to Nimrana, District Alwar, Rajasthan, for attending his duty in Oil India Private Limited Company, at a normal speed. When he reached at village Siliani Bye-pass, in the meantime, a truck bearing registration No.RJ-02GA-7394, driven by respondent No.1-Unnas Khan, in a rash and negligent manner, came from the front side and struck against the appellant-claimant. As a result of this accident, the appellant-claimant sustained multiple injuries and received fractures in his right leg, brain injury, right hand injury and injuries on other parts of the body. He was taken to Civil Hospital, Jhajjar, where from, he was referred to PGIMS, Rohtak and then, he was admitted in Fortis Hospital, Delhi on 10.11.2013 and remained admitted there till 23.11.2013. Thereafter, he was admitted at PGIMS, Rohtak on 23.11.2013 and his right thigh was operated as per doctor's advice and he was discharged on 26.03.2014.

Qua the accident in question, FIR bearing No.734 dated 10.11.2013 was registered at Police Station Jhajjar. On account of the injuries, sustained in the accident, the appellant-claimant had sought compensation to the extent of Rs.25 lakh.

In the given backdrop, learned counsel for the appellant-claimant underscores that the appellant-claimant had suffered 25%

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permanent disability and is unable to perform everyday activities and he requires constant support, even, for the confined life, which he has been forced to live after the accident. He has since become invalid and considering all these aspects, the compensation, so granted by learned Tribunal is miserably on lower side.

Further, learned counsel for the appellant submits that the Tribunal has worked upon the compensation, vis-a-vis, permanent disability, in a mechanical manner. Also, learned Tribunal had erroneously not taken into consideration, the impact of permanent disability, upon the life of the appellant-claimant, not only relating to his income generating capacity, more particularly, considering his age, at the relevant time, but also about non-quantifiable implications, on the life of the appellant-claimant.

Besides the same, learned counsel for the appellant assiduously submits that looking at the nature of injuries sustained by the appellant, huge expenses were incurred for the medical treatment, which fact has also not been properly appraised. Also, his marriage prospects have become restrictive and on this count also, he is to be compensated, which fact has been overlooked by learned Tribunal.

Thus, learned counsel for the appellant has made a prayer for extensive enhancement of the amount, so awarded by the 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. Thus, he submits that the appeal sans merit and deserves to be dismissed.

The appellant-claimant, in his affidavit Ex.PW1/A, besides deposing about manner of accident, has also categorically deposed about detail of injuries, sustained by him, in the accident in question and furthermore, also deposed about his treatment firstly having got done from the Civil Hospital, Jhajjar, wherefrom, he was taken to Fortis Hospital, Shalimar Bagh, Delhi, where he remained admitted from 10.11.2013 to 23.11.2013 and moreover, he has deposed that he got admitted in PGIMS, Rohtak on 23.11.2013 and his right thigh was operated as per doctor's advice and he was discharged on 26.03.2014. He also deposed that he had spent an amount of Rs.5,68,743/-, on his treatment in Fortis Hospital and about Rs.6 lakh in PGIMS, Rohtak. He further deposed that on account of injuries sustained in the accident, he had become a disabled man.

Furthermore, PW-2 Gaurav Parbakar, Cashier, Fortis Hospital, has brought the record, relating to admission/treatment in Fortis Hospital and proved the final bill Ex.P1. PW-3 Barun Kumar, Assistant Manager, Oil India Pvt. Ltd. has brought the salary statement of Ashish Kumar and deposed that he was working as Executive (Engineer) Quality Control, in their company i.e. Oil India Pvt. Ltd. and he proved the salary slip, which is Ex.PW3/A.

PW-4 Dr.S.P.Sharma, being the member of Board of Doctors, which had assessed the disability suffered by the appellant-claimant, has deposed that appellant-claimant was having 25% permanent disability and proved the disability certificate, which is Ex.PW4/A. This disability certificate states about the appellant-claimant to be a case of '***Malunited fracture right forearm with limitation of supination and pronation and fracture femur with ILN with***

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1.5 inch shortening with stiffness right shoulder'. Furthermore, it is mentioned that he is *physically Disabled/Visual Disabled/Speech and Hearing Disabled and has 25% permanent (physical impairment/Visual impairment/Speech & Hearing Impairment) in relation to his Particular limb*. Moreover, a note has been given that this condition is **Non-progressive** and that re-assessment is **Not recommended**.

PW-5 Dr.Mukesh Kumar Sharma, Senior Resident of PGIMS, Rohtak, had also brought the treatment record of the appellant-claimant and deposed that as per CR No.198170, date of admission was 23.11.2013 and the date of discharge was 26.03.2014. Copy of the discharge summary is Ex.P209 and Ex.P210. He also proved the medical bills, which are Ex.P2 to Ex.P213.

In the light of the aforesaid evidence, it is pertinent to mention that appellant-claimant had suffered extensive injuries. The medical record, so proved, by way of examination of the aforesaid witnesses, clearly reveals about the injuries, so sustained by the appellant-claimant, on account of accident in question and they stand co-related to the observations, so made in the disability certificate. Though, it is 25% disability and it is mentioned to be of a particular limb, but however, there is shortening of the limb to the extent of 1.5 inch. Definitely, there was decrease in body functionality. Keeping in view the observations, so made in the disability certificate, coupled with the medical record, it gives no reason to consider that disability was not to the extent of 25% of the whole body.

Thus, from the aforesaid, it becomes evident that appellant-claimant had suffered extensive grievous injuries, for which remained

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admitted in various hospital for about for months. Even, the educational certificates of the appellant have come on record. Perusal of the matriculation certificate reveals about date of birth of appellant to be 31.12.1998, meaning thereby, he was about 25 years old and he had obtained excellent grade in matriculation. He had also done Bachelor of Technology (Electronics and Communication Engineering) with First Division. Thus, the appellant-claimant remained a bright student and considering the same, he was bound to rise further in his life. However, due to the injuries in question, in the job, which he was already doing, as deposed by PW-3, his growth has been jeopardised.

His youthful dreams, pertaining to his future hopes and growth in life, were snuffed to a great extent by the serious accident. Youngman's impaired condition, would have definitely impacted his chances of settlement in life and must have also impacted the life of his family members. Their resources and strength are bound to be stressed by the need to provide full time care to the claimant, at least for good period of time, soon after the accident.

In this backdrop, at the very outset, it is pertinent to mention that since Motor Vehicles Act is in the nature of social welfare legislation and its provisions, therefore, make it clear that compensation should be 'justly' determined. 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 human disability, but however, the efforts of the Courts must always be to substantially ameliorate the misery of the claimant and recognize his/her actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

Keeping in view the aforesaid, the kind of injuries sustained by the appellant-claimant, which made him hospitalised for a period of about four months and undergo various operations and left him disabled, there is no reason, why not disability to the extent of 25%, be taken as whole body disability. Even, in Ex.PW4/A, there is mention made about the condition to be non-progressive. Considering the aforesaid, the appellant-claimant had suffered shortening of a limb and also visual and speech disability, definitely, his chances of growth, ought to have become restricted to some extent.

Considering the same, while taking proximate disability to be to the extent of 25% and considering the salary certificate, his earnings to the extent of Rs.15,103/- and also considering the age of the appellant, addition of 40%, on the count of future prospects, ought to be made, in consonance with the *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*. Thus, the monthly earnings of the injured appellant comes to be $\text{Rs.}15103 + 6041(40\%) = \text{Rs.}21,144/-$ and annual earnings comes to be $\text{Rs.}21,144 \times 12 = \text{Rs.}2,53,728/-$.

In consonance with the *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '18' and so multiplying the same with 25% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as **Rs.2,53,728x18x25/100=Rs.11,41,776/-**.

The medical bills also stand duly proved. Ex.P1 is the medical bill of Fortis Hospital, which was for the amount of Rs.5,53,744/-, out of which, an amount of Rs.4 lakh had been deposited by the concerned insurance company and the residue bill amount is Rs.1,53,744/-, which was paid by the appellant-claimant. An amount of Rs.3,77,560/- was paid vide bill Ex.P208. These bills, do co-relate to the treatment undergone by the appellant, after the accident and the total of the said bills comes to be **Rs.5,31,310/-**, which has been appropriately considered by learned Tribunal.

Besides the aforesaid, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of conveyance of 'to and fro' to the hospital, a substantial amount must have been spent by the appellant-claimant. The consolidated amount of Rs.20,000/- has been given by learned Tribunal, on the count of transportation charges and diet. However, this amount is miserably on lower side, which requires enhancement, more particularly, considering his duration of having remained hospitalised, for a period of four months and thus, these two counts are bifurcated. Therefore, on the count of transportation charges, a sum of **Rs.40,000/-** is awarded.

Obviously, during the period of treatment and some time thereafter, in the minimum, the appellant-claimant must have been put on special rich

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diet, for healing process. On this count also, another sum of **Rs.40,000/-** is granted.

Also, 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 respondent No.3-insurance company had made a faint attempt to assert about the actual expenses, having so incurred, upon the services of the attendant, not being established, but however, this submission is bereft of merits and the same is not tenable. Besides the family members, the appellant-claimant, ought to have been looked after by one attendant, for some period of time, 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 this count also, further amount of **Rs.40,000/-** is granted.

On the count of 'pain and suffering', learned Tribunal had granted a sum of Rs.25,000/-, which also calls for enhancement. A person not only suffers injuries, on account of the accident, but also suffers in mind and body, on account of the accident, throughout his life. He develops a feeling of invalidity and considers himself to be not normal man. Thus, while fixing the compensation, all these circumstances, which makes the victim feel helpless ought to be taken into consideration, more particularly, while looking at his age as well as avocation followed by him, before the

accident as well as his marital status. Unusual deprivation, he has undertaken in his life, has to be reckoned. Considering, all the aforesaid facts, on the count of ‘pain and suffering’, compensation stands enhanced to **Rs.1,50,000/-**.

No compensation has been awarded on the count of ‘**loss of marriage prospects**’. Considering the disability, so suffered, more particularly, looking at the age of the appellant-claimant, at the relevant time and his being in a settled job, the marriage prospects of the appellant-claimant have also become very restricted and on this count, he is entitled to be compensated and therefore, the compensation to the extent of **Rs.1,50,000/-**, on this count, is also granted.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.11,41,776/-
2.	Medical Bills	Rs.5,31,310/-
3.	Transportation charges	Rs.40,000/-
4.	Special rich diet	Rs.40,000/-
5.	Attendant charges and	Rs.40,000/-
6.	Pain and suffering	Rs.1,50,000/-
7.	Loss of Marriage prospects	Rs.1,50,000/-
Total		Rs.20,93,086/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.20,93,086-7,36,722=Rs.13,56,364/-**.

On the enhanced amount of the compensation i.e. **Rs.13,56,364/-**, 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.

The impugned Award dated 15.07.2015 stands modified, to the extent, as indicated aforesaid and the remaining terms of the Award, shall remain the same.

With the above observations, the present appeal stands allowed.

September 22, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No