

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO 1026/2017 (O&M)

Date of decision: 12.01.2023

Devender

.....**Appellant**

Vs.

Anuj Aggarwal and others

.....**Respondents**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Parmod Parmar, Advocate for the appellant/claimant.
Mr. Paras Money Goyal, Advocate for the respondent/Insu.Co.

Nidhi Gupta, J.

This common order shall dispose of cross appeals bearing FAO No.1026/2017 filed by claimant, and FAO No.7766/2016 filed by respondent Insurance Company, both Appeals arising out of Award dated 14.9.2016 passed by Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') in MACP No.25 of 2013/2016 (RBT) filed by the injured-claimant u/s 166 of the Motor Vehicles Act, 1988. For the sake of convenience and with the consent of learned counsel for the parties, the facts are being noticed from FAO No.1026/2017, which are even otherwise common.

Briefly noticed the facts of the case are that on 14.4.2013 injured-claimant/appellant Devender was going to harvest his crop when a Santro car bearing registration No. HR-12H-1923 (hereinafter referred to as 'the offending vehicle') being driven by Anuj Aggarwal-respondent no.1 in a rash and negligent manner and at a high speed hit the bicycle of injured-Devender from the back

side as a result of which he fell down on the road alongwith his bicycle and sustained multiple grievous injuries on his body including a major head injury. The respondent no.1-driver stopped the car and with the help of Virender, brother of the injured, took the injured-appellant to Community Health Centre, Dighal, from where the injured, due to nature of injuries sustained by him, was referred to PGIMS Rohtak. The appellant remained hospitalized at PGIMS Rohtak from 14.4.2013 to 12.5.2013.

Learned Tribunal on the basis of material in form of pleadings and evidence placed before it, concluded that the appellant was injured in the accident that took place on 14.4.2013 due to the rash and negligent driving by the respondent No. 1 of the offending vehicle, as a result of which the appellant was rendered 100% permanently disabled due to head injury suffered by him in the said accident. Learned Tribunal also concluded that the appellant at the time of accident was 15 years old and was doing agricultural labour work. In this background, the Tribunal awarded a total compensation of Rs.16,67,000/- to the claimant/injured-appellant, as tabulated hereunder:-

1.	On account of loss of income	Rs.48,000/-
2.	On account of expenditure on treatment and medicines etc.	Rs.33,000/-
3.	On account of transportation	Rs.25,000/-
4.	On account of attendant charges	Rs.1,00,000/-
5.	On account of special diet	Rs.20,000/-
6.	On account of pain and suffering	Rs.15,000/-
7.	On account of loss of amenities and enjoyment	Rs. 80,000/-
8.	Future Medical expenses	Rs.50,000/-
9.	On account of permanent disability	Rs.12,96,000/-
	Total	Rs.16,67,000/-

Now in the present appeal, claimant seeks enhancement of said compensation of Rs.16.67 lacs. Learned counsel for the claimant/appellant submits that the claimant is entitled to enhancement inter alia on the ground that the learned Tribunal has taken the income of the injured-appellant only Rs.4000/- per month which is on the lower side. It is submitted that the accident in question took place on 14.4.2013 and as per Notification No. IR-II/6430-6579 dated 22.2.2013 issued by the Government of Haryana, the minimum wages admissible to a skilled labourer are Rs.5732/- per month. It is further submitted that as appellant has suffered 100% disability on account of head injury, he requires a permanent attendant for the rest of his life. It is also submitted that amounts awarded under other heads are on the lower side.

On the other hand, learned counsel for the Insurance Company has assailed the Award only on the ground of quantum and submits that as per judgment of Hon'ble Supreme Court rendered in case of '**Mallikarjun v Divisional Manager, National Insurance Company Limited and another**', (2014) 1 SCC 396, when disability is 100% in case of a child, maximum compensation that can be awarded apart from medical expenses is Rs.6 lacs.

Heard learned counsel for the parties.

Perusal of the impugned Award shows that learned Tribunal has calculated the compensation, as reproduced above. It is not disputed that prior to the accident the appellant was doing agricultural labour work. As such, as per abovesaid Notification dated 22.2.2013 the appellant was entitled to minimum wages of skilled labourer i.e. Rs.5732/- (rounded off to Rs.5800/-) per month. Besides that injured appellant is also entitled to future prospects @ 40% which comes to Rs.2320/- per month. Thus, after adding the future prospects of Rs.2320/- the monthly income of the appellant comes to Rs.5800+2320=

Rs.8120/-. The age of the injured at the time of accident being 15 years, multiplier of 18 has correctly been applied by the Tribunal. Thus the total loss of income of the appellant would be $\text{Rs.}8120 \times 12 \times 18 = 17,53,920/-$. Admittedly medical bills Ex.P7 to Ex.P32 for a total sum of Rs.33,000/- have been produced, which expenditure is held to have been correctly awarded.

It is further borne out from the record that the appellant remained hospitalized from 14.4.2013 to 12.5.2013. As per testimony of PW4 Dr. Saquib Azad Siddiqui, Assistant Professor, Department of Neurosurgery, PGIMS, Rohtak the appellant was permanently disabled to the extent of 100% on account of head injury with severe Ataxia (staggering gait) and severe Dysarthria (difficulty in talking) with mild intellectual impairment (I.Q. 55). PW4 further stated that the appellant needs physiotherapy and attendant on a long term basis and was unable to do any work. PW6-Dr. Ravi Kanta, Senior Medical Officer, General Hospital, Jhajjar proved the disability certificate Ex.P12 of the appellant and testified that the Board found the appellant with 100% permanent disability as he had head injury. PW6 further deposed that appellant will be unable to perform his daily routine and will require attendant for whole life as there is no chance of recovery from the disability. As per disability certificate Ex.P6 dated 7.4.2015 and the disability certificate Ex.P12 dated 10.6.2015 the age of the appellant was shown to be 16 years. Ld. counsel for the Insurance Company has not disputed the above factual position.

Accordingly, in these facts and circumstances, I hold the appellant-claimant entitled to following compensation, re-worked as hereinunder:-

Sr.No.	Head	Compensation awarded by the Tribunal	Compensation re-worked in present appeal.
1.	On account of loss of income	Rs.48,000/-	Rs.48,000/-
2.	On account of expenditure on treatment and medicines etc.	Rs.33,000/-	Rs.33,000/-
3.	On account of transportation	Rs.25,000/-	Rs.25,000/-
4.	On account of attendant charges	Rs.1,00,000/-	Rs.2,00,000/-
5.	On account of special diet	Rs.20,000/-	Rs.30,000/-
6.	On account of pain and suffering	Rs.15,000/-	Rs.1,00,000/-
7.	On account of loss of amenities and enjoyment	Rs. 80,000/-	Rs. 2,00,000/-
8.	Future Medical expenses	Rs.50,000/-	Rs. 1,00,000/-
9.	On account of permanent disability	Rs.12,96,000/-	Rs.18,14,400/-.
	Total	Rs.16,67,000/-	Rs. 25,50,400/-
	Difference	Alongwith interest @ 7.5% as awarded by the Ld. Tribunal.	Rs. 8,83,400/-

Before parting it may be pointed out that Hon'ble Supreme Court in **Mallikarjun's** case (supra) has further held that the compensation has to be determined in the facts and circumstances of each case. Accordingly, the Insurance Company can derive no benefit from the relied upon judgment as the same is distinguishable, and as noticed above, the Award in the present case is being enhanced in the facts and circumstances of the present case.

For the reasons stated above, the appeal bearing FAO 1026/2017 filed by the claimant/appellant is allowed and impugned Award stands modified as above; while the appeal bearing FAO No.7766/2016 filed by the Insurance Company stands dismissed.

A copy of this order be placed on the file of FAO 7766/2016.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

12.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No