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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4794-2017 (O&M)
Date of decision: March 21, 2023

Sushil @ Sachin

….Appellant

versus

Sandeep Kumar and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Veena Hooda, Advocate for appellant.

Mr. Nikhil Chopra, Advocate for respondent No.3-Insurance Company.

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ARUN MONGA, J. (ORAL)

Aggrieved by inadequate compensation, the claimant has assailed herein an Award dated 23.01.2017 rendered by learned Motor Accidents Claims Tribunal, Jhajjar (for brevity, "Tribunal"), seeking enhancement thereof.

2. Succinct facts, as noted by learned Tribunal, are as below:

> "*……on 30.9.2013, he and his cousin Vikash son of Jagdev Singh were going to attend their classes at Nav Jyoti Sr.Sec. School, Village Lakariya on motorcycle bearing registration No.HR-77- 3339 which was being driven by Vikas and he (petitioner) was pillion-rider on it. At about 10.30 am, when they were crossing the by-pass cut of Village Lakariya, a Santro Car bearing registration No.HR-06R-2171 (the offending Car) which was being driven by respondent no.1 in a rash and negligent manner and at a very high speed, came from the side of Rohtak and hit their motorcycle. As a result of this, both the motorcyclists fell down on the road and the right leg of the petitioner was crushed under the rear tyre of the offending Car. After causing the accident, respondent no.1 lost his control over the offending Car and struck against the divider of the road. His cousin Vikash shifted the petitioner to PGIMS, Rohtak and then, he was shifted to Base Hospital, Delhi where he was treated, operated and remained hospitalised w.e.f.30.9.2013 to 31.10.2013 and he is still undergoing treatment as outdoor patient. FIR No.285 dated 10.10.2013 under Sections 279, 337 IPC at Police Station Beri, Distt.Rohtak was got registered by the petitioner against the driver of the offending Car…….*"

3. Upon notice, respondents No.1 and 2 filed joint written statement denying factum of accident as well as involvement of Car in question. It was averred that no such accident took place due to negligence on the part of respondent No.1

while driving the Car in question. A false FIR was lodged against respondent No.1. Petition was filed on the basis of false and concocted story. It was also pleaded that respondent No.1 was having a valid and effective driving licence and Car in question was insured with respondent No.3 at the relevant time.

3.1 Respondent No.3-Insruance Company in its written statement also denied the factum of accident and involvement of Car in question in the alleged accident. It was pleaded that respondent No.1 was not holding valid and effective driving licence to drive the Car in question at the time of accident and that respondent No.2 had violated the terms and conditions of insurance policy. Further it was pleaded that amount claimed by appellant-claimant was highly excessive. Prayer for dismissal of claim petition was made.

4. Based on rival pleadings, learned Tribunal framed the following issues:

> "*1. Whether the accident, resulting into the injuries on the person of Sushil @ Sachin (minor) took place due to rash and negligent driving of vehicle i.e., Santro Car bearing registration No.HR-06R-2171 by respondent no.1, as alleged?OPP.*
> *2. If Issue No. 1 is proved in affirmative, whether the petitioner is entitled to compensation, if so, to what amount and from whom? OPP.*
> *3. Whether the petition is not maintainable in the present form?OPR.*
> *4. Whether respondent no.1 was not holding a valid and effective driving licence on the date of alleged accident, if so its effect?OPR-3.*
> *5. Whether respondent No.2 had contravened the terms and conditions of insurance policy, if so its effect? OPR-3.*
> *6. Relief.*"

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 to 5 in favour of claimant and against respondents. Consequently, compensation of Rs.1,90,000/- was computed and awarded in favour of claimant.

6. I have heard competing contentions of both learned counsels and have gone through case file with their assistance.

7. Learned counsel for appellant-claimant argues that appellant suffered permanent functional disability which will affect his earning capacity for life time due to amputation of his right leg below knee. In fact, disability should have been assessed

as 100%, she would argue, as appellant is unable to do anything effectively. At the time of accident, appellant was 17 years of age and his disability, as medically assessed, is 65%. Learned counsel further submits that appellant spent a sum of Rs.57,650/- on his medical treatment of serious injuries suffered by him in the accident. He is now dependent on others for his livelihood.

7.2 Learned counsel for appellant would argue that appellant has to purchase artificial limb from time to time, as it lasts for a limited time span. The cost of limb is Rs.4,00,000/- and life of the limb is 5-6 years. Going by the age of appellant, he shall have to purchase the limb at least for 6 times during his life time. In support of her argument, learned counsel for appellant relies on a decision of this Court rendered in FAO-1877-2017 titled Deepak versus Kulbir Singh and another, decided on 25.01.2023.

7.3 Learned counsel would further argue that learned Tribunal has granted less amount on account of pain and suffering as well as on account of transportation, attendant and special diet etc. She argues that appellant is also entitled for compensation on account of loss of amenities of life, loss of marriage prospects and loss of income due to disability and disfigurement. To buttress her arguments, learned counsel relies on a decision rendered by the Supreme Court in the case of **Mohd. Sabeer @ Shabir Hussain versus Regional Manager, U.P. State Road Transport Corporation** reported in **2023 AIR (Supreme Court) 186**.

8. Per contra, learned counsel for respondent No.3-Insurance Company opposes the prayer of appellant and submits that respondent No.1 was not holding valid and effective driving licence at the time of accident and respondent No.2 has violated terms and conditions of the Insurance Policy.

9. Having heard rival contentions and on perusal of impugned award, I find that the submissions made herein by learned counsel for respondent No.3 as noted in para-8 above, were also raised before learned Tribunal which were duly considered and repelled by recording sound and sufficient reasons consistent with record and the

applicable law. I am inclined to agree with the same. Respondent No.3 has not filed any appeal or cross objections in the case.

10. In **Mohd. Sabeer @ Shabir Hussain's case (supra)**, the Supreme Court has held as under:

> "***<u>FUTURE PROSPECTS</u>***
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> *17. The High Court has not applied the quantum for future prospect in the compensation granted. In its reasoning, the High Court has stated that the Income tax returns relied upon by the Appellant show that despite the injury the Appellant's income had subsequently increased and hence it cannot be said that there is a loss of future earnings.*
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> *18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.*
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> *19. The accident that caused the injury took place on 12.06.2009. The acknowledgement of both the Income Tax Returns produced by the Appellant show that Tax Returns were till 31.03.2008 and 31.03.2009. Both the Income Tax Returns produced as proof of income were from before the accident took place, and hence the High Court's finding that the income of the Appellant has increased after the disability is incorrect.*
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> *20. It is also to be noted that even if the income of the Appellant had increased after the accident, it would not be enough grounds to disable the Appellant from claiming compensation for future prospect as the rise in income may be attributed to multiple other factors.*
>
> *21. In light of* ***National Insurance Company Limited v. Pranay Sethi & Others (2017) 16 SCC 680****, the applicable 40% addition of future prospects will be given as compensation to the Appellant herein.*
>
> ***<u>COMPENSATION FOR THE PURCHASE AND MAINTENANCE OF THE PROSTHETIC LEG</u>***
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> *22. The High Court has awarded a compensation of Rs.5,20,000/- for the prosthetic limb and Rs.50,000/- towards repair and maintenance of the same. The Appellant submits that the cost of the prosthetic limb itself is Rs. 2,60,000/- and the life of the prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs.15,000 to Rs.20,000/-. This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of Anant Son of Sidheshwar Dukre (Supra) that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:*
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>> *"In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a*

> *full life and enjoy those things and amenities which he would have enjoyed, but for the injuries."*
>
> *"The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident."*

23. As per the current compensation given for the prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/-.

NON-PECUNIARY COMPENSATION

24. The High Court has upheld the compensation awarded by the Ld. Tribunal for non-pecuniary damages, which comes to Rs. 3,00,000/- in total. Considering the nature of the permanent disability caused by the accident and the effect it will have on the Appellant's life, this Court is of the opinion that the compensation provided by the High Court for non-pecuniary heads is inadequate.

*25. In **R.D. Hattangadi v. Pest Control (India) (P) Ltd. (1995) 1 SCC 551** dealing with the different heads of compensation in injury cases this Court held that:*

> *"Broadly speaking while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."*

26. In light of the above decision of this Court and the facts and circumstances of the case at hand, the compensation to be awarded is as follows:

- *I. Compensation for pain and suffering – Rs. 2,00,000/-*
- *II. Compensation for Loss of Amenities of Life – Rs. 2,00,000/-*
- *III. Compensation for disability and disfigurement – Rs. 2,00,000/-*

CONCLUSION

27. We are of the opinion that while awarding compensation in cases of permanent disability caused to claimants, the courts must look at the case in totality, and must consider the socio-economic background of the claimants. The Appellant herein comes from an economically weaker section of the society.
28. It is almost universally seen that persons from marginalized backgrounds often face an additional layer of discrimination due to bodily disabilities. This is because persons from marginalized sections of the society already face severe discrimination due to a lack of social capital, and a new disability more often than not compounds to such discrimination. In such circumstances, to preserve the essence of justice, it becomes the duty of the Court to at the very least restore the claimant as best as possible to the position he was in before the occurrence of the disability, and to do so must award compensation in a liberal manner.
29. While no material compensation can completely negate the trauma and suffering that the injured and his family faces, the law only knows the language of monetary compensation in such cases. It then becomes to duty of the court to translate the provisions of monetary compensation into a fabrication that helps the injured and his family in coping with their loss."

11. In my opinion, aforesaid ratio is apt to be applied in the present case as well. In the premise and applying the principles laid down in cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, **National Insurance Co. Ltd. v. Pranay Sethi,** reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153** and **Mohd. Sabeer @ Shabir Hussain versus Regional Manager, U.P. State Road Transport Corporation** reported in**2023 AIR (Supreme Court) 186**, I am of the view that compensation for the injuries suffered by appellant deserves enhancement.

11.1 In view of the foregoing discussion, computation of compensation under various heads is determined/ modified as below:

Injures	Sushil @ Sachin
Date of accident	30.09.2013
Age	17 years
Marital Status	Unmarried
Injuries	Amputation of right leg below knee
Permanent disability	65%
Occupation	Student
Minimum wages	Rs.5,860/- per month
Annual Income	Rs.5,860 x 12 = Rs.70,320/-

Future prospects @ 40%	Rs.28,128/-
Total	Rs.98,448/-
Loss of future earnings @ 65% by applying multiplier of 18	Rs.98,448/- x 65% x 18 = Rs.11,51,841/-
Prosthetic limb	Rs.4,00,000/-
Durability of prosthetic limb	5-6 years or maximum 7 years
Number of prosthetic limb which will be required till the age of 60 years	Rs.4,00,000/- x 6 = Rs.24,00,000/-
Maintenance and repair cost	Rs.5,00,000/- (lumpsum)
Medical expenses	Rs.57,650/-
Attendant charges	Rs.11,802/-
Conveyance	Rs.10,000/-
Special Diet	Rs.30,000/-
Pain & Suffering	Rs.2,00,000/-
Loss of amenities of life	Rs.2,00,000/-
Loss of marriage prospects	Rs.5,00,000/-
Loss due to disability and disfigurement	Rs.2,00,000/-
Total	Rs.56,61,293/-
Awarded compensation	Rs.1,90,000/-
Enhanced amount of compensation	**Rs.54,71,293/-** (Rs.56,61,293/- - Rs.1,90,000/-)

12. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to the claimant along with interest, as awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimant within a period of 2 months of his approaching the insurance company along with web print of instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Enhanced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimant.

13. Disposed of accordingly.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 21, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No