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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3044-2018 (O&M)
Reserved on : 24.01.2023
Date of decision : 31.01.2023

VirenderAppellant

Versus

Rajesh and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Lalit Kumar Narang, Advocate for the appellant.

Ms. Meenakshi Bali, Advocate for
Mr. Krishan Kant, Advocate for respondent No.3.

ALKA SARIN, J.

The present appeal has been preferred by the injured claimant-appellant against the award dated 18.07.2016 passed by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as ‘Tribunal’) whereby the following compensation has been awarded to him :

Sr. No.	Heads	Compensation Awarded
1	Monthly income of the injured	Rs.8000/-
2	Compensation on account of disability	Rs.1,00,000/-
3	Medical Bills	Rs.2,94,579/-
4	Loss of work	Rs.16,000/-
5	Pain and sufferings	Rs.25,000/-

6	Diet and nutrition & transportation etc.	Rs.25,000/-
7	Total Compensation	Rs.4,60,579/-
	Interest	7.5% per annum

During the pendency of the present appeal, the claimant-appellant was directed to appear before the Medical Board to be constituted by the Medical Superintendent, PGIMS, Rohtak to assess his functional disability. The certificate has since been received. As per the certificate, the claimant-appellant is stated to be suffering from 88% permanent disability on account of Transhumeral (Above Elbow) lower 1/3rd arm, right side of dominant hand.

Learned counsel for the claimant-appellant would contend that the income of the claimant-appellant was assessed as Rs.8,000/- per month and it has come in the evidence that the claimant-appellant remained admitted for two months in the hospital. The medical bills totaling Rs.2,94,579/- had already been placed on the record and were duly proved. Learned counsel would further contend that the right hand of the claimant-appellant has been amputated leading to 88% permanent disability and that since the claimant-appellant was doing the work of a labourer, hence, 88% disability should be treated as his functional disability. It is further the contention of learned counsel that no future prospects had been granted as laid down by the Hon’ble Supreme Court in the case of **Pappu Deo Yadav Vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** and that even the amounts granted i.e. Rs.16,000/- towards loss of work, Rs.25,000/- towards pain and sufferings and Rs.25,000/- towards diet and nutrition and transportation etc., are also on the lower side.

Per contra, learned counsel for respondent No.3-Insurance

Company has contended that 88% is the disability qua a limb and cannot be treated as functional disability. It is further the contention of learned counsel that sufficient amounts had already been awarded to the claimant-appellant and there is no scope for further enhancement.

Heard.

In the present case the claimant-appellant was 27 years of age on the date of the accident i.e. 27.12.2014. The income of the claimant-appellant was assessed as Rs.8,000/- per month which has not been challenged by respondent No.3-Insurance Company by way of an appeal or cross-objections.

It has been held by the Hon'ble Supreme Court in the cases of **Pappu Deo Yadav (*supra*) and Sandeep Khanuja Vs. Atul Dande & Anr. [2017 (1) RCR (Civil) 1017]** that where the working capability of the injured is affected due to the permanent disability, future prospects should be awarded. Keeping in view the fact that the claimant-appellant was doing the work of a labourer and there is 88% permanent disability qua his right hand, this Court deems it appropriate to assess the functional disability of the claimant-appellant as 88%. Taking the functional disability of the claimant-appellant as 88%, his income is assessed as Rs.7040/- per month and an addition of 40% would be made towards future prospects. Since the age of the claimant-appellant was 27 years on the date of the accident, a multiplier of '17' is applied. The Tribunal had awarded only an amount of Rs.25,000/- towards pain and sufferings and Rs.25,000/- towards diet and nutrition and transportation etc. However, keeping in view the long hospitalization and the fact that the dominant arm of the claimant-appellant has been amputated, this Court deems it appropriate to enhance the amount under the heading of

pain and sufferings to Rs.2,50,000/-. No amount has been awarded towards loss of amenities of life. In the present case the claimant-appellant was 27 years of age on the date of the accident and since his dominant arm has been amputated, the Tribunal ought to have awarded some amount under the head of loss of amenities of life. Hence, this Court deems it appropriate to award an amount of Rs.5,00,000/- under the head of loss of amenities of life. No amount has been awarded towards attendant charges. Keeping in view the fact that minimum wages at the relevant time i.e. in the year 2014 for a skilled worker were Rs.6029.50/- per month and for a 24 hour attendant for a month the attendant charges would have been Rs.12,059/- and since the claimant-appellant remained admitted for a period of two months, an amount of Rs.24,118/- is awarded towards attendant charges. The amount of Rs.2,94,579/- awarded by the Tribunal towards the payment of medical bills is maintained as also the amount of Rs.25,000/- awarded towards diet and nutrition and transportation etc. is also maintained.

In view of the above, the total compensation to which the claimant-appellant is entitled is re-worked as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income of the injured	[8000 x 12] =Rs.96000/-
2	Annual Income as per 88% functional disability	Rs.84,480/- (Rs.7040x12)
3	Future Prospects @ 40%	[84480+33792]= Rs.1,18,272/-
4	Multiplier of 17	[118272x17] = Rs.20,10,624/-
5	Loss of Amenities of life	Rs.5,00,000/-
6	Pain and sufferings	Rs.2,50,000/-
7	Diet and nutrition & transportation etc.	Rs.25,000/-
8	Medical Bills	Rs.2,94,579/-
9	Attendant Charges	Rs.24,118/-

10	Total Compensation	Rs.31,04,321/-
	Amount Awarded by the Tribunal	Rs.4,60,579/-
	Enhanced amount	Rs.26,43,742/-

The enhanced amount shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount. It is made clear that the claimant-appellant would not be entitled to interest for 487 days, as ordered on 23.09.2019 while condoning the delay in filing the appeal.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

31.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO