

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

FAO 6411/2017(O&M)

Date of decision: 25.05.2023.

Vipul Gupta

.....Appellant

Vs.

Devender Sharma and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. RD Yadav, Advocate for the appellant.
 Mr. Amit Goyal, Advocate for respondent no.3.

Nidhi Gupta, J.

CM 20480-CII/2017.

Since there is delay of 53 days in filing the appeal, aforesaid application has been filed seeking condonation of said delay.

2. For the reasons stated in the application, the same is allowed and delay of 53 days in filing the appeal is condoned.

Main Appeal.

3. Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.33,28,000/- granted by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') vide Award dated 17.2.2017 passed in MACP No.372/2015 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

4. Ld. Tribunal on the appraisal of facts, pleadings and evidence on record held that the appellant had been injured in a motor vehicular accident that took place on 8.6.2014 due to rash and negligent driving of Car bearing registration No. HR-36S-9190 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3. The Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation was joint and several.

5. Ld. counsel for the appellant seeks enhancement of compensation inter alia, on the ground that appellant was 12 years old at the time of accident and due to injuries suffered in the accident appellant has been rendered 100% permanently disabled. It is submitted that the appellant is not able to move himself and needs one Attendant for 24 hours. It is stated that despite the fact, very meagre compensation has been awarded by the Id. Tribunal towards Attendant charges. It is further submitted that nothing has been granted towards future prospects.

6. In response, Id. counsel for the Insurance Company submits that compensation awarded by the Tribunal is just and fair in the facts and circumstances of the case and does not need to be enhanced.

7. No other argument has been raised.

8. Heard Id. counsel.

9. Perusal of the record of the case reveals that as per PW7 Dr.

AK Saini, appellant has suffered 100% permanent disability on account of paraplegia due to lower thoraco lumbar spine fracture, in other words, the

appellant is 100% disabled due to spinal cord injury and would therefore, not be able to move his lower body. As a result, the appellant cannot stand, what to talk of walk. PW7 has further deposed that appellant is totally bed ridden and cannot even perform daily functions such as going to toilet, bathing etc. Learned Counsel for the respondent Insurance Company is unable to controvert these findings.

10. In the backdrop of the above facts, ld. Tribunal has taken notional income of the appellant as Rs.5000/- per month and applying multiplier of 15 had held the appellant entitled to a sum of Rs.9 lacs i.e. Rs.5000x12x15, towards loss of income. PW3 Ghansham Sharma has deposed that he was working as Attendant of the appellant and was taking a salary of Rs.10,000/- per month. However, ld. Tribunal took salary of the Attendant as Rs.5000/- per month and held that the appellant will require an Attendant at least for next 25 years and has awarded a sum of Rs.15 lacs towards Attendant charges (Rs.5000x12x25). Ld. Tribunal has awarded Rs.90,000/- towards physiotherapy charges undergone by the appellant from 1.10.2014 to December 2015. Ld. Tribunal further granted Rs. 1 lac towards future treatment; and a sum of Rs.50,000/- towards special diet; Rs.2 lacs for physical pain and suffering; Rs. 1 lac for loss of amenities and loss of marriage prospects and studies etc.

11. Perusal of the above calculations shows that nothing has been granted by the ld. Tribunal towards future prospects. Keeping in view the fact that the appellant was 12 years of age, future prospects have to be added @ 40%. Further, it is writ painfully large on the record of the case that the appellant has been rendered 100% disabled at the tender age of 12. Needless to say, the studies, future enjoyment, marriage prospects, in fact, the entire life

of the appellant, has come to a standstill, and he would remain a dependent for the rest of his life. Accordingly, in my very firm view, above amounts awarded by the Id. Tribunal under various heads are abysmally inadequate in the facts and circumstances of the present case.

12. Thus, in view of the facts as noticed above, this Court deems it fair, just and proper and holds that the appellant is entitled to enhanced compensation, as reworked hereunder:-

Sr.No.	HEAD	MACT (in Rupees)	APPEAL (in Rupees)
1.	Medical expenses	3,88,000/-	3,88,000/-
2.	Physical pain and suffering	2,00,000/-	5,00,000/-
3.	Loss of amenities	1,00,000/-	5,00,000/-
4.	Physiotherapy	90,000/-	1,00,000/-
5.	Loss of income	9,00,000/-	9,00,000/-
6.	Future prospects @ 40%	NIL	3,60,000/-
7.	Attendant charges	15,00,000/-	20,00,000/-
8.	Future medical expenses	1,00,000/-	1,00,000/-
9.	Special diet	50,000/-	50,000/-
10.	Total	33,28,000/-	48,98,000/-

13. Appellant shall be entitled to interest at the rate of 7.5% per annum on enhanced compensation from date of filing of claim petition till realization.

14. Appeal is accordingly, **allowed**, in above terms.

15. Pending applications, if any, stand disposed of.

25.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No