

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4406 of 2018
Reserved on 12.04.2023
Date of Decision : 17.04.2023

Krishan KumarAppellant

VERSUS

Anil Kumar and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Kotla, Advocate for the appellant.
Mr. Rajneesh Malhotra, Advocate for respondent No.3.

ALKA SARIN, J.

1. The present appeal has been preferred by the injured claimant-appellant against the award dated 04.04.2018 passed by the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as the ‘Tribunal’) aggrieved by the quantum of compensation awarded. Since the factum of the accident is not in dispute, the facts are not being repeated for the sake of brevity.
2. The Tribunal on the basis of the evidence on the record had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Annual income of the injured	Rs.2,48,521/-
2	Multiplier of 9	Rs.22,36,689/-
3	Medicine and Treatment	Rs.19,26,562/-
4	Costs of Transportation, Attendant, Special Diet and loss of income	Rs.2,00,000/-
5	Loss of future amenities of life	Rs.1,00,000/-
6.	Pain and Sufferings	Rs.1,00,000/-
	Total Compensation	Rs.45,63,251/-

3. Learned counsel for the claimant-appellant submitted that the Tribunal had assessed the annual income of the claimant-appellant as Rs.2,48,521/- per annum and had applied a multiplier of 9. Learned counsel would contend that since it is a case of 100% permanent disability, the future prospects also ought to have been applied and since the age of the claimant-appellant at the time of the accident was 56 years, hence, an addition of 10% ought to have been made towards future prospects. Counsel would further contend that the amount awarded under the heads Attendant Charges, Pain and Suffering, Special Diet and Transportation are also on the lower side.

4. Per contra, learned counsel for respondent No.3 has contended that a huge amount has already been granted as compensation by the Tribunal and there is no scope for any enhancement.

5. Heard.

6. In the present case undisputedly, as per the disability certificate Ex.P/183, the claimant-appellant has suffered 100% permanent disability on account of a head injury with weakness of left side of body with incontinence of urine and stool. The claimant-appellant was rendered bed-ridden and till date his condition remains the same. PW-2 Dr. Narender Ahlawat, from Cygnus Maharaja Aggarsain Hospital, Panipat deposed that the claimant-appellant remained admitted in his hospital and that he had suffered head injury with loss of consciousness and CT Scan of brain was suggestive of fracture of left frontal bone with right fronto parietal right basal ganglia haemorrhage for which he was operated upon. A knee brace was also applied for left hip fracture and dislocation by an orthopaedic surgeon. Post operatively the claimant-appellant was on ventilator support.

On 11.01.2015 he was referred to a higher centre for better treatment. On

10.03.2015 the claimant-appellant was again admitted in the hospital and his cranioplasty and VP Shunt was done. Again on 11.06.2015 the claimant-appellant was admitted and tracheostomy removal was done. Yet again on 25.07.2015 the claimant-appellant was admitted in the hospital for VP Shunt blockage and seizure. He also proved the OPD bills and indoor treatment bills. PW-1 Dr. Praveen Kumar Bansal of the Asian Institute of Medical Science, Faridabad deposed that the claimant-appellant remained in the hospital from 23.01.2015 to 04.03.2015 and when he was discharged he was bed-ridden and his general condition was not good as he was not able to identify any person. PW-3 Amit Kumar, Data Entry Operator, Fortis Memorial Hospital, Gurugram stated that the claimant-appellant remained admitted in the hospital from 11.01.2015 to 23.01.2015. PW-6 Parmod Kumar, Salesman, Sanyog Pharmacy operating from Maharaja Aggarsain Hospital, Panipat proved the bills. PW-7 Dr. Pardeep Kumar, Orthopaedic Surgeon, Civil Hospital, Panipat proved the disability certificate Ex.P-183 according to which the claimant-appellant has suffered 100% permanent disability on account of head injury. The Supreme Court in the case of **Pappu Deo Yadav Vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** has held as under :

“12. In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation

for loss of future prospects, @ 40% (following the Pranay Sethi principle).

13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court re-assessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too

diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity.”

7. The Tribunal ought to have made an addition of 10% towards future prospects keeping in view the age of the claimant-appellant.

8. Further, the Supreme Court in the case of **Abhimanyu Partap Singh Vs. Namita Sekhon & Anr. [2022 (3) RCR (Civil) 557]** had assessed the attendant charges for the injured who was totally confined to the bed as Rs.5000/- per month for whole life, calculating the compensation applying a multiplier of 18.

9. In the present case the minimum wage at the time of the accident i.e in the year 2015 was Rs.5,812/- per month and hence the appellant who is totally confined to bed would be entitled to attendant charges @ Rs.5,812.75 rounded off to Rs.5,900 x 12 (Rs.70,800/- per annum) x 9 i.e the multiplier applicable in the present case. The Tribunal has awarded compensation of Rs.1 lakh under the head Pain and Sufferings. Keeping in view the fact that the claimant-appellant is confined to bed and has undergone immense mental shock and agony, accordingly the amount is enhanced to Rs.5 lakhs. The amount awarded under the head Medicines and Treatment is maintained. The amount awarded under the head Costs of Transportation and Special Diet is also maintained. An amount of Rs.1 lakh has been awarded by the Tribunal under the head Loss of Amenities, which is on the lower side. Keeping in view the vegetative condition of the claimant-appellant, the said amount is enhanced to Rs.2 lakhs.

10. Accordingly, the compensation is re-worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income of the injured	Rs.2,48,521/-
2	Addition of 10% on account of future prospects	Rs.2,73,373/- (Rs.2,48,521/- + Rs.24,852/-)
3	Multiplier of 9	Rs.24,60,357/-
4	Medicine and Treatment	Rs.19,26,562/-
5	Costs of Transportation and Special Diet	Rs.2,00,000/-
6	Pain and Sufferings	Rs.5,00,000/-
7	Attendant Charges	Rs.5900/- x 12 x 9 (Rs.6,37,200/-)
8	Loss of Amenities	Rs.2,00,000/-
9	Grand Total	Rs.59,24,119/-
	Compensation awarded by Tribunal	Rs.45,63,251/-
	Difference of compensation	Rs.13,60,868/-

11. The enhanced amount of **Rs.13,60,868/-** over and above the amount already awarded by the Tribunal shall carry interest @ 7.5% per annum from the date of filing of the claim petition till realization.

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

17.04.2023
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(ALKA SARIN)
JUDGE

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