

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.7032 of 2017
Reserved on : 12.05.2023
Date of Decision : 29.05.2023

Abdul Satar @ Tara Chand

....Appellant

VERSUS

Jaswinder and Others

....Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dheeraj Narula, Advocate for the appellant.

Mr. Vinod Gupta, Advocate
for respondent No.4-Insurasnce Company.

Service of respondent Nos.1 to 3 dispensed with
vide order dated 26.07.2018.

ALKA SARIN, J.

1. The present appeal has been preferred by the injured claimant-appellant against the award dated 12.05.2017 passed by the Motor Accident Claims Tribunal, Sirsa (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 adverted to for the sake of brevity.
2. The Tribunal on the basis of the pleadings and the evidence on the record awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Loss of future income on account of 50% disability	Rs.1,62,000/-
2	Pain and suffering	Rs.50,000/-
3	Attendant charges and special diet	Rs.10,000/-
4	Transportation charges	Rs.10,000/-
5	Loss of forced rest for three months	Rs.9,000/-
	Total compensation	Rs.2,41,000/-
	Interest	9% per annum

3. Learned counsel for the claimant-appellant has contended that no amount has been awarded towards future prospects and the amount awarded under the other heads is also on the lower side. Learned counsel for the claimant-appellant has further contended that even the salary of the claimant-appellant has not been taken as per the minimum wages prevalent at the time of accident i.e. in the year 2012.

4. *Per contra* learned counsel for respondent No.4-Insurance Company has contended that the compensation awarded is already in excess and hence there is no scope of any further enhancement.

5. I have heard learned counsel for the parties.

6. In the present case the claimant-appellant herein in order to prove his disability examined Dr. Suraj Bhan Kamboj as PW3 who tendered in evidence his affidavit as Ex.PW3/A. He deposed that on 17.09.2014 the claimant-appellant was examined by a medical board of which he was one of the members and issued disability certificate to the extent of 50% on account of fracture of right shaft of femur with stiffness at right hip and knee joint with difficulty in sitting cross legged on the floor. There is no evidence to the contrary nor is there any evidence on the record to dispute the disability certificate produced by the claimant-appellant. Hence, the disability was rightly assessed as 50% by the Tribunal. The minimum wages for an unskilled worker at the time of accident i.e. in the year 2012 was Rs.4,847/-, which can be rounded off to Rs.5,000/- per month, and accordingly the salary of the claimant-appellant is assessed as Rs.5,000/- per month.

7. Hon'ble 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.”

8. In view of the law laid down by the Hon’ble Supreme Court and keeping in view the age of the claimant-appellant, an addition of 10% ought to have been made towards future prospects.

9. In the present case, keeping in view the age of the claimant-appellant, a multiplier of ‘9’ would have to be applied. The claimant-appellant remained admitted in hospital for a period of 05 months. Taking the minimum wages as Rs.5,000/- per month, the claimant-appellant would be entitled to Rs.5,000/- per month for a period of 05 months towards attendant charges. The amount awarded under the head ‘Transportation Charges’ is maintained. The claimant-appellant, who remained admitted in hospital for a period of 05 months and had undergone various surgeries, has been awarded only an amount of Rs.50,000/- towards ‘Pain and Suffering’ which is on the lower side and the same is enhanced to Rs.2,00,000/-. The claimant-appellant is awarded an amount of Rs.10,000/- towards ‘Special Diet’ and an amount of Rs.1,00,000/- towards ‘Loss of Amenities of Life’.

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

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.5,000/-
2	Income for 05 months	[Rs.5,000 x 5] = Rs.25,000/-
3	Loss of income as per 50% disability	[Rs.25,000 x 50/100] = Rs.12,500/-
4	Addition of 10% on account of future prospects	[Rs.12,500 + Rs.1,250] = Rs.13,750/-
5	Multiplier of ‘9’	[Rs.13,750 x 9] = Rs.1,23,750/-
6	Special Diet	Rs.10,000/-
7	Transportation	Rs.10,000/-
8	Pain and suffering	Rs.2,00,000/-
9	Attendant Charges	[Rs.5,000 x 5] = Rs.25,000/-
10	Loss of amenities of life	Rs.1,00,000/-
	Total Compensation	Rs.4,68,750/-
	Amount Awarded by the Tribunal	Rs.2,41,000/-
	Enhanced amount	Rs.2,27,750/-

11. The enhanced amount of compensation shall also attract interest @ 9% per annum from the date of filing of the claim petition till realization of the amount.

12. 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.

29.05.2023
jk

(ALKA SARIN)
JUDGE

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