

FAO No.5353 of 2018 (O&M)

-1-

222

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

FAO No.5353 of 2018 (O&M)
Date of Decision : 10.03.2023

Mohit Kumar

....Appellant

VERSUS

State of Haryana and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Paramveer Singh, Advocate for the appellant.

Mr. Saurabh Girdhar, AAG Haryana
for respondent Nos.1 and 2.

Mr. Shubham Gupta, Advocate for
Mr. D.P. Gupta, Advocate for respondent No.4.

ALKA SARIN, J. (Oral)

The present appeal has been preferred by the injured claimant-appellant challenging the quantum of compensation awarded vide the award dated 26.04.2018 passed by the Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as the 'Tribunal'). Since the factum of the accident is not in dispute, the facts of the case are not being adverted to for the sake of brevity.

The Tribunal in the present case had awarded the following compensation

Sr. No.	Heads	Compensation Awarded
1	Loss of Future Income	Rs.10,58,400/-
2	Attendant Charges	Rs.6,48,000/-
3	Medical Expenses and Treatment	Rs.1,22,626/-
4	Pain & Sufferings due to permanent disability	Rs.4,00,000/-
5.	Nutritious Diet	Rs.50,000/-
6.	Transportation	Rs.50,000/-
	Total Compensation	Rs.23,29,026/-

Learned counsel appearing on behalf of the claimant-appellant has contended that the claimant-appellant in the present case, as a result of the injuries received in the accident, suffered 100% disability. Learned counsel has further referred to the statement of PW-9 Dr. Vijay Bansal who specifically deposed that he was the member of the Medical Board and that the claimant-appellant is a case of spinal injury with paraplegia with bowel and bladder involvement. He further specifically deposed that the disability had been assessed as 100% and the same was permanent in nature. Learned counsel has contended that the amount awarded under the Head Attendant Charges is not in consonance with the judgment of the Supreme Court passed in the case of **Kajal Vs. Jagdish Chand & Ors. [(2020) 4 SCC 413]** nor were any future medical expenses awarded as was done in the **Kajal’s** case (supra). Learned counsel would further contend that the amount awarded under the Head Pain and Sufferings is also on the lower side and that no amount has been awarded for loss of marriage prospects. It is further the contention of the learned counsel that erroneously deduction of 50% has been made by the Tribunal which, as per the judgment of the Hon’ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar &**

FAO No.5353 of 2018 (O&M)

-3-

Ors. [(2011) 1 SCC 343] cannot be done in the case of injury and that deduction would be only in the case of fatal accident where the claimants were the dependant family members of the deceased.

Per contra, the learned counsel for the respondent No.4 has contended that the amount awarded is already on the higher side and there is no scope for enhancement.

I have heard learned counsel for the parties.

The Supreme Court in the case of Raj Kumar (supra) held that in the case of an injured claimant deduction is not to be made and the same would apply in the cases of a fatal accident where the claimants are dependant family members of the deceased. In view of the judgment of the Supreme Court in the case of Raj Kumar (supra), the finding of the Tribunal to the extent whereby 50% deduction has been applied is set aside.

In the case of Kajal (Supra) the Supreme Court while dealing with the case of 100% disability on the issue of Pain and Sufferings has held as under :

“26. Coming to the non-pecuniary damages under the head of pain, suffering, loss of amenities, the High Court has awarded this girl only Rs.3,00,000/-. In Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Ors.2013(10) SCALE 668: 2013(4) RCR (Civil) 295,, this Court while dealing with the issue of award under this head held that it should be at least Rs.6,00,000/-, if the disability is more than 90%. As far as the present case is concerned, in

addition to the 100% physical disability the young girl is suffering from severe incontinence, she is suffering from severe hysteria and above all she is left with a brain of a nine month old child. This is a case where departure has to be made from the normal rule and the pain and suffering suffered by this child is such that no amount of compensation can compensate.

27. One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation. While awarding this amount we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bedridden for life. Her mental age will be that of a nine month old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9 month old child. This girl will miss out playing with her friends. She

cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least Rs.15,00,000/-."

Further, under the head Loss of Marriage Prospects, an amount of Rs.3 lakh awarded by the Tribunal is upheld. The Supreme Court in the case of Kajal (supra) had also awarded an amount of Rs.5 lakhs for future medical treatment. In the case of Kajal (supra) the appellant therein had suffered head injury and was left with very low IQ and severe weakness in all her four limbs and suffered from severe hysteria and severe urinary incontinence. In the present case the claimant-appellant has been assessed to be a case of 100% disability inasmuch as PW-9 Dr. Vijay Bansal had specifically stated that the claimant-appellant was suffering from paraplegia with bowel and bladder involvement and his disability was assessed as 100%. There is no evidence on the record to the contrary.

In view of the above and in view of the judgment of the Supreme Court passed in the case of Kajal (supra), this Court deems it fit to award, taking the minimum wage at the time of the accident as Rs.7000/-

per month and applying a multiplier of 18, an amount of Rs.15,12,000/- as attendant charges. Medical expenses as awarded are maintained. Rs.5 lakhs is awarded for future medical expenses as per the judgment passed in the case of Kajal (supra). An amount of Rs.3 lakh is awarded under the head Loss of Marriage Prospects relying upon the judgment in the case of Kajal (supra). Further, the amount awarded under the head Pain and Sufferings is enhanced to Rs.6 lakhs keeping in view the judgment passed in Kajal’s case (supra). The amounts under the head Nutritious Diet and Transportation are maintained.

In view of the above, the re-assessed compensation is as under

Sr. No.	Heads	Compensation Awarded
1	Loss of Future Income	Rs.21,16,800 (9800 x 12 x 18)
2	Attendant Charges	Rs.15,12,000/-
3	Medical Expenses and Treatment	Rs.1,22,626/-
4	Pain & Sufferings due to permanent disability	Rs.6,00,000/-
5	Nutritious Diet	Rs.50,000/-
6	Transportation	Rs.50,000/-
7	Future Medical Expenses	Rs.5,00,000/-
8	Loss of Marriage Prospects	Rs.3,00,000/-
	Total Compensation	Rs.52,51,426/-
	Amount Awarded by the Tribunal	Rs.23,29,026/-
	Enhanced amount	Rs.29,22,400/-

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till realization of the entire amount.

FAO No.5353 of 2018 (O&M)

-7-

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.

March 10, 2023
tripti

(ALKA SARIN)
JUDGE

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