

2023:PHHC:149790

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-8053-2017 (O&M)
Date of Decision: November 23, 2023

Jiwan Singh @ Jeevan

...Appellant

VERSUS

Supinder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Arora and Mr.Vipul Sharma, Advocates
for the appellant.

Mr.R.S.Mann and Mr.Hardeep Singh, Advocates
for respondents No.1 and 2.

Mr.R.S.Sharma, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation granted by learned Motor Accident Claims Tribunal, vide Award dated 07.07.2017, on account of injuries sustained by him, in a motor vehicular accident, which took place on 10.12.2015.

On perusal of the evidence, brought on record, learned Tribunal had granted compensation to the extent of Rs.5,00,586/- and besides the same also, had ordered the Insurance company to pay the compensation, at

FAO-8053-2017

first instance and also gave liberty to the insurance company to seek recovery of the amount thereafter, from respondents No.1 and 2-driver and owner of the motorcycle bearing registration No.PB-12X-3689.

So far as, the fact of accident and manner of its taking place as well as the liability, so fastened, are concerned, it is pertinent to mention that none of the persons, who have been made liable, as such, have challenged the finding of liability upon them and thus, this issue warrants no further scrutiny.

Learned counsel for the parties heard.

As per the claim of the appellant-claimant, in pursuance of the accident in question, he had sustained injuries i.e. fracture on left leg, fracture acetabulum and other multiple injuries. He was firstly taken to Civil Hospital, Ropar, wherefrom, he was referred to PGI, Chandigarh, where he remained admitted from 10.12.2015 to 06.01.2016 and he was operated on 15.12.2015 and rod and screws were inserted in his left leg. Thereafter, he was again operated on 31.12.2015 and plate was inserted in his left pelvis hip. Again, infection had occurred in the left leg of appellant-claimant and he was again admitted in PGI, Chandigarh on 05.02.2016 and the rod, which was earlier inserted, was removed and three fixators were inserted on 08.02.2016 and he was discharged on 13.02.2016.

Taking into consideration the aforesaid injuries, which stands corroborated from the discharge cards Ex.P2 and Ex.P3, furthermore, it should also be noted that disability certificate Ex.P85 was proved by PW-2 Dr.Sudesh Pebam. In the disability certificate, it was observed that the patient was diagnosed; ***#BB Leg Grade-III A, # Acetebulum with shoulder.***

FAO-8053-2017

He is a case of Multiple Disability and his overall permanent physical/mental impairment was assessed to be 42%. Besides the same also, medical bills have been proved, which are Ex.P6 to Ex.P84.

In this backdrop, it is essential to note that the claimant asserted himself to be working as 'Pathi' and was earning Rs.10,000/- per month. However, on account of deficiency of documentary proof, with regard to the income, learned Tribunal had taken his monthly earnings to be Rs.7000/- being labourer. However, the observation, so made by learned Tribunal is erroneous. Pathi cannot be equated with the labourer. Definitely, Pathi stands on a better pedestal, as compared to the labourer. Considering him to be so, in the fitness of circumstances and in close proximity to the reality, his earnings, as such, are taken to be Rs.8,000/- per month.

The disability has been assessed to be 42%. It is the lower limb of the appellant-claimant, which got injured and related to the same, two surgeries were undergone by the appellant-claimant. Keeping in view the same and keeping in view the avocation, so followed by the appellant-claimant, there is no reason, as to why the functional disability, be not assessed as 42% only. As such, his functional disability is taken as 42%. As obviously, the appellant's occupational prospects have been adversely impacted, even his movements and day to day activities ought to have become restricted, on account of the disability. Thus now, in the light of the aforesaid observation, the compensation, ought to be worked upon.

As per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, keeping in view the age of the appellant-claimant to be 42 years years, an addition of 25%, on the count of

FAO-8053-2017

‘future prospects’ is to be made. Thus, after making this addition, his earnings are taken to be $\text{Rs.}8000+2000(25\%)=\text{Rs.}10,000/-$ per month, annual whereof, comes to be **Rs.1,20,000/-**.

In consonance with the *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is ‘14’ and also multiplying the same with 42% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as **Rs.1,20,000x14x42/100=Rs.7,05,600/-**.

The expenditure incurred on the treatment, on the basis of the medical bills Ex.P6 to Ex.P84, comes to be **Rs.1,17,786/-**, which is rounded off as **Rs.1,18,000/-**.

Besides the same, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of the conveyance for ‘to and fro’ to the hospital, as he was admitted twice in the hospital, substantial amount must have been spent by the family of the appellant-claimant. Taking the same into consideration, on the count of ‘transportation charges’ a sum of **Rs.20,000/-** is awarded.

Obviously, during the period of treatment and some time thereafter, in the minimum, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, another sum of **Rs.20,000/-** is granted.

Furthermore, for some period of time, after the accident, in the minimum and even, looking at his condition with disability and more particularly, looking at the kind of injuries sustained, the appellant-claimant must have been looked after by a by-stander/attendant throughout. Even if,

the appellant-claimant was being looked after only by his family members, then also, it should be noted that they could perform the role of care-giver, only by diverting their own time, from any form of gainful employment, which could have generated some income. Thus, on the count of ‘attendant charges’, a sum of Rs.20,000/- is granted.

On the count of ‘pain and suffering’, the compensation awarded by learned Tribunal i.e. Rs.20,000/- is on lesser side. Keeping in view the factual situation, as spelt out, the compensation awarded, on this count, stands enhanced to **Rs.50,000/-**.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.7,05,600/-
2.	Medical Bills	Rs.1,18,000/-
3.	Transportation charges	Rs.20,000/-
4.	Special rich diet	Rs.20,000/-
5.	Attendant charges	Rs.20,000/-
6.	Pain and suffering	Rs.50,000/-
	Total	Rs.9,33,600/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.9,33,600-5,00,586=Rs.4,33,014/-**. On the enhanced amount of the compensation i.e. **Rs.4,33,014 /-**, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

The impugned Award dated 07.07.2017 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award,

shall remain the same.

With the above observations, the present appeal stands allowed.

November 23, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No