

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.5843 of 2018
Date of Decision : 09.05.2023

Nirmal Singh

....Appellant

VERSUS

Sukhi Ram and Others

....Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. B.S. Brar, Advocate for the appellant.
Mr. Vikas Chatrath, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the injured claimant-appellant against the award dated 16.03.2018 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 reproduced for the sake of brevity.
2. The Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Medicines and treatment charges	Rs.11,99,693/-
2	100% disability	Rs.16,41,600/-
3	Cost of transportation, attendant, special diet and loss of income	Rs.2,00,000/-
4	Loss of future amenities	Rs.1,00,000/-
5	Pain and suffering	Rs.1,00,000/-
	Total compensation	Rs.32,41,293/-
	Interest	7.5% per annum

3. Learned counsel for the claimant-appellant would contend that present is a case of 100% disability and no amount has been awarded towards loss of future prospects. Keeping in view the age of the injured claimant-appellant, which was 25 years at the time of accident, an addition of 40% ought to have been made towards loss of future prospects. It is further the contention that the amount awarded under the heads of transportation, special diet, pain and suffering and loss of amenities is also on the lower side and that no amount has been awarded towards attendant charges.

4. *Per contra* learned counsel appearing on behalf of respondent No.3-Insurance Company has contended that already a huge amount has been awarded towards compensation by the Tribunal and there is no scope of enhancement.

5. I have heard learned counsel for the parties.

6. In the present case, the claimant-appellant received multiple grievous injuries including fracture in the backbone and was admitted in Ayushman Hospital, G.T. Road, Sewah, District Panipat for treatment and remain admitted there for a period of 1½ months and was stated to have spent more than Rs.15 lakhs on his treatment and that he was still under treatment. It was further averred that the claimant-appellant has been rendered 100% disabled. Dr. Sudeep Sangwan, Director, Ayushman Bhav Health Institute, Panipat stepped into the witness-box as PW5 and deposed that the claimant-appellant was brought to his hospital with history of roadside accident and had complaint of fracture T4 and T5 with displacement and complete paraplegia and was operated upon for the same and fixation of T4 and T5 was carried out and he was discharged on

01.10.2016. On 10.06.2017 the claimant-appellant was again admitted with complaints of bedsore with enteric fever with paraplegia and was discharged on 17.06.2017. Again, the claimant-appellant was admitted on 24.06.2017 with a history of bedsore and he was operated upon for the same and discharged on 01.07.2017 with treatment of bilateral trochanteric pressure sore with flap advancement. He also stated that the claimant-appellant had regularly been visiting his hospital for follow-up and further treatment. He proved discharge summary (Ex.P5 to Ex.P7) and also the bills (Ex.P8 to Ex.P40). PW4 Balwan Singh, Record Keeper, Madhumita Diagnostic Centre, Panipat proved receipts (Ex.P2 to Ex.P4) regarding MRI and CT scan. PW6 Mohd. Shadab, Record Keeper, New Kamal Medical Hall, Rohtak proved bills (Ex.P41 to Ex.P49). Bills (Ex.P59 to Ex.P72) were also tendered in evidence and a total amount of the bills tendered came to Rs.11,99,693/-, which has been rightly awarded by the Tribunal. PW3 Dr. Pardeep Kumar, Orthopaedic Surgeon, Civil Hospital, Panipat deposed that a Board of Doctors was constituted for assessment of disability of the claimant-appellant and he was also a member of the said Board and on examination of the claimant-appellant he was found to be 100% permanently disabled on account of complete paraplegia with bladder and bowel involvement. He proved the disability certificate as Ex.P1. In his cross-examination, he stated that in paraplegia, complete motor and sensory function of lower limbs are absent and the person was not able to move bilateral lower limbs and there was no chance of any improvement and the disability was permanent in nature. The income of the claimant-appellant was assessed as Rs.7600/- per month on the basis of minimum wages *qua* which learned counsel for the claimant-appellant has not raised a quarrel.

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 40% ought to have been made towards future prospects.

9. Further, Hon’ble Supreme Court in case of 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. In the present case, the minimum wages at the time of accident i.e. in the year 2017 was Rs.7600/- per month. The claimant-appellant herein, who is totally confined to bed, would be entitled to attendant charges @ Rs.7600/- per month x 12 (Rs.91200/- per year) x 18 i.e. the multiplier applicable in the present case. A consolidated amount of Rs.2,00,000/- has been awarded towards cost of transportation, attendant charges, special diet and loss of income. The same is accordingly modified

and an amount of Rs.16,41,600/- is awarded towards the attendant charges.

The amount awarded under the head loss of amenities of life is also on the lower side keeping in view the fact that the claimant-appellant is suffering from paraplegia and is bedridden. The amount is enhanced to Rs.2,00,000/-.

The amount awarded towards pain and suffering is enhanced to Rs.5,00,000/- keeping in view the fact that the claimant-appellant is confined to bed and has undergone immense mental shock and agony. The amount awarded towards medicines and treatment is maintained.

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

Sr. No.	Heads	Compensation Awarded
1	Annual income	[Rs.7,600 x 12] = Rs.91,200/-
2	Addition of 40% on account of future prospects	[Rs.91,200 + Rs.36,480] = Rs.1,27,680/-
3	Multiplier of 18	[Rs.1,27,680 x 18] = Rs.22,98,240/-
4	Medicines and treatment charges	Rs.11,99,693/-
5	Transportation and Special Diet	Rs.2,00,000/-
6	Pain and suffering	Rs.5,00,000/-
7	Attendant Charges	[Rs.7,600 x 12 x 18] = Rs.16,41,600/-
8	Loss of amenities	Rs.2,00,000/-
	Total Compensation	Rs.60,39,533/-
	Amount Awarded by the Tribunal	Rs.32,41,293/-
	Enhanced amount	Rs.27,98,240/-

11. The enhanced amount of compensation shall also attract interest @ 7.5% 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.

09.05.2023
jk

(ALKA SARIN)
JUDGE

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