

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**FAO No.759-2016 (O&M).
Date of Reserve: 03.03.2023
Date of pronouncement: 19.04.2023.**

Arvind

....Appellant.

VERSUS

Parveen Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Argued by: Mr. Raman Chawla, Advocate
for the appellant.

Service of Respondents No.1, 2 and 2(A)
was exempted vide order dated 01.04.2016.

Mr. Puneet Jain, Advocate for
respondent No.3-Insurance Company.

Sukhvinder Kaur, J.

1. By way of this appeal, appellant-claimant Arvind seeks enhancement of compensation of ₹4,84,047/- alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization, awarded to him by learned Motor Accident Claims Tribunal, Narnaul (for short, "the Tribunal") vide the award dated 11.08.2015 passed in MACT Petition No.251 of 2012, on account of injuries sustained by him in a motor vehicular accident that took place on 26.06.2011.
2. Appellant-Arvind filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation with the averments that on 26.06.2011 at about 3.00

P.M., when the appellant along with his maternal uncle Mukesh Kumar was waiting for conveyance at bus stand Jawahar Nagar for going to Satnali and was standing on the side of the road, in the meantime, a vehicle Bolero bearing registration No.UA-07Q/0022 being driven by respondent No.1 at high speed and in a rash and negligent manner came and hit the appellant, as a result of which the appellant fell down and became unconscious due to the injuries sustained in the accident. A First Information Report No.80 dated 27.06.2011 in respect of the accident was registered at Police Station Satnali, under Sections 279 and 337 of the Indian Penal Code against respondent-Parveen Kumar. After the accident, the appellant was taken to Krishna Hospital, Mahindergarh and after giving first-aid, he was taken to Kailash Hospital, Behror (Rajasthan), where he took the treatment as an indoor patient and after that he was taken to SMS, Jaipur and there also, he remained admitted as an indoor patient and thereafter, claimant is taking treatment from Manidhari Hospital, Jodhpur. As per the averments, in the claim petition, the appellant was having good physique and enjoying good health prior to the accident and at the time of the accident he was about nine years old and he was a brilliant student and was getting good marks in the examination. It has also been averred that about Rs.9,00,000/- have been spent upon his treatment, cost of attendants, taxi fares, telephone bills, special diet and medicines and in the future, more expenses are likely to be incurred upon his further treatment as claimant is still under treatment. He is bed ridden and had undergone major surgeries. In the future also he is likely to undergo more surgeries. The entire life of the claimant has been spoiled

and there is 100% permanent disability and he is not in the position even to do his daily routine and chores. He is in dire need of attendant even to do his daily routine. He is undergoing great physical pain as well as mental agony and it was prayed that compensation to the amount of Rs.50,000,00/- be granted.

3. The driver-Parveen Kumar, owners-Naresh Kumar and Anil Kumar as well as insurer-IFFCO Tokyo General Insurance Co. Ltd. were impleaded as respondents in the petition. Respondents contested the petition denying the occurrence of the accident and involvement of the vehicle in question in the accident. Respondent No.3-Insurance Company also raised objection that respondent No.1 was not holding a valid and effective driving licence at the time of accident and the vehicle was being driven in violation of the terms and conditions of the insurance policy. However, later on respondents No.1 and 2 were proceeded against ex-parte, when none appeared on behalf of them.

4. On the basis of the pleadings of the parties, issues were framed. Both the parties adduced evidence to discharge the onus behind the issues upon them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the petition and awarded a sum of ₹4,84,047/- as compensation to the appellant alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization. Respondents were held jointly and severally liable to pay compensation.

5. Feeling dissatisfied with the award dated 11.08.2015, the

appellant preferred the instant appeal, for enhancement of the compensation.

6. The submissions made by Mr. Raman Chawla, learned counsel for the appellant and Mr. Puneet Jain, learned counsel for respondent No.3-insurance company have been heard and record perused.

7. Learned counsel for the appellant/claimant has contended that the learned Tribunal has awarded only Rs.2,00,000/- for 100% permanent disability which is on the lower side. In case of 100% permanent disability, amount of Rs.5,00,000/- should have been awarded qua the disability only. He has argued that the Tribunal has awarded only Rs.1,84,047/- for treatment, medical bill and hospitalization but the claimant had spent Rs.10,00,000/- on his treatment, so this amount should also be enhanced. It has been urged that the Tribunal has only awarded a sum of Rs.1,00,000/- towards pain, suffering, mental shock and agony undergone by him due to the accident and has not considered these aspects in a right manner and has ignored that appellant was only a 10 years old brilliant student who was getting good marks in the exams and has not awarded a single penny qua future prospects of the permanent disabled person and has not assessed the loss of future income. He has vehemently contended that the entire life of the appellant has been spoiled in the accident and as per the disability certificate the appellant had sustained head injury and has become 100% permanently disabled and as per the opinion of doctor he won't be able to speak in the near future. He has contended that as the compensation awarded by the Tribunal is not the just compensation and is not sufficient to

prevent the life of the appellant from becoming more miserable and pitiable, so the amount of compensation might be enhanced and the present appeal may be allowed. He has also relied upon the judgment of Hon'ble Supreme Court in **Abhimanyu Partap Singh Vs. Namita Sekhon and another, 2022(3) R.C.R. (Civil) 557** to substantiate his contentions.

8. On the other hand, learned counsel for respondent No.3- Insurance Company has contended that a just amount of compensation has been granted by the Tribunal and award of the Tribunal does not call for any interference and has prayed that the present appeal may be dismissed. In support of his contentions, he has relied upon the judgment of Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar and another, 2011(1) SCC 343.**

9. It has been held by the Hon'ble Apex Court in **Kajal Vs. Jagdish and others, 2020 (4) SCC, 413** that "It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The

compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages”.

10. In view of this legal position in a injury case, the compensation can be assessed in pecuniary heads i.e. the loss of future earnings, medical expenses including future medical expenses, attendant charges and also in the head of transportation. In the non-pecuniary heads, the compensation can be computed for the mental and physical shock, pain and suffering present and in future, loss of amenities of life including loss of marital bliss, loss of expectancy in life, inconvenience, hardship, discomfort, disappointment, frustration, mental agony in life etc.

11. The Tribunal has awarded compensation of Rs.4,84,047/- detailed as under:-

Compensation on account of treatment medical bills, hospitalization etc.	Rs.1,84,047/-
Compensation on account of disability (100%)	Rs.2,00,000/-
Compensation Pain, suffering, transportation diet, attendant etc.	Rs.1,00,000/-
Total	Rs.4,84,047/-

12. The perusal of the impugned award reveals that the Tribunal under the head of treatment, medical bills, hospitalization etc. has awarded Rs.1,84,047/-, on the basis of the bills Ex.P-1 to Ex.P-241 amounting to Rs.1,84,047/-. One must take note of the fact that it is not possible to retain each and every bill. There is no dispute with regard to long period of

treatment and hospitalization of the claimant in various hospitals, so limiting the amount only to the bills which have been brought on record does not appear to be reasonable. Therefore, the amount payable for actual medical expenses is increased from Rs.1,84,047/- to Rs.2,00,000/-.

13. From the perusal of the award, it further transpires that the Tribunal has not awarded any amount for future loss of earnings even though the claimant is having 100% permanent disability. Learned counsel for the appellant/claimant had not placed on record any material to prove the minimum wages payable at that time. But keeping in view the fact that the accident had taken place way back in the year 2011 and the claimant was about 10 years old at that time, the notional income of Rs.36,000/- P.A. can be taken into consideration. In **Divya Vs.The National Insurance Company Ltd. and another, 2022(15) Scale 619**, it has been held by the Hon'ble Apex Court while relying upon **Reshma Kumari and others Vs. Madan Mohan and another (2013) 9 SCC 65**, that the selection of multiplier of '15', for the age group up to 15 years, by the three Judge Bench in Reshma Kumari's case, is having a sound basis. So keeping in view the ratio of law laid down in case supra this Court identifies the multiplier of 15 to be the appropriate in this case. So after applying the multiplier of '15' the loss of future earning is assessed as Rs.5,40,000/-.

14. Perusal of award further reveals that lump sum amount of Rs.1,00,000/- has been given on account of pain and suffering, transportation, diet, attendant charges which also appears to be on the lower side. So in such circumstances compensation granted under such heads

require enhancement for the purpose of granting just compensation.

15. In the present case, undisputedly, claimant has suffered 100% permanent disability, so he would require life long services of some attendant even to do his daily routine and chores. So the cost of attendant is assessed as Rs.2500/- P.M. which comes to Rs.30,000/- P.A. In Kajal's case (supra), it has been held by the Hon'ble Apex Court that "when compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only the determining the compensation an amount of loss of income but also for determining the attendant charges etc." So keeping in view the ration of law laid down in case supra, after applying the multiplier of '15' the attendant charges works out to Rs.4,50,000/-.

16. As the claimant remained under treatment at various hospitals in various cities, so Rs.30,000/- are awarded as transportation charges and Rs.30,000/- in addition are granted as costs of special diet and nursing.

17. The claimant has suffered pain and trauma as a consequence of injuries suffered in the accident in question. He had a prolonged hospitalization, underwent operations and consequently suffered great pain and discomfort. He is also to suffer post accident agony for whole life including the amenities of life which he could have enjoyed as a normal man, but is unable to do so on account of his 100% permanent disability. So considering the facts and circumstances of the present case and the nature of the injuries, the 100% permanent disability, the appellant is held entitled to

sum of Rs.6,00,000/- for pain and suffering, loss of amenities, loss of marital bliss, loss of enjoyment and loss of expectancy of life.

18. In view of above, this Court awards a sum of Rs.18,50,000/- to the claimant under the following heads:-

Compensation on account of treatment, medical bills, hospitalization etc.	Rs.2,00,000/-
Loss of future earnings	Rs.5,40,000/-
Attendant Charges	Rs.4,50,000/-
Pain, suffering, loss of amenities loss of marital bliss, loss of enjoyment and loss of expectancy of life and disability	Rs.6,00,000/-
Transportation charges	Rs..30,000/-
Cost of special diet and nursing	Rs.30,000/-

19. However, the rate of interest of 7.5% granted by Tribunal appears to be reasonable and does not call for any interference. So, the appellant/claimant in FAO-759-2016 is held entitled to a compensation of Rs.18,50,000/- alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization.

20. With the above said modification, the appeal is partly allowed.

21. All pending applications, if any, stands disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

19.04.2023
komal

Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No