

2023:PHHC:142352

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-8220-2015 (O&M)
Date of Decision: November 07, 2023

Sunaina

...Appellant

VERSUS

Parveen Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.D.S.Kahlon, Advocate
for the appellant.

Mr.Yadwinder S. Bhangu, Advocate
for respondents No.2 and 3.

ARCHANA PURI, J.

This appeal arises out of the motor accident claim, following the serious injuries suffered by the appellant-claimant, in a motor vehicular accident, which took place on 25.01.2014.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.8,36,000/- to the appellant.

Being dissatisfied with the awarded amount, the appellant-claimant has filed the present appeal for seeking enhancement of the compensation.

So far as the fact of accident and manner of its taking place, as

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well as liability fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several are concerned, it is pertinent to mention that no appeal has been filed by the persons, so made liable to challenge the Award and thus, this issue does not warrant any further scrutiny.

At the very outset, it is submitted by learned counsel for the appellant that on account of injuries sustained, in the accident in question, the appellant-claimant had suffered post traumatic stress disorder along with depression with general anxiety disorder and has suffered 50% disability. It is further submitted that in view of the young age of the appellant and also about her to be a brilliant student, studying in 10+2, at the relevant time, she had aspired for a very high position in life as she wanted to become PCS officer. On account of the injuries sustained, it is submitted that it has become difficult for the appellant-claimant, even to perform everyday activities and she requires constant support, even, for the confined life, which she has been forced to live after the accident. She has become invalid and even, her marriage prospects have become very restricted and as such, the compensation, granted by learned Tribunal is miserably on lower side.

In fact, it is submitted by learned counsel for the appellant that learned Tribunal has erroneously worked upon the compensation, vis-a-vis, the disability, in a mechanical manner, while considering it to be temporary. Also, it is submitted that learned Tribunal has not taken into consideration, the impact of disability, upon the life of the appellant-claimant, not only relating to her physical body and income generating capacity, being a bright student, at the relevant time, but also about non-quantifiable implications, on the life of the appellant-claimant.

Thus, summing up his submissions, learned counsel for the appellant has made a prayer for extensive enhancement of the amount, as granted by learned Tribunal.

On the contrary, learned counsel for respondents No.2 and 3 has refuted the claim the appellant-claimant, while asserting that no satisfactory and sufficient evidence has been led to seek compensation, as now impressed upon. In fact, he submits that the compensation has been worked upon by learned Tribunal in an appropriate manner and just compensation has already been granted. Thus, learned counsel for respondents No.2 and 3 has made a prayer for dismissal of the appeal.

At the very outset, it is pertinent to mention that appellant was examined by Medical Board, which consisted of three doctors and she was concluded to be a case of 'post traumatic mental disorder along with depression with general anxiety disorder' and she was found to be mentally disabled to the extent of 50% and the disability was temporary with regular medication, counselling and follow up period for two years, such disorder could overcome. The disability certificate issued by the Medical Board is Ex.PW3/A. PW-3 Dr.Sonia Mishra, who was member of the Medical Board has so deposed. However, it should be noted that during her cross-examination, this witness had stated that such disorder was not due to accidental injury but it has been aggravated due to accidental injury. In order to clarify such opinion given by PW-3 Dr.Sonia Mishra, learned Tribunal had ordered reconstitution of a medical board with a direction that such board shall consult the entire record, to the extent of injuries received by the appellant in the accident and also directed Chauhan Hospital, who

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treated the appellant, to assist the medical board, in order to render report about the extent of aggravation of such mental disorder after receipt of injuries. Resultantly, fresh medical board was constituted, in pursuance of the directions, so given and after examination of the appellant again, the medical board issued fresh certificate, which is Ex.A2, where, it is observed that the '*patient was suffering from post traumatic stress disorder along with depression with general anxiety disorder amounting to 50% disability but otherwise the patient has not given any history of pre traumatic mental disorder*', meaning thereby, that disability in question was suffered by the appellant, only due to the injuries received in the accident.

It is pertinent to mention that PW-3 Dr.Sonia Mishra, who was earlier examined, was also member of the board of doctors, constituted in pursuance of the orders passed by learned Tribunal and she was signatory to the opinion given about the patient, not having any history of pre traumatic mental disorder.

In the given circumstances, learned Tribunal has appropriately reached the conclusion about the opinion of PW-3 Dr.Sonia Mishra, given earlier, about the disorder was not due to accidental injuries, proved to be incorrect, particularly, in view of the recitals of the disability certificate Ex.A2. In the light of the same, when there was no history of pre traumatic mental disorder, coming on record, learned Tribunal had correctly reached the conclusion about the said disability to have occurred, in pursuance of receipt of injuries, in the accident in question.

Furthermore, it should also be noted that board of doctors remained silent, as to whether, such disability is permanent or temporary,

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but however, in this regard, reference is made to the cross-examination of PW3 Dr. Sonia Mishra, Psychiatrist, who had stated that in such percentage of disability, the patient can understand the things and can do her daily chores, like an ordinary person but with regular medication. As per the said witness, the patient had never turned up for her follow up action and she could not say, as to whether, patient had improved or mental disorder was aggravated.

When appellant-claimant was re-examined by the board of doctors, after statement of Dr.Sonia Mishra, still had 50 percent disability, meaning thereby, her condition has not improved by that time. As per Dr.Sonia Mishra, there are chances of improvement in the mental disorder but the same required continuous medication and counseling. Such being the fact situation, learned Tribunal has appropriately considered the extent of disability to be 25%, as permanent disability.

Thus, it stands established the appellant suffered mental disorder, which has its own impact, upon the body functioning. In this regard, it should be considered that at the time of examination of the appellant-claimant by learned Tribunal, an observation has been made by the Tribunal about her condition, when it was recorded by learned Tribunal that she was able to understand everything, but her ability of observation and reproduction was slow, probably due to head injury, sustained by her in the accident.

From the evidence adduced, it stands established that injured-appellant was in the age group of 18-19 years, at the time of accident. Her youthful dreams, pertaining to her future hopes and growth in life, were

snuffed to a great extent by the serious accident. She was student of 10+2 class, at the time of accident. On account of injuries sustained and mental disorder, so suffered, her chances of settlement in life, have become bleak.

The Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be ‘justly’ determined. A person therefore is not only to be compensated for the injury suffered due to the accident but also for the loss suffered, on account of the injury and his inability to lead the life, he led prior to the life altering event. A three Judges’ Bench in *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

“...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law.”

The Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his/her life, on account of his/her physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count but the functional disability, on account of injury sustained,

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can always be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Hon'ble Supreme Court in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*.

The efforts of the Courts must always be to substantially ameliorate the misery of the claimant and recognize his actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

Considering this kind of ailment, where there is mental stress along the depression and general anxiety and when there is loss of memory also, the appellant-claimant has obviously become dependent upon others to some extent and the disability, so suffered, made her life very restricted, to chose field of work and be gainfully employed. In the given circumstances, when the appellant-claimant was studying in 10+2 class, at the relevant time, her chances of settlement in life were quite bright. In these circumstances, when there was decrease in body functionality, then also, her earnings, as such, cannot be considered as that of unskilled labourer.

The prevalent minimum wages for skilled worker in the State of Punjab, in the month of September 2013 was about Rs.7900/- per month. The accident in the present case had taken place on 25.01.2014. Considering the same and considering the educational input of the appellant-claimant, while relying upon *Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others, 2023(3) RCR (Civil) 573*, wherein, reliance was further made on *Lalan D. @ Lal and another vs. The Oriental Insurance Company Limited, 2020(4) RCR (Civil) 441*, the income of the appellant,

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while taking the disability, to be to the extent of 25%, in modest estimate, is assessed to be **Rs.8,000/-** per month.

Looking at age of the appellant-claimant to be 18-19 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, 40% has to be added, on the count of 'future prospects'. Thus, the earnings of the injured-appellant comes to be $\text{Rs.8,000} + 3200(40\%) = \text{Rs.11,200/-}$ and annual earnings comes to be **Rs.1,34,400/-**.

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 '18' and also multiplying the same with 25% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as $\text{Rs.1,34,400} \times 18 \times 25 / 100 = \text{Rs.6,04,800/-}$.

The total of the medical bills, which have been proved before the Tribunal is Rs.1,61,086/- and the same has been rounded off as **Rs.1,61,000/-**.

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, substantial amount must have been spent by the family of the appellant-claimant. Few of the bills have been proved in evidence and taking the same into consideration, on the count of 'transportation charges' a sum of **Rs.30,000/-** 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.30,000/-**

is granted.

Furthermore, for some period of time, after the accident, in the minimum and even, looking at her condition with disability and more particularly, looking at the kind of injuries sustained, the appellant-claimant must have been looked after by a bye-stander/attendant throughout. Though, learned counsel for respondents No.2 and 3 submits that there is no material, as such, produced by the appellant-claimant, on actual expenses, incurred for the services of the attendant and it is argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability suffered, besides the family members, the appellant-claimant ought to have been looked after by one attendant throughout, as there was need for assisted living. Even if, the appellant-claimant was being looked after only by her 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 account of 'attendant charges' a sum of **Rs.50,000/-** is granted. Similarly, on the count of 'pain and suffering', an amount of **Rs.50,000/-** is granted.

No compensation has been awarded on the count of '**loss of marriage prospects**'. Considering the disability, so suffered, it is quite obvious, the marriage prospects of the appellant-claimant have also become very restricted and on this count, she is entitled to be compensated and therefore, the compensation to the extent of **Rs.1,00,000/-**, on this count, is also granted.

Thus, on various counts, as detailed aforesaid, the compensation

is re-computed as herein given:-

1.	Loss of earnings	Rs.6,04,800/-
2.	Medical Bills	Rs.1,61,000/-
3.	Transportation charges	Rs.30,000/-
4.	Special rich diet	Rs.30,000/-
5.	Attendant charges and	Rs.50,000/-
6.	Pain and suffering	Rs.50,000/-
7.	Loss of Marriage prospects	Rs.1,00,000/-
	Total	Rs.10,25,800/-

As such, the compensation, so awarded by learned Tribunal, stands enhanced from **Rs.8,36,000/-** to **Rs.10,25,800/-**.

Accordingly, the impugned Award dated 01.05.2015 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 07, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No