

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

FAO-772-1991
Date of decision: 16.01.2024

Babu Ram

.....Claimant-Appellant

Versus

Avtar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: None for the appellant.

Mr. Vinod Chaudhri, Advocate
for respondent No.3-Insurance Company.

AMAN CHAUDHARY, J.

1. Injured-appellant has filed the present appeal seeking enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short ‘the Tribunal’) vide award dated 04.03.1991, on account of the injuries received by him in a motor vehicular accident.
2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for the last more than 33 years, the counsel for respondent No.3 have no objection, in case the same is decided on the basis of the available record.
3. It is stated in the grounds of appeal that the injured-appellant had met with an accident, wherein he had suffered multiple injuries on forehead as well as fracture of right leg and injuries on account of which, he remained admitted in the hospital for about 06 days. He got a plaster on his leg for a period of 40 days which did not cure completely, it was replastered at Saharanpur. As he was

employed in Haryana Roadways, he could not attend duties for about five months. He had spent Rs.20,000/- on account of his treatment, however, the Tribunal has awarded an amount of Rs.8,000/- in all heads, which is inadequate.

4. On the other hand, the learned counsel for respondent No.3-insurance company has opposed the present appeal with vehemence by stating that the rate of interest i.e. 12% awarded by the Tribunal is on the higher side besides this, just and reasonable compensation has already been awarded to the appellant, which requires no enhancement.

5. Heard and perused.

6. To proceed further, it would be worthwhile to refer to the judgment in **Sidram vs. Divisional Manager, United India Insurance Co. Ltd. and another**, 2023(1) RCR (Civil) 44, relating to an accident that took place on 18.07.2012, wherein the injured-claimant was struck by a goods vehicle being driven in a rash and negligent manner, causing permanent disability to the extent of 45%, and he was awarded Rs. 6,13,000/- by Motor Accidents Claims Tribunal, Belgaum, vide order dated 21.01.2014, which was enhanced by the High Court to the tune of Rs. 9,26,800/- vide order dated 25.04.2018 and when the appellant, feeling aggrieved, approached Hon'ble the Supreme Court, it was enhanced by observing that, "This Court has emphasized time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives."

Further, while allowing the appeal the compensation was enhanced by taking into consideration the following:

“56. The evidence on record indicates that the appellant suffered paraplegia due to the accident. Paraplegia is a form of paralysis of lower body. It restricts everyday routine more particularly the physical activity and leads to (i) deprivation of simple pleasures and amenities of life, (ii) 100% loss of earning capacity, (iii) long term secondary complications requiring continuous care, medical treatment and hospitalization, (iv) feeling of helplessness, depression, anger, stress, anxiety, etc. In short, paraplegia impairs physical, mental and psychological health and has devastating impact on the social and financial well being of the victim.

57. In the case on hand, the appellant was in the business of selling utensils and used to travel to various villages to sell the same. With this disability in the form of paraplegia being suffered by the appellant, it is not possible for him now to walk a long distance or stand for a long period. His business could be said to have been gravely impacted. Further, the appellant at the time of accident was just 19 years old...”

Xx	xx	xx
112. The total compensation awarded by us under different heads is as under:		
1.	Loss of earning due to disability	:Rs.7,77,600/-
2.	Loss of earning for 6 months:	Rs.48000/-
3.	Medical expenses	Rs.1,55,000/-
4.	Future medical expenses	Rs.2,16,000/-
5.	Attendant charges	Rs.4,32,000/-
6.	Litigation charges	Rs.50,000/-
7.	Loss of conveyance	Rs.50,000/-
8.	Pain and suffering	Rs.1,00,000/-
9.	Marriage prospects	Rs.3,00,000/-
10.	Loss of amenities	Rs.50,000/-
	Total	Rs.21,78,000/-”

7. Hon’ble the Supreme Court in **Mohd. Sabeer @ Shabir Hussain vs. Regional Manager, UP State Road Transport Corporation** 2023(1) RCR (Civil) 349, wherein the accident had occurred on 12.06.2009, causing permanent disability to the extent of 70% in relation to right lower limb, to the claimant, a 37 year old man, hindering his mobility proving functional disability severely impacting his earning capacity and having to use prosthetic limb, was awarded a compensation of Rs. Rs.15,76,465/- by the Motor Accident Claim Tribunal,

Delhi-II, Dwarka Court, New Delhi by an order dated 08.02.2013, which stood modified by the High Court to the extent of Rs.16,70,932/- vide order dated 11.09.2018. Being unsatisfied, the appellant approached Hon'ble the Supreme Court and was awarded Rs.38,70,120/- (including Rs.2,00,000/- for pain and suffering, Rs.15000/- special diet, Rs.2,00,000/- loss of amenities of life) while observing therein that it is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place.

8. Moving to the present case, there is no dispute with regard to the accident in which the appellant had suffered multiple injuries. So far as the fact of accident and manner of its taking place, as 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 challenge to the Award has been made and thus, this issue does not warrant any further examination. With regard to enhancement of the compensation, as is evident from the award, the appellant sustained various injuries including fracture on right leg. Dr.Gurpiar, PW6 stated that he examined the appellant and found five injuries on his person. There was fracture of second, third and fourth metatarsal at their distal ends and a chip fracture of the first phalanx of big toe at the base. On account of the injuries suffered, the appellant remained hospitalised for about 06 days and his leg was also plastered.

9. Keeping in view the peculiarity of facts and circumstances in light of

the aforesaid dictum of law, this Court finds that for the ends of justice to be adequately met, the amount of compensation awarded to the appellant is required to be enhanced thus:

- 1. Pain and suffering : Rs.50,000/-
- 2. Attendant, special diet, conveyance charges : Rs.25,000/-
- 3. Loss of amenities/enjoyment of life : Rs. 25,000/-

10. However, the appellant is not entitled for compensation of any amount for TA and other allowances, as he was in Govt. job, which has rightly been declined by the Tribunal.

11. Accordingly, the appellant is entitled to the enhanced amount of compensation of Rs.92,000/- over and above the amount of Rs.8,000/- already awarded by the Tribunal. However, the rate of interest on the enhanced amount, in view of the judgment in **Dharampal vs. U.P. SRTC**, (2008) 12 SCC 208, shall be 7.5% per annum, accruing from the date of the award, till its realization, which will be paid to the claimant-appellant within a period of two months from the date of receipt of a certified copy of this judgment, failing which, the amount shall carry an interest at the rate as already awarded by the Tribunal.

12. Modifying the award to the aforesaid extent, the present appeal is disposed of.

13. Registry is directed to send a copy of the judgment to the concerned Tribunal for necessary compliance.

(AMAN CHAUDHARY)
JUDGE

16.01.2024
Hemant

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