2024:PHHC:128131

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

FAO-2377-2004 (O&M)
Decided on : 13.09.2024

Manjit Singh

. . . Appellant(s)

Versus

Lekh Raj and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Karan Diwan, Advocate for
Mr. Manjit Singh Uppal, Advocate
for the appellant(s).

Mr. V. Ramswaroop, Advocate
for respondent No.4 – Insurance Company.

****

SANJAY VASHISTH, J. (Oral)

1. Instant appeal is for enhancement of compensation amount for the injuries suffered in a motor accident on 08.01.2001.

The appellant/claimant, along with two other persons namely Tek Singh and Teja Singh, was coming from Sardulgarh to Sadhuwala on foot. At about 5:00Pm, when they reached near the field of Darbara Singh, a jeep bearing registration no.PB-31-0061,being driven in a rash and negligent manner by respondent no.1-Lekh Raj ,hit the appellant/claimant. As a result, the appellant/claimant suffered fracture of his right thigh and bones.

2. Claimant filed a claim petition (MACT Case No.11) under Section 166 of The Motor Vehicles Act, 1988 for seeking compensation before the Ld. Tribunal pleading therein that the jeep bearing No. PB-31-0061, being driven by respondent no.1 in rash and negligent manner caused injuries to the appellant/claimant. Thus, it is the negligence of the

Respondent No.1-driver of the offending vehicle that led to the accident.

3. While considering the claim petition under section 166 of the Motor Vehicle Act, Learned Tribunal held in specific that the accident was caused due to the rash and negligent driving of the jeep bearing registration no. PB/31A/0061.

4. While deciding the amount of compensation payable to the appellant/claimant/injured, Tribunal found that the injured was 32 years of age and he remained admitted in hospital from 08.01.2001 to 15.02.2001. During this period, he underwent two surgeries. As per Ex.P1, his physical disability was assessed at 20%, although it did not affect the whole body. Additionally, he had undergone a laprotomy. Thus, the claimant was held to be entitled for Rs. 35,000/- as compensation on account of the injuries sustained by him.

5. For the sake of convenience, the compensation awarded by the Learned Tribunal is presented in a tabular form here below:-

Medical Bills /Receipts	*Rs.22,000 /-*
Permanent disability	*Rs.8,000/-*
Loss of Income for 1-1/2 months	*Rs.2,000/-*
Shock, Pain & Sufferings	*Rs.1,000/-*
Attendance Charges	*Rs. 1,000/-*
Conveyance Charges	*Rs.1,000/-*
TOTAL	***RS. 35,000/-***

6. Counsel for the appellant/claimant/Injured submits that the Ld. Tribunal has erred in determining the total amount of compensation payable to the claimant. While substantiating his argument, Ld. Counsel submits that Ld. Tribunal has failed to grant any compensation amount on account of future medical expenses, special diet, and loss of enjoyment. The appellant /claimant remained on bed and spent Rs.2,000/- per month on his special diet, for 1 year, however, nothing has been awarded by the Tribunal on that account. To substantiate his arguments, counsel relies upon the judgment of the Hon'ble Apex Court in ***Kajal** v. **Jagdish Chand and others;** 2020(4) SCC 413 : Law Finder Doc ID#1679623*, to substantiate his arguments.

Also contends that Ld. Tribunal has erred by not applying the principle of multiplier, while calculating the compensation amount, as injured has to face the sufferings for whole of his life. Further, Ld. Tribunal has granted Rs.22,000/- only, towards the medical expenses, whereas the injured/claimant was hospitalized for 1-1/2 months and 2 operations were conducted upon him.

7. On the other hand, Ld. Counsel for Respondent No. 3 – Insurance Company submits that the Ld. Tribunal has rightly determined the amount of compensation payable to the claimant and there is no error in the award rendered by Ld. Tribunal and no need to interfere in the same.

8. Considering the submissions addressed by the Counsel for the parties and after examining the award passed by the Ld. Tribunal, this court is of the considered opinion that the impugned award is liable to be modified, and the amount of compensation awarded by it needs to be enhanced, by applying the settled proposition of law.

9. This Court has gone through a judgment rendered by Hon'ble Apex Court in ***Raj Kumar** v. **Ajay Kumar**; (2011) 1 SCC 343*, whereby the supreme Court has considered in detail the different heads, under which compensation must be given to a victim of motor accidents. In paragraph 6 of the decision, the various elements of compensation are enumerated as under:-

> ***"Pecuniary damages (Special damages)***
>
> *(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.*
> *(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:*
> *(a) Loss of earning during the period of treatment;*
> *(b) Loss of future earnings on account of permanent disability.*
> *(iii) Future medical expenses*
>
> ***Non-pecuniary damages (General damages)***
>
> *(iv) Damages for pain, suffering and trauma as a consequence of the injuries.*
> *(v) Loss of amenities (and/or loss of prospects of marriage).*
> *(vi) Loss of expectation of life (shortening of normal longevity)".*

10. **N**o doubt that in a situation where the different Courts at different time were at diversions in their opinion and in the absence of any clarification by the law makers despite recommendations by the Hon'ble Apex Court, all the major issues were referred to the larger Bench and accordingly, Constitution Bench was constituted in ***"National Insurance Company Limited v. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 : Law Finder Doc ID #918174".*** Thus, for the purpose of reaching out to appropriate amount of compensation for adjudging the rights of the claimants, guidelines laid down in the judgment of the Constitution Bench in **Pranay Sethi's case (supra),** would help the Courts.

11. In a given situation, as in the present injury case, said judgment of the Hon'ble Apex Court would guide this Court to assess the compensation amount by applying the principle of multiplier, future prospects as well as attendant charges.

12. Accordingly, this court proposes to modify the impugned award as under:-

A. <u>PECUNIARY</u>

(I) **Loss of future Earnings:**

- **Determination of monthly salary of the injured**

  The tribunal has assessed the loss of income during the period; he remained admitted in hospital i.e for 1-1/2 months, as Rs.2,000/-.Thus, monthly income has been taken as Rs.1,350/- only. However, Ld. Counsel for the claimant/injured states that before accident, injured was working as conductor on a private bus and earning Rs.3,800/-pm (Rs.3,000 salary +Rs.800 bonus). For assessing the income of injured, this court considers the injured as an unskilled worker and accordingly, applies the minimum wage prevalent on the date of accident i.e. 08.01.2001, in the state of Punjab. Therefore, the income of injured is assessed as **Rs.2,100/-p.m.**

- **Future Prospects**

  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. In the light of **Pranay Sethi's case**, the applicable 40% addition of future prospects also be added to the monthly salary of the injured.

  Thus, after addition of future prospects, the monthly salary of the deceased would be **Rs.2,940 (2100+840)**

- **Loss of earning capacity**

  To assess the quantum of compensation to be awarded, this Court has to consider in detail **the correlation between the**

physical disability suffered in an accident and the loss of earning capacity resulting from it as held by Hon'ble the Supreme Court in the case of '**Raj Kumar versus Ajay Kumar and another, 2011 (2) RCR (Civil) 101',** paragraphs No.10 and 13 of the judgment made the following observations:-

> *"10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps.*
>
> *The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in Government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his*

clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in Government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

xx xxx xx xxx

xx xxx xx xxx

13. We may now summarise the principles discussed above:

(i) *All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*

(ii) *The percentage of permanent disability with* *reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*

(iii) *The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*

(iv) *The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.*

A fracture in thigh, typically involving the femur (the longest and strongest bone in the body) can have significant impact on daily life and earning capacity. The femur is crucial bone for standing, walking and supporting the body weight so the fracture of it means a long and difficult recovery. Such types of cases improve with the passage of time, although such deformities remain there while walking, as is there in the case of claimant.

Applying the aforesaid principles to the instant case, it is noted that the appellant herein appeared for evidence as PW-1 and his doctor (Dr.

Tejinder Pal) was examined as PW-5. He also produced document Ex.P1 – Permanent disability certificate, as evidence. It is noted that the appellant herein sustained bone fracture of thigh. He was operated twice and was hospitalized for one hundred and twenty days cumulatively. As per PW-5 (the doctor who treated him) and Ex.P1, there was 20% permanent disability despite the treatment given to the appellant herein.

Thus, this Court is satisfied that it is a case of 20% permanent disability suffered by the claimant in a motor vehicular accident.

MULTIPLIER

Considering the age of injured as 32 years, the multiplier of 16 would apply.

This way, total loss of future earning, by applying the multiplier of 16, would be Rs.5,64,480/- (Rs.2,940 × 12 × 16).

Since, the appellant/claimant suffered 20% permanent disability, which has been duly proved by Disability Certificate (Exhibit P-1), this court is of the view that 20% of the aforesaid amount be granted to the claimant/injured on the account of loss of future income i.e, **Rs.1,12,896/-.**

(II) MEDICAL EXPENSES:

The Ld. counsel for the claimant contends that the Ld. tribunal has wrongly awarded **Rs. 22,000/-** towards the medical expenses as he remained admitted in hospital for about 120 days and spent Rs. 2 lacs on his treatment and medicines.

This Court is of the view that the medical expenses assessed by the Ld. Tribunal are awarded on much lower side. Thus, the compensation on account of medical expenses is enhanced to **Rs.50,000/-** (Rs. Fifty Thousand only).

(III) <u>FUTURE MEDICAL EXPENSES</u>:

As far as future medical expenses are concerned, no amount of Compensation has been awarded by the Ld. Tribunal under this head. However, looking at the nature of the injury suffered by the claimant and the amount of compensation awarded by the co-ordinate Bench of this Court in case of similar injury, this court deems it appropriate to grant compensation of **Rs. 30,000/-** under the head of future medical expenses.

(IV) <u>ATTENDANT CHARGES AND SPECIAL DIET</u>:

Learned counsel for the claimant argues that the learned Tribunal has granted meager amount of Rs.1,000/- on account of attendant charges and no amount has been awarded towards special diet although, the claimant remained on special diet for 1 year and spent Rs. 2,000/- per month on his special diet. This Court is of the view that to recover and to sustain in a meaningful life, claimant would require special diet. This dietary requirement, essential for his well-being, was required for at least a period of 1 year.

Considering the facts and circumstances of the present case, this Court deems it appropriate to grant lump-sum amount of **Rs.25,000/-** on account of Attendant charges and special diet.

(V) <u>TRANSPORTATION</u>:

Due to the 20% permanent disability suffered by the claimant, necessity of recurrent hospital visits and ongoing medical support will arise. Thus, this Court deems it appropriate to award an amount of compensation of **Rs.10,000/-** under the head of transportation, recognizing the need for continued medical care and aiming to provide a measure of relief during this difficult time.

(B) NON-PECUNIARY

(I) PAIN & SUFFERING:

Ld. Tribunal has awarded an amount of compensation as Rs.1,000/- on account of pain and sufferings suffered by the claimant/injured due to the injuries sustained in the motor vehicular accident.

However, this Court is of the view that the 20% permanent disability, stemming from a motor vehicular accident, has inflicted significant pain and profound debilitation to the claimant. In the light of this, an augmentation in compensation for the purpose of addressing the endured agony and hardship is deemed necessary. Thus, the compensation on account of loss of pain and sufferings is enhanced to **Rs.30,000/-.**

(II) LOSS OF ENJOYMENT:

Accident has resulted in a 20% permanent disability for the claimant, causing an irrevocable loss of enjoyment in all facets of life. Recognizing this profound impact, this Court deems it appropriate to grant compensation as **Rs.20,000/-** to address the challenges and hardships faced by the individual.

(III) LOSS OF AMENITIES TO LIFE:

The injuries sustained by claimant in motor vehicular accident significantly affect the quality of life .This may include inability to engage in everyday activities, hobbies or employment due to physical and emotional limitations. Thus, the court deems it appropriate to award **Rs.20,000/-**

towards loss of amenities.

For the sake of convenience, amount of compensation awarded by this Court is produced here below in a tabular form:

Heads	*Compensation awarded by this court*
(A) PECUNIARY	
I. Loss of future earnings	*Rs. 1,12,896/*
II. Medical expenses	*Rs.50,000/-*
III. Future medical expenses	*Rs.30,000/-*
IV. Attendant charges & Special diet	*Rs.25,000/-*
V. Transportation	*Rs.10,000/-*
(B) NON-PECUNIARY	
I. Pain & Sufferings	*Rs.30,000/-*
II. Loss of Enjoyment	*Rs.20,000/-*
III. Loss of Amenities	*Rs.20,000/-*
TOTAL	***Rs.2,97,896/-***

13. Accordingly, the claimant is entitled for a total compensation of **Rs.2,98,000/-** (rounded-off), as against Rs.35,000/- awarded by the Tribunal.

Thus, keeping in view the aim of this beneficial legislation of providing relief to the victims or their families, the total compensation payable to the appellants (claimant) is enhanced to **Rs.2,98,000/- (Rupees Two Lakhs and Ninety Eight Thousand only)** along with interest at 7.5% per annum, in the same terms, from the date of filing of claim petition till the date of payment of compensation to the appellant.

14. The awarded amount shall be paid to the claimant within a period of 3 months from the date of this order. In case, the awarded amount is not paid within a stipulated period of 3 months, the same shall be payable with interest @ 9% per annum from the date of this order till its realization. Needless to mention that out of the total payable compensation amount, already paid amount (if any) in compliance to the impugned award would be adjusted.

Therefore, by partly modifying the award, appeal is allowed with the terms indicated here-above.

Misc. application(s), if any, also stand disposed of.

(SANJAY VASHISTH)
JUDGE

September 13, 2024
J.Ram

Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: Yes/~~No~~