

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) FAO-3318-2005 (O&M)

Sudesh Kumari
...Appellant

VERSUS

Palwinder Singh and others
...Respondents

(ii) FAO-4315-2005 (O&M)

Monika Sharma
...Appellant

VERSUS

Palwinder Singh and others
...Respondents

Date of Decision: March 05, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Arihant Jain and Mr.Rishav Jain, Advocates
 for the appellants.

Mr.Anupam Singla, Advocate
for respondent No.2.

Mr.Govind Mor, Advocate for
Mr.Jasbir Mor, Advocate
for respondent No.4 (in FAO-3318-2005).

Mr.Rajesh Verma, Advocate
for respondent No.4 (in FAO-3318-2005) and
for respondent No.5 (in FAO-4315-2005).

Mr.Paul S. Saini, Advocate
for respondent No.5 (in FAO-3318-2005) and
for respondent No.6 (in FAO-4315-2005).

ARCHANA PURI, J.

These are two appeals filed by the appellants-claimants, who

are mother-daughter duo, for seeking enhancement of compensation granted to them, on account of injuries sustained by them, in a motor vehicular accident, which took place on 02.02.2003.

So far as the fact of accident, manner of its taking place and the liability fastened upon the driver, registered owner as well as PRTC, is concerned, it is pertinent to mention that none of the respondents, who have been saddled with the liability, have filed any appeal and thus, this aspect, calls for no further scrutiny.

In this backdrop, now let us firstly consider the injuries sustained by appellant-claimant Monika Sharma. It is pleaded case of Monika Sharma that on 02.02.2003, she along with her mother, while travelling in Bus bearing registration No.PB-29B-9615, were coming from Hisar to Patiala. At about 1.00 p.m., when the bus reached near Barwala, while being driven by Palwinder Singh, in a rash and negligent manner, the bus crossed the roundabout and hit against the truck bearing registration No.HYD-1663. As a result of the accident, the claimant-Monika and other passengers had sustained multiple injuries and she remained admitted in Janta Hospital from 02.02.2003 to 03.02.2003 and thereafter, she was got admitted in Rajindra Hospital, Patiala and was discharged on 11.02.2003. Again, she was got admitted in Rajindra Hospital, Patiala, on 14.03.2003 and was discharged on 17.03.2003. Further, it is the version of the claimant that she remained under treatment in T.B. Hospital, Patiala and also remained admitted in PGI, Chandigarh, where two operations were performed, as her voice was lost and doctors advised that there is slight chance of recovery of voice.

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Claimant Monika Sharma herself stepped into witness box as PW-4 and in her affidavit Ex.PW4/A, she has deposed with regard to the injuries sustained and treatment undergone, in consonance with her pleaded case.

Furthermore, claimant examined PW-1 Dr.Atul Kohli, ENT Consultant, Janta Hospital, who has deposed that on examination of patient Monika, he found following injuries on her person:-

- “1. *Blunt injury neck.*
2. *Blunt injury inter scapular region.*
There is diffuse swelling in the neck with mild tenderness.
There was no surgical crepitus.”

He proved the indoor chart Ex.P1 and further deposed that the patient was discharged on 03.02.2003 on request. The said witness also proved the original bills of medicines, which are Ex.P2 and Ex.P3 and hospital expenses bill Ex.P4. PW-7 Dr.Jaswinder Singh, Rajindra Hospital, Patiala, had produce the treatment record of claimant Monika, where she remained admitted from 14.03.2003 to 17.03.2003 and he proved the bed head ticket of the claimant as Ex.P108. Furthermore, he deposed about Prof. S.K.Verma, ENT Department, Rajindra Hospital, having examined the complainant and after examination, her disability was assessed to be 75% and report to this effect was made on the application Ex.P104, on which Prof.S.K.Verma, appended his signatures and identified the writing of Prof. S.K.Verma. PW-5 Lila Dhar, Junior Assistant, CMO Office, Patiala, proved the permanent disability certificate Ex.P103, which was issued under the signatures of Board of Doctors. This certificate contains the recitals that the claimant has a permanent disability to the tune of 75%, as she was unable to

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speaking. PW-6 Nachhattar Singh, Clerk, CRD Department, PGI, Chandigarh, had brought the summoned record of admission and treatment of Monika Sharma, in PGI, Chandigarh. He deposed that she remained admitted from 08.03.2003 to 11.03.2003 and again from 19.05.2003 to 30.06.2003. She also remained as Outdoor Patient at PGI. He proved the copy of medical record Ex.P105, Ex.P106 and OPD ticket Ex.P107. As already observed aforesaid, the claimant, in her affidavit, has also stated about having undergone two operations and her voice was lost and the doctors advised that there was slight chances of recovery of voice. The doctors of the PGI, Chandigarh, have inserted some instrument in her vocal cord and by closing the hole of that instrument, she was in a position to make statement. The version, so put forth, stands connected from the medical record brought on record. Even, Monika Sharma had stated in her affidavit that she was earlier working as Tailor and earning Rs.4000-5000/- per month. Now, she cannot attend to her work.

In the light of the aforesaid evidence, it is amply established that claimant had sustained multiple injuries and as a result thereof, she had lost her voice and her disability has been assessed to be 75%, which is permanent. Also, from the evidence adduced, it stands established that the claimant was 21 years old, at the relevant time.

Considering the aforesaid evidence, learned Tribunal had granted Rs.25,000/- as compensation, on the count of 'diet, attendant, guests, conveyance' etc. and another amount of Rs.25,000/- was granted, on the count of 'pain and suffering'. Besides the same, keeping in view the permanent disability, loss of income, impairment of future income and effect

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of disability on her marital prospects, lumpsum amount of Rs.1,50,000/- was granted. The bills of medical expenditure were rounded off to Rs.33,500/-.

However, the compensation worked upon aforesaid, is definitely quite meagre and calls for re-determination.

Before adverting to the recomputation of the compensation, it is pertinent to mention that the Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be '**justly**' determined. The Courts, as such, should 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 a lesser count but the functional disability, on account of injury sustained, 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 human disability, but however, the efforts of the Courts must always be to substantially ameliorate the misery of the claimant and recognize his/her actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

In fact, the determination of the quantum is fact dependent exercise, which must be liberal and not parsimonious. It must be emphasized that the compensation is a more comprehensive form of pecuniary relief, which involves a broad based approach.

Keeping in view the aforesaid, the kind of injuries sustained by

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the appellant-claimant has made her hospitalised for a period of about 55-60 days and she had undergone operations and the same left her disabled. The disability has been assessed to be 75% and there is no chance of its improvement. Though, in the disability certificate, as such, it is not mentioned about the extent of disability, relating to the voice only or of the whole body, but in any case, considering the organ of the body, which has been affected and voice has been lost by the appellant-claimant Monika Sharma, the disability, in any case, can appropriately be taken to be 60% of the whole body.

It is specific claim of the appellant-claimant that she was indulging in tailoring work. As such, in the minimum, she can be taken to be skilled worker. Considering the minimum wages, at the relevant time, the earnings of the appellant-claimant can conveniently be taken to be Rs.2000/- per month. To the said amount, addition of 40% has to be made, on the count of 'future prospects', in view of the age of the appellant-claimant and thus, monthly earnings of the injured-appellant comes to be Rs.2000+Rs.800(40%)=Rs.2800/- per month, annual whereof, comes to be Rs.33,600/-.

Keeping in view the age of the appellant-claimant Monika Sharma, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '18' and so multiplying the same with 60% of disability and dividing the same by 100, as per standard multiplier process, the loss is assessed as $Rs.33600 \times 18 \times 60 / 100 = Rs.3,62,880/-$.

Learned Tribunal had appropriately considered the bills of

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medical expenditure of the appellant-claimant and correctly granted an amount of **Rs.33,500/-**, on this count.

Besides the aforesaid, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of conveyance '**to and fro**' to the hospital, during the period of her admission in the hospital, a substantial amount must have been spent by the appellant-claimant. Considering the same, another sum of **Rs.10,000/-** 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, more particularly, considering the seat of injury. On this count also, another sum of **Rs.10,000/-** is granted.

Also, for some period of time, after the accident, in the minimum and even, looking at her condition with permanent disability, the appellant-claimant must have been looked after by an attendant. Learned counsel for respondent-PRTC had made a faint attempt to assert about the actual expenses so incurred, upon the services of the attendant, does not stand established. Moreover, he has pointed out towards the cross-examination of the appellant-claimant, wherein, she has stated that she was looked after by her family members. However, it matters not much. Whether the appellant-claimant was looked after by the attendant or by her family members, but fact remains that she was looked after by some person, as there was need for assisted living, at least for some period of time, till she adept herself to be self sufficient. Even, if, the appellant-claimant was being looked after by 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

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form of gainful employment, which could have generated some income.

Thus, on this count also, further amount of **Rs.10,000/-** is granted.

On the count of 'pain and suffering', learned Tribunal had granted a sum of Rs.25,000/-, which also calls for enhancement. A person not only suffers injuries, but also suffers in mind and body, on account of the accident, throughout his/her life. He/she develops a feeling of invalidity and considers himself/herself to be not normal person. Thus, while fixing the compensation, all these circumstances, which makes the victim feel helpless, ought to be taken into consideration, more particularly, while looking at the age of the claimant. Unusual deprivation, which the claimant had undertaken in life, also has to be reckoned. Considering, all the aforesaid facts, on the count of 'pain and suffering', compensation stands enhanced to **Rs.50,000/-**.

It should also be noticed that the no separate amount has been granted, on the count of '**loss of marriage prospects**'. It was included in the amount of Rs.1,50,000/-, for various counts, like loss of income, impairment of future income, permanent disability etc. However, considering the disability, so suffered, more particularly, looking at the age of the appellant-claimant, at the relevant time, the marriage prospects of the appellant-claimant have become very restricted and on this count, separately, the compensation to the extent of **Rs.1,50,000/-**, on this count, is also granted.

Besides the same, it is also pertinent to mention that there was instrument installed in the neck of the appellant-claimant and she could speak only with the help of the instrument, while closing the hole of the same. Keeping in view this manner of adapting herself with the disability, it

is quite obvious that the instrument, which was inserted, must be required to be taken care of, from time to time. Looking at the age of the claimant, this instrument is bound to be worn out and must call for the change. Considering the same and also considering chances of catching infection being there, there is bound to be need for future medical treatment. Therefore, on this count, another sum of **Rs.50,000/-** is granted.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.3,62,880/-
2.	Medical Bills	Rs.33,500/-
3.	Transportation charges	Rs.10,000/-
4.	Special rich diet	Rs.10,000/-
5.	Attendant charges and	Rs.10,000/-
6.	Pain and suffering	Rs.50,000/-
7.	Loss of Marriage prospects	Rs.1,50,000/-
8.	Future Medical treatment	Rs.50,000/-
Total		Rs.6,76,380/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.6,76,380-2,33,500=Rs.4,42,880/-**.

Now, let us consider the case of appellant-claimant Sudesh Kumari. It is the specific version of the appellant-claimant that on account of the accident in question, she had sustained multiple injuries and fracture, as a result whereof, she had undergone medical treatment. To so substantiate her claim, appellant-claimant herself stepped into the witness box as PW-3 and sworn her testimony, in the form of affidavit Ex.PW3/A. Therein, she had categorically deposed that besides her daughter, she had

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also sustained injuries, as a result whereof, she along with her daughter, was taken to Janta Hospital, Barwala. She deposed that her left leg was fractured in the accident and sustained injuries on the body. POP was casted after operation and she remained on bed for about three months. The appellant-claimant had also examined PW-1 Dr.Sanjay Verma, who deposed about having examined the injured-claimant on 02.02.2003 and he found following injuries:-

“Patient was complaining of pain on the left distal third leg with ankle, tenderness was present. There was mild swelling, restriction of movement was present. She was advised X-ray left ankle with distal third leg. A.P. & lateral view”.

He further deposed that the appellant-claimant was admitted in the hospital on 02.02.2003 and was discharged on 03.02.2003. She was referred to Rajindra Hospital, Patiala, for further treatment. Copy of her medico-legal report is Ex.P1, discharge slip Ex.P2 and her indoor chart Ex.P3. The expenses of Rs.2200/- was charged for the treatment of the claimant in Janta Hospital. The medicines prescribed were purchased vide bill Ex.P5.

The total of the medical bills was to the extent of Rs.5303/-, which was rounded off to Rs.5300/-. Also, it is specific claim of the appellant-claimant that she was working as tailor, at the relevant time of accident. However, learned Tribunal had considered her earnings as household lady as Rs.1500/- per month. Taking into consideration, the aspect of pain and suffering, loss of income, nutritious diet, care and attendance, a lumpsum amount of Rs.10,000/- was granted, in addition to the medical expenses. Thus, the total compensation awarded was Rs.15,300/-.

Considering this extent of compensation, the same definitely calls for re-determination. The claimant was working as tailor and as such, was a skilled worker and in modest estimate, her earnings are taken to be Rs.2000/- per month. Considering, it to be so, on account of injuries sustained in the accident, at least for a period of five months, she would not have been able to follow her vocation, more particularly, on account of fracture in the lower limb. Thus, on the count of ‘loss of income’, the compensation is worked upon as Rs.10,000/-.

Besides the aforesaid, it is pertinent to mention that on the count of ‘pain and suffering’, intake of nutritious diet, care and attendance, though, consolidated compensation to the extent of Rs.10,000/- had been granted by learned Tribunal, but, as observed aforesaid, it calls for enhancement. Besides the count of ‘loss of income’ and taking into extent of medical bills, in the fitness of circumstances, it shall be appropriate to grant Rs.25,000/-, over and above the amount of Rs.15,300/-.

On the enhanced amount of the compensation i.e. **Rs.4,42,880/-** (granted to appellant-claimant **Monika Sharma**) and **Rs.25,000/-** (granted to appellant-claimant **Sudesh Kumari**), they shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. The remaining terms of the Award, shall remain the same.

With the above observations, both the appeals stand allowed.

March 05, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No