

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1104-2007 (O&M)
Date of Decision: February 09, 2024

Ajit Singh
... Appellant

Versus

Dilbagh Singh and others
... Respondents

CORAM: HON’BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kuldeep Khandelwal, Advocate,
for the appellant.

Mr.Neeraj Khanna, Advocate for
Mr.R.N.Singhal, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation, awarded by learned Motor Accident Claims Tribunal, on account of injuries sustained by him, in a motor vehicular accident.

Vide impugned Award dated 11.09.2006, learned MACT had decided two claim petitions, relating to death of Rishi Pal Singh and injuries sustained by the appellant-claimant, in the accident in question.

The facts germane, to be noticed, are as follows:-

That, on 31.12.2004, Rishi Pal Singh was driving the motorcycle bearing registration No.HR-05M-5076 and Ajit Singh-present appellant was

pillion rider on the said motorcycle. They were coming from Shefali Hotel, Hospital Chowk, Karnal. When, at about 9.30 p.m., they tried to cross Nirmal Kutia Chowk, one truck bearing registration No.HR-46B-1164, being driven by respondent No.1-Dilbagh Singh, came from Ambala Side, which was being driven in a rash and negligent manner, without blowing horn and struck against the motorcycle of Rishi Pal Singh. As a result of this accident, Rishi Pal Singh, received multiple injuries and succumbed to the same, on the spot, whereas, Ajit Singh-appellant, also received multiple injuries.

So far as, the factum and manner of taking place of the accident is concerned, this issue warrants no further scrutiny, as the respondents, i.e. driver, owner and insurer of the offending vehicle, who have been saddled with the liability to pay the compensation aforesaid, have not filed any appeal. Be it noted that it is only the appeal filed by the appellant-claimant Ajit Singh for seeking enhancement of the compensation.

On appraisal of the evidence, compensation granted by learned Tribunal was to the extent of Rs.1,45,000/-, which in the tabular form, is as herein given:-

i.	Compensation on account of expenditure on medical treatment which includes hospitalization charges, expenses in purchasing medicines, transportation and on special diet etc.	Rs.40,000/-
ii.	Compensation for pain and suffering and loss of income during the period of treatment	Rs.15,000/-
iii.	Compensation on account of future loss of earning due to disability (15% disability of particular limb 7-1/2 qua whole body)	Rs.90,000/-

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Keeping in view the extent of compensation, so awarded, learned counsel for the appellant submits that learned Tribunal had erroneously worked upon the compensation. Various counts, which ought to be taken into consideration, for making assessment of the compensation, as such, have been given amiss. Even, the consolidated amount, on the count of medical treatment, which includes hospitalization charges, expenses incurred for purchase of medicines, transportation, special diet etc., is too meagre. Likewise, on the count of 'pain and suffering', the amount granted is less. Also, there is no reason, as such, assigned for working compensation, to the extent of Rs.90,000/-, on account of permanent disability suffered by the appellant-claimant.

On the other hand, learned counsel for the insurance company has assiduously resisted the claim of the appellant-claimant. He submits that the compensation granted by learned Tribunal is just and reasonable, which calls for no further enhancement.

To establish the detail of the injuries, suffered by him, appellant-claimant Ajit Singh had himself stepped into witness box as PW-3 and his sworn testimony, in the form of affidavit is Ex.P5. Therein, he has categorically stated about sustaining of the injuries, on his head, left hand, left eye and left leg was broken. He was admitted in Government Hospital on 31.12.2004 and remained admitted there upto 31.01.2005. He was operated upon and had spent Rs.1.5 lakh, on his treatment.

Furthermore, the claimant had also examined PW-1 Dr.Rakesh Girdhar, Medical Officer, General Hospital, Karnal, who was member of the Board of Doctors, which had assessed the disability of the injured-claimant.

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He categorically deposed that the claimant was having 15% disability, due to ten months old fracture of the leg bones on left side with fracture of ulna on left side with fracture rib on left side with delayed union of fracture and stiffness of left knee (range of motion 0 to 90%). He proved disability certificate Ex.P11. This witness also deposed that ring fixator and bone grafting was done and also proved the bill, which is Ex.P1. He deposed that fixator applied on the leg of the claimant was brought by the claimant. Besides the bill Ex.P1, other medical bills, coming on record are Ex.P12 to Ex.P34 and Ex.P36.

Keeping in view the aforesaid kind of injuries, suffered by the appellant-claimant, the compensation, so worked upon by learned Tribunal, definitely falls on lower side.

Before re-assessment of the compensation, it should be noted that the appellant-claimant was 44 years, at the time of accident. On account of body functionality having reduced, on account of injuries sustained in the accident, definitely, his extent of earnings ought to have been reduced.

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 the inability to lead the life, he led prior to the life altering event.

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

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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, 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*'.

Thus, 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.

As deposed by PW-1 Dr.Rakesh Girdhar, the appellant-claimant had suffered 15% disability, on account of fracture and delayed union of the same, as deposed in the Court and as reflected in the disability certificate, which is Ex.P11. In this regard, it is pertinent to mention that though PW-1 Rakesh Girdhar, while facing cross-examination had stated that the disability may reduce by 1 or 2% with the passage of time and exercise, but furthermore, the said witness had also stated that since the fracture was involving knee joint and there were multiple pieces of fractured bone, in this case, Ajit Singh was less likely to improve significantly, in spite of 44 years of age. Keeping in view same, for all intents and purposes, the disability, for making assessment of the compensation, ought to be taken as 15%.

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Even though, the appellant-claimant, in the claim petition had asserted himself to be running a flour mill and also doing business of property dealer and as such, having earnings to the extent of Rs.12,000/- per month, but however, no sufficient evidence, as such, has been led by the appellant, to so establish his indulgence, as aforesaid. Keeping in view the same, in modest estimate, by making some guess work, proximate to the reality, the earnings of the appellant-claimant, at the relevant time, are taken to be Rs.3,000/- per month. Keeping in view the age of the appellant-claimant to be 44 years and his being self-employed, there ought to be addition of 25%, on the count of 'future prospects'. Thus, the earnings of the appellant-claimant works out to be Rs.3750/- per month, annual whereof, comes to be Rs.45,000/-.

Considering the age of the appellant-claimant to be about 44 years, the suitable multiplier, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, to be applied is '14' and also multiplying the same with 15% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as $\text{Rs.45000} \times 14 \times 15 / 100 = \text{Rs.94,500/-}$, on account of disability.

Definitely, for some period of time, on account of lower limbs, having made him immobile, till they were united, the movement of the appellant-claimant ought to be restricted. It should be taken into consideration that PW-1 Dr.Rakesh Girdhar also stated that it takes at least six months for the patient to start bearing weight, in such cases. Therefore, for at least a period of six months, he was bound to be confined to bed, by and large and on this count, he would not have been able to follow his

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source of livelihood and on this account, taking his earnings inclusive of future prospects also, for at least a period of six months, the compensation, to be granted comes out to be **Rs.22,500/-**.

Besides the aforesaid, total of the bills, which have been duly proved, as observed by learned Tribunal, is to the extent of **Rs.53,582/-**. The same ought to be taken into consideration.

Further, it is pertinent to mention that appellant-claimant remained admitted in hospital for a period of one month and definitely, he must have been looked after by a bye-stander/attendant. Though, learned counsel for respondent-insurance company 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 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. 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. Even, after the discharge from hospital, the appellant-claimant must have been looked after by family member/attendant, for at least six months, till he adept a skill to be self-sufficient to his maximum capacity. Thus, on account of 'attendant charges' a sum of **Rs.10,000/-** is granted.

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, some amount must have been spent by the family of the appellant-claimant. Thus, on the count of ‘transportation charges’ a 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. On this count also, another sum of **Rs.10,000/-** is granted.

Considering the nature of injuries, suffered by the appellant-claimant, in the accident in question, the appellant-claimant must have undergone through much stress and pain, on account of fracture, suffered by him, which never healed and on account of which, he had undergone pain and suffering and undergone operation. Thus, on the count of ‘pain and suffering’, an amount 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 (on account of disability)	Rs.94,500/-
2.	Loss of earnings (for six months)	Rs.22,500/-
3.	Medical Bills	Rs.53,582/-
4.	Attendant charges	Rs.10,000/-
5.	Transportation charges	Rs.10,000/-
6.	Special rich diet	Rs.10,000/-
7.	Pain and suffering	Rs.50,000/-
	Total	Rs.2,50,582/-

As such, the compensation, so awarded by learned Tribunal, stands enhanced from **Rs.1,45,000/-** to **Rs.2,50,582/-**.

On the enhanced amount of the compensation i.e. **Rs.2,50,582-1,45,000=Rs.1,05,582/-**, the appellant-claimant 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 residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

February 09, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No