

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

269

FAO-4869-2009 (O&M)
Date of Decision : 18.11.2024

Sandeep Kumar Verma

....Appellant

VERSUS

Parveen Kumar and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. K.B. Sidhu, Advocate for the appellant.

 Mr. Ankur Gupta, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the claimant-appellant against the award dated 06.04.2009 passed by the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as ‘the Tribunal’) whereby an amount of Rs.7,60,387/- was awarded as compensation to the claimant-appellant.
2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.
3. In the present case the Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Medical Bills	Rs.7,10,387/-
2	Pain and suffering	Rs.50,000/-
3	Total Compensation	Rs.7,60,387/--
	Interest	7.5% per annum

4. In the present case, vide order dated 08.05.2024 the claimant-appellant was directed to appear before a Medical Board to be constituted by the Director, Government Medical College and Hospital, Sector 32, Chandigarh for assessing his disability. Pursuant to the said order, a report from the GMCH, Sector 32, Chandigarh has been received assessing the permanent disability of the appellant to the extent of 90%.

5. Learned counsel for the claimant-appellant would contend that the claimant-appellant was 20 years of age at the time of the accident, which took place on 02.02.2007. In the said accident the claimant-appellant sustained multiple grievous injuries leading him to become permanently disabled. It is further the contention of learned counsel for the claimant-appellant that the claimant-appellant remained admitted in various hospitals and was operated upon thrice. Learned counsel for the claimant-appellant would further contend that the amount of compensation awarded by the Tribunal is on the lower side inasmuch as the Tribunal ought to have applied a multiplier method and that the amount awarded under the head pain and suffering is also on the lower side and further no amount has been awarded towards attendant charges, special diet and loss of amenities of life.

6. *Per contra*, the learned counsel for the respondent No.3-Insurance Company has vehemently argued that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

7. Heard.

8. In the present case, Dr. Sunil Bhasin, Neuro Surgeon, Maharaja Aggarsain Hospital, Delhi was examined as PW-8 before the Tribunal. However, he did not testify about the extent of disability of the claimant-

appellant and accordingly, vide order dated 08.05.2024, a direction was issued to the Director, Government Medical College and Hospital, Sector 32, Chandigarh to constitute a Medical Board to assess the disability of the claimant-appellant. Pursuant to the said order a report dated 03.06.2024 has been received wherein the disability of the claimant-appellant has been assessed as 90% of permanent in nature in relation to his brain. In view thereof, this Court deems it fit to assess the functional bodily disability of the claimant-appellant as 100%. Hon'ble the Supreme Court in the case of **Pappu Deo Yadav vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** has held as under :

“ 12. In view of the above decisive rulings of this court, *the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the Pranay Sethi principle).*

13. *The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court re-assessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only*

one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity."

9. In view of the law laid down in the case of **Pappu Deo Yadav** (supra), the Tribunal should have applied a multiplier method keeping in view the functional disability of the claimant-appellant by assessing his income according to the minimum wages prevalent at the relevant point of time. Admittedly, at the relevant point of time, the minimum wages were Rs.3,500/- per month and hence the income of the claimant-appellant is

assessed as Rs.3,500/- per month. At the time of the accident the claimant-appellant was 20 years of age and hence a multiplier of ‘18’ would be applicable and an addition of 40% is also to be made towards loss of future prospects.

10. The Tribunal has not awarded any amount towards attendant charges. The Supreme Court in the case of **Abhimanyu Partap Singh Vs. Namita Sekhon & Anr. [2022 (3) RCR (Civil) 557]** had assessed the attendant charges for the injured who was totally confined to the bed as Rs.5000/- per month for whole life, calculating the compensation applying a multiplier of 18. In the present case, the minimum wages at the time of the accident i.e in the year 2007 were Rs.3,500/- per month and hence the claimant-appellant, who is totally confined to bed, would be entitled to an amount of Rs.7,56,000/- [Rs.3,500/- x 12 x 18 (multiplier)] towards attendant charges.

11. Further, the amount of Rs.50,000/- awarded under the head pain and suffering is on the lower side and no amount has been awarded towards special diet. The claimant-appellant remained admitted in various hospitals and was operated upon thrice and thus this Court deems it appropriate to enhance the amount awarded under the head pain and suffering to Rs.2,50,000/- and to award an amount of Rs.25,000/- towards special diet. An amount of Rs.5,00,000/- is also awarded towards loss of amenities of life. The amount of Rs.7,10,387/- awarded by the Tribunal towards medical expenses is maintained. Accordingly, the reworked compensation is as under:

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.3,500/-

2	Annual Income	[Rs.3,500 x 12] = Rs.42,000/-
3	Future prospects @ 40%	[Rs.42,000+16,800/-] = Rs.58,800/-
4	Loss of income after applying multiplier ‘18’	[Rs.58,800 x 18] = Rs.10,58,400/-
5	Loss of Amenities of life	Rs.5,00,000/-
6	Pain and suffering	Rs.2,50,000/-
7	Special Diet	Rs.25,000/-
8	Attendant Charges	[Rs.3,500 x 12 x 18] = Rs.7,56,000/-
9	Medical expenses	Rs.7,10,387/-
	Total Compensation	Rs.32,99,787/-

12. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

13. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

18.11.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO