



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-3490-2010 (O&M)
Date of Decision: May 27, 2024

Khubi Khan

...Appellant

VERSUS

Karma Lal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.P.R.Yadav, Advocate
for the appellant.

Mr.Vinod Kumar, Advocate for
Mr.Rajesh Lamba, Advocate
for respondents No.1 and 2.

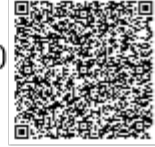
Mr.Rohit Kataria, Advocate for
Ms.Anamika Mehra, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation, as awarded by learned Motor Accident Claims Tribunal, on account of injuries sustained by him, in a motor vehicular accident, which took place on 10.03.2007, on account of use of Dumper bearing registration No.HR-55D-6275.

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

That, on 10.03.2007, appellant-claimant Khubi Khan, while being employed as driver on Dumper bearing registration No.HR-55D-6275, was

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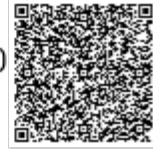
going from Pali Crusher Zone to Utawar for bringing stones. At about 5.00 a.m., while it was drizzling, he reached near village Bhagola, on Faridabad-Palwar Road. In the meantime, a stray animal came on the road, which forced him to apply emergency brakes, as a result whereof, the dumper slipped from the metal road and one of its tyre got burst. It became difficult for him to control the vehicle and thus, it turned turtle.

As a result of this accident, the appellant-claimant was got admitted in Om Hospital, Palwal, where he was given first-aid and further referred to All India Institute of Medical Sciences, Delhi. Anyhow, he was shifted to Safdarjung Hospital, Delhi, where he remained admitted for 21 days. His right leg was amputated above knee. Besides the same, there was fracture in the left leg ankle and his right arm was also damaged and his four teeth had broken as well as left finger of the right hand was also got cut.

It is the claim of the appellant-claimant that he became totally disabled and thereupon, he claimed compensation to the extent of Rs.15 lakh, along with interest.

In reply, respondents No.1 and 2, had denied the occurrence, for want of knowledge and further also denied the employment of appellant-claimant, as driver, upon the offending dumper and about the fact of injuries sustained by him. It was denied that he was permanently disabled.

Likewise, respondent No.3-insurance company also denied about the dumper, in question to be insured with their company and further, also about the claimant to be the driver of the same. The fact of accident, as such, had also been denied. Furthermore, objections had been taken about the claimant to be not holding valid and effective driving licence and that the dumper was

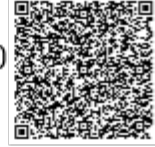


being driven in violation of terms and conditions of the policy.

Issues were framed and the evidence was adduced. The appellant-claimant himself stepped into witness box as PW-6 and further, he has examined various witnesses, who proved the medical bills. Also, PW-4 Dr.Mohammad Garukh, Medical Officer, was examined, who was the member of the medical board, which examined the claimant, with regard to the assessment of the disability and he proved the disability certificate Ex.P10. Furthermore, an eye witness to the accident was examined as PW-7 Mohammad Hanif. Thereafter, the evidence was closed

Even, respondents No.1 and 2, who had earlier made appearance and filed their reply to the main petition, did not pursue the claim petition and were proceeded against ex-parte. In these circumstances, respondent No.3-insurance company tendered into evidence, the copy of the insurance policy Ex.R1.

On appraisal of the evidence, brought on record, it was concluded by learned Tribunal that the fact of the accident stands established, arising out of use of the dumper bearing registration No.HR-55D-6275. Also, it was concluded by learned Tribunal, on the basis of the medical evidence, brought on record, more particularly, the disability certificate Ex.P10, that the appellant-claimant had suffered 100% disability, as a result whereof, considering the profession of driver, being followed by the appellant-claimant, his earnings were assessed as Rs.3000/- per month and thereupon, while applying the multiplier of '12' to the annual earnings, the compensation was worked upon as Rs.4,32,000/-. Besides the same, medical bills proved, to the extent of Rs.1521/- were also considered and

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Rs.5000/- was granted, on the count of 'pain and suffering'. Thus, the total compensation awarded was Rs.4,38,521/-.

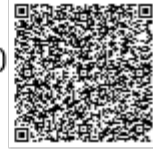
Being aggrieved by the extent of compensation awarded, the appellant-claimant has filed the present appeal.

So far as, the fact of accident and manner of taking place of the same, as well as the liability fastened upon the respondents is concerned, it ought to be considered that same stands amply established from the evidence adduced and furthermore, the respondents, who have been made liable, to pay the compensation, as such, have not challenged the Award. In these circumstances, the aforesaid aspects calls for no further scrutiny.

Be it noted that, it is only the appellant-claimant, who has filed the appeal, for seeking enhancement of the compensation.

The claim petition had been filed under Section 163-A of the Motor Vehicle Act, which is a special provision for payment of compensation on structural formula basis. It provides that the owner of the motor vehicle of the authorised insurer, shall be liable to pay, in the case of death or permanent disablement, due to the accident, arising out of use of motor vehicle, as indicated in the IIInd Schedule, to the legal heirs or the victim, as the case may be.

As already observed aforesaid, the fact of accident and same having caused, on account of use of offending dumper, of which the appellant-claimant was the driver, at the relevant time, stands established. It should also be noted that it is categoric claim of the appellant-claimant that he was employed as driver on the offending dumper, at the relevant time and he was driving the aforesaid dumper, at the time of accident. As a result of

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dumper having turned turtle, he had sustained injuries, the detail whereof, stands amply proved. As a result of the injuries, the disability suffered by the appellant-claimant is 100%. There was amputation of his right leg, above knee. Besides the same, there was fracture in the left leg ankle and his right arm was also damaged. Four teeth of the appellant-claimant had also broken and his left finger of the right hand had also got cut. The extent of disability, as such, is not disputed. It stands amply established from the evidence brought on record, by way of examination of PW-4 Dr.Mohammad Garukh.

Furthermore, it is pertinent to mention that it is categoric claim of the appellant-claimant that his earnings were Rs.3300/- per month. While in the witness box, in his affidavit Ex.PW6/A, he categorically stated about his earnings to the aforesaid extent. Learned Tribunal had taken the earnings of the appellant-claimant as Rs.3000/- per month, but however, there is no reason, as such, assigned as to why the earnings of the appellant-claimant, be not taken as Rs.3300/- per month, as asserted by him.

Taking it to be so, the compensation, so worked by learned Tribunal, calls for re-determination.

While taking the earnings of the appellant-claimant to be Rs.3300/- per month, his annual earnings works out to be Rs.39,600/-. The multiplier of '12', as applied by learned Tribunal, is on lower side. It stands established that the appellant-claimant was 37 years old, at the relevant time. Considering the appellant-claimant to be falling in the age group of 36-40 years, as per specifications given in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the suitable and appropriate



multiplier to be applied is ‘15’. Thus, after applying the aforesaid multiplier, the compensation comes to be Rs.39600x15=Rs.5,94,000/-. Besides the same, medical bills, which have been proved by PW-3 Gopi are Ex.P4 to Ex.P9, to total whereof is Rs.1521/-. The same also to be taken into consideration. Thus, the total compensation to be granted to the appellant-claimant comes to be Rs.594000+1521=**Rs.5,95,521/-**.

As such, the compensation, so awarded by learned Tribunal, stands enhanced from **Rs.4,38,521/-** to **Rs.5,95,521/-**. On the enhanced amount of compensation i.e. Rs.595521-438521=**Rs.1,57,000/-**, 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.

Accordingly, the impugned Award dated 10.11.2009 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

May 27, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No