

2024:PHHC:161849



201.

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

FAO No.4886 of 2010 (O&M)

Date of decision: 31.05.2024

Smt. Nirmal Gupta

.... Appellant

Versus

C. Roshan Lal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Harsh Aggarwal, Advocate, for the appellant
(through Video Conferencing).

Ms. Jaspreet Kaur, Advocate for
Mr. Mohit Jaggi, Advocate, for respondent No.1.

Mr. Solomon Partap Singh, AAG, Punjab,
for respondents No.2 to 4.

GURBIR SINGH, J.

1. Dissatisfied with the amount of compensation so awarded by the learned Tribunal, the claimant, who suffered injuries in a motor vehicular accident, has filed present appeal for enhancement of the amount of compensation.

2. Brief facts necessary for the disposal of present appeal are that on 27.11.2005, the claimant-Mrs. Nirmal Gupta along with her husband-Mr. M.L. Gupta, was coming from Phagwara to Hoshiapur in car bearing No.PB07D-7373. Said car was being driven by her husband carefully on the correct side of the road. At about 10:45 PM when they reached opposite

Mahavir Spinning Mills in the area of Village Purhiraan on Hoshiarpur-Phagwara road, a police vehicle bearing No.PB07C-3227, came from opposite side, which was being driven rashly, negligently and at a high speed, by respondent No.1. The headlights of police vehicle were also not on. On seeing the police vehicle in a zigzag manner, the husband of claimant took his car to the extreme left side of the road. The driver of police vehicle i.e. respondent No.1, could not control his vehicle and struck against the car being driven by the husband of the claimant by bringing his vehicle on the wrong side of the road. As a result of said accident, car bearing No.PB07D-7373 was badly damaged and the claimant and her husband received serious multiple injuries on their persons. They were removed to Civil Hospital, Hoshiarpur. On an application given by the husband of claimant, an FIR No.27, dated 23.01.2006 was also registered under Sections 279/337/338/428 of IPC at Police Station Sadar, Hoshiarpur, against respondent No.1.

2.1 The case set up by the claimant was that she received multiple injuries including fractures of pelvic bone and right arm below elbow. Initially, the claimant was given first-aid at Civil Hospital, Hoshiarpur but since the condition of claimant and her husband became very serious, they were referred to Amandeep Hospital, Amritsar. The claimant remained admitted there from 28.11.2005 to 18.12.2005 and thereafter, she was brought to Hoshiarpur where she remained confined to bed upto 03.06.2006. Then, she was got admitted in Fortis Hospital, Noida on

03.06.2006 where she remained admitted upto 10.06.2006. She was then admitted in St. Stephen's Hospital, Delhi, w.e.f. 18.12.2006 to 22.12.2006.

2.2 It was pleaded that before the accident, claimant was having a very good health but due to the accident, she became permanently disabled and her life had been shortened. She was working as Special Assistant with Punjab National Bank, Hoshiarpur and getting salary of Rs.22,000/- per month, but due to accident, she remained confined to bed. As there was no medical leave due to her, she took earned leave from 28.11.2005 to 20.01.2006 and thereafter, remained on leave without pay. It was also pleaded that she would have to undergo two other surgeries for removal of wires fixed in her pelvis and rod inserted in her right arm.

2.3 Upon notice, respondent No.1-driver appeared and filed written statement. Though he admitted the accident and registration of the case against him, but stated that husband of the claimant was in a drunken condition and he first hit his car against a truck and then against the police vehicle after coming towards wrong side of the road.

2.4 Respondents No.2 to 4 also appeared and filed separate written statement. Said respondents also admitted registration of the FIR but denied the averments made in the claim petition.

2.5 Issues were framed and in support of her case, the claimants examined 15 witnesses, whereas on the other side, respondent No.1 appeared as his own witness as RW1 and respondents No.2 to 4 failed to lead any evidence.

2.6 After appreciating the evidence on record, learned Motor Accident Claims Tribunal, Hoshiarpur, vide award dated 10.04.2010, awarded the following amount of compensation:-

“1.	Medical Treatment	=	Rs.165818=00
2.	Leave without pay	=	Rs.314972=00
3.	Emoluments of attendant	=	Rs. 18000=00
4.	Transportation charges	=	Rs. 10000=00
5.	Special diet	=	Rs. 10000=00
6.	Permanent disability	=	Rs. 100000=00
7.	Pain and suffering	=	Rs. 50000=00
8.	Loss of enjoyment of life	=	Rs. 25000=00

Total =			Rs.693790=00”

3. The appellant has filed an application i.e. CM No.12453-CII of 2023, under Section 41 Rule 27 read with Section 151 CPC to produce OPD slip, discharge summary, receipts/invoice and bills regarding her treatment, as Annexures A-1 to A-11, by way of additional evidence. It has been submitted that due to the injury received by her in the accident, she suffered complication in her hip and on advice, she was got operated in Sehgal Neo Hospital, New Delhi where she remained admitted w.e.f. 26.02.2023 to 05.03.2023 and incurred an expenditure of Rs.4,39,417/- vide Annexure A-1 to A-11.

3.1 Notice of said application was issued and respondents No.2 to 4 filed reply contending that the bills so produced vide Annexures A-1 to A-11 do not pertain to the treatment of injury caused due to the accident in question and whatever medical record was produced by the claimant had

already been considered by the Tribunal at the time of disposal of claim petition.

4. Main case as well as application for additional evidence are being taken up together.

5. Learned counsel for the appellant-claimant has argued that the appellant has been awarded the amount of compensation on lower side. Due to the accident, she suffered multiple injuries including fracture of pelvic bone and fracture of right arm below elbow. She remained hospitalized on different intervals and still visiting hospitals for follow-up treatment. Her permanent disability has been assessed as 50% which has totally incapacitated her from doing any work. Because of the accident, she had to take voluntary retirement. It is further argued that she developed complication in her right hip and has undergone right hip replacement again. The injury in the right hip was suffered in the accident and that time her right hip was replaced. Documents Annexures A-1 to A-11 pertaining to replacement of right hip again, may be taken up on record by way of additional evidence and be read in evidence. So, she has prayed for enhancement of amount of compensation.

6. Learned counsel appearing on behalf of respondent No.1 as well as learned counsel appearing on behalf of respondents No.2 to 4 have argued that the learned Tribunal has already awarded the compensation on higher side and there is no need for any enhancement.

7. I have heard the submissions of learned counsel for the parties and have gone through the record.

8. The instant appeal has been filed for enhancement of amount of compensation awarded vide award dated 10.04.2010 on account of injuries suffered by the claimant in the motor vehicle accident which took place on 27.11.2005. As per the medical record, it was a case of dislocation of right hip and total hip replacement was done by way of surgery. There was fracture on the right humerus and a plate was inserted. Due to complication in the right hip, again right hip replacement has been done. The appellant wants to produce OPD slip, discharge summary and bills of her treatment as Annexures A-1 to A-11 by way of additional evidence. Said documents have been issued by the concerned hospitals in the regular course of their working and there is nothing to disbelieve said documents. Said documents are for the period of February and March, 2023. Since surgery is conducted during the pendency of appeal and operation of right revision total hip replacement and allograft under CSEA was done on 01.03.2023, it can be safely concluded that complication had developed and the appellant had to go for further operation for right hip replacement. So, the documents Annexures A-1 to A-11 are required to be taken on record by way of additional evidence. The application i.e. CM-12453-CII-2023 is allowed and the documents Annexures A-1 to A-11 are taken on record.

8.1 The appellant suffered permanent disability to the extent of 50%. The Tribunal has granted Rs.1 lakh for the loss on account of

permanent disability, whereas the Tribunal was required to adopt multiplier method and then was required to assess the loss of income due to permanent disability. It is well known in many cases when implant is inserted in the body, then after sometimes either said implant is to be removed or some complication is developed which requires further treatment, so that the person is able to lead a pain free life.

8.2 As per Annexures A-1 to A-11, the amount spent on further operation is to the tune of Rs.4,39,417/-. Keeping in view the injuries suffered by the claimant and further surgery whereby her hip is replaced again after long time, the entire burden of said treatment cannot be put on the shoulders of respondents. The appellant is held entitled for a sum of Rs.2 lakhs as the amount of compensation on account of further medical treatment.

8.3 The claimant remained on leave without pay and the Tribunal held that the claimant is entitled for 50% of her salary which she would have received for the period she remained without pay. The Tribunal has awarded a sum of Rs.3,14,972/- as the amount of compensation for remaining on leave without pay for 785 days. The claimant got VRS on 19.03.2008 whereas she was to retire in the normal course on 30.04.2013. At the time of premature retirement of the claimant, her age was about 53 years. In case ***Popat Versus Shankar, Law Finder Doc Id # 832976***, an authority of Aurangabad Bench of Bombay High Court, it is held that in

such cases, appropriate date for adopting the multiplier will be the date of premature retirement of the claimant.

8.4 The appellant-claimant was granted pension of Rs.12,500/- per month. There is no evidence that she could not do any work. After total hip replacement, she was fully recovered. The Tribunal granted only one lakh amount of compensation on account of permanent disability which was to the extent of 50%. The petitioner had sought premature retirement and she was not discharged from service on account of some medical disability. By adopting multiplier of 11, the loss of future income can be assessed as $6,250 \times 12 \times 11 = 8,25,000/-$.

9. In view of above, the appellant-claimant is entitled for a total amount of Rs.10,25,000/- over and above the amount already paid to her, along with interest @ 7.5% per annum from the date of award till the realization of the amount.

10. Present appeal stands disposed of accordingly.

(GURBIR SINGH)
JUDGE

May 31, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No