



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.652 of 2010 (O&M)
Date of Reserve: 05.12.2024
Date of Decision: 17.12.2024

MOHAMMAD AKABARAppellant(s)
Vs
SHIV KUMAR AND ORSRespondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Ashwani Arora, Advocate
for the appellant.

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

HARKESH MANUJA, J.

[1]. By way of present appeal, challenge has been laid to an award dated 07.04.2009 passed by the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter to be referred as “the Tribunal”), whereby an amount of Rs.2,20,000/- was awarded as compensation to the appellant-injured along with interest @ 7.5% per annum.

Brief Facts

[2]. The appellant/claimant-Mohammad Akabar, being injured filed claim petition before the learned Tribunal praying for grant of compensation on account of injuries suffered by him in a motor vehicular accident which took place on 17.11.2004, while alleging rash and negligent driving by respondent No.1/driver.

[3]. After going through the claim petition and evaluating the evidence led by both the parties, learned Tribunal arrived at a conclusion that the accident occurred on account of rash and negligent driving of respondent No.1/driver; liability to pay compensation was fastened upon respondents jointly and severally.

The amount of compensation was awarded by the learned Tribunal in the following manner:-

S.No	Heads of Claim	Amount (in Rs)
1.	Expenses relating to treatment and medical bills	Rs.83,500/-
2.	Loss of income	Rs.24,000/-
3.	50% Permanent Disability	Rs.1,00,000/-
4.	Transportation	Rs.2,500/-
5.	Special diet, etc. (lumpsum)	Rs.10,000/-
	TOTAL:	Rs.2,20,000/-

[4]. Being aggrieved against the award dated 07.04.2009, the present appeal was preferred by the appellant/claimant for enhancement of compensation. Facts as specified in the claim petition and the issue regarding negligence of the driver being in favour of the appellant, not been assailed, therefore, for the sake of brevity, those are not being repeated here.

Arguments

[5]. Learned counsel for the appellant submitted that no compensation was awarded by the learned Tribunal on account of loss of future earnings, attendant charges as well as pain and sufferings. He also submitted that the compensation granted for transportation and special diet was on the lower side and was, therefore, liable to be enhanced.

[6]. On the other hand, learned counsel for respondent No.3/Insurance Company submitted that the appellant had been adequately compensated and as



such the impugned award warrants no interference and the present appeal was, thus, liable to be dismissed.

Discussion

[7]. I have heard learned counsel for the parties and perused the paper book of the case. I find force in the arguments advanced by the learning counsel for the appellant/claimant.

On the aspect of enhancement of compensation

Assessment under “Future loss of Income”

[8]. To prove his case, appellant tendered in the evidence his affidavit as Ex.P-1; copy of discharge summary and follow-up card as Ex.P-2; copy of FIR as Ex.P-181; copy of medical bills as Ex.P-7 to 170 and the disability certificate as Ex.P-177 and 178.

[8.1]. In the present case appellant in his affidavit (Ex.P-1) and during deposition while appearing as PW-1 claimed that he was working as a taxi driver. Even though during his cross-examination appellant admitted that he did not possess any proof of income while he was working as a Taxi driver, learned Tribunal ought to have considered the fact that in an unorganized sector such as in the present case, definite proof of income was rarely available and maintained. The Hon’ble Supreme Court in case of **"Kubrabibi v. Oriental Insurance Co. Ltd."**, reported as **(2023) 3 Apex Court Judgments (SC) 23**, held that in the absence of definite proof of income, social status of the deceased was to be kept in perspective when such person was employed in an unorganized sector. Relevant para thereof is reproduced here-under: -

“7. In a matter of the present nature where the compensation is sought and even in the absence of definite proof of the income, the social status of



the deceased is to be kept in perspective where such persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration. The fact that the deceased had three dependents to be cared for and had claimed that he was working as a mechanic, the amount payable to an unskilled labour, cannot be the basis and in that circumstance when he was a skilled person, the daily income at Rs.200/- per day in any event could have been taken even if the income from jeep transport business was discarded for want of documents. More so in a circumstance, where the MACT had referred to the evidence available on record and then arrived at its conclusion, the re-appreciation of evidence by the High Court is without being sensitive to nature of lis before it."

Also, learned Tribunal should have appreciated the fact that Motor Vehicles Act, 1988 being a beneficial piece of legislation, strict rules of evidence as applicable in a criminal trial, would not be applicable in the motor accident compensation cases. Reliance in this regard can be placed upon the judgment of the Hon'ble Apex Court in **"Rajwati @ Rajjo v. United India Insurance Company Ltd."**, reported as **2023(3) Apex Court Judgments (SC) 684**, relevant paras from which are reproduced hereunder: -

"18. Similarly, in the case of Kusum Lata & Ors. v. Satbir & Ors. (2011) 3 SCC 646, this Court observed that it is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

19. It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, "the standard of proof to be borne in mind



must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases".

Moreover, considering the fact that no evidence to the contrary was ever produced by the respondents in order to refute the claim of the appellant/claimant that he never worked as a taxi driver, this Court in its humble opinion, while relying on "Kukrabibi" and "Rajwati @ Rajjo's" cases (supra) as well as considering the deposition of appellant who appeared as PW-1 holds that appellant worked as a driver prior to the present accident.

Further, the Hon'ble Supreme Court in case of "Minu Rout and another vs. Satya Pradyumna Mohapatra and others", reported as (2013) 10 SCC 695, assessed the income of a driver in the year 2004 as Rs.6,000/- per month, thus, considering the fact that in the present case accident pertained to the year 2004, income of the appellant is assessed as Rs.6,000/- per month (Rs.200/- per day).

[8.2]. Upon perusal of disability certificate of the appellant (Ex.P177 and 178), it is evident that he suffered 50% permanent disability due to the injuries in the accident, and, thus, it would be difficult for him while sitting cross-legged, one feet having suffered disfigurement by shortening of limb by 2 inches. Moreover, Dr. Shardaindu Sharma, while appearing as PW 2, affirmed the findings of the medical board which issued the disability certificate. Therefore, keeping in mind that the appellant worked as a driver prior to the accident and after that he was forced to leave his vocation; even facing tremendous difficulty in any task involving sitting; functional disability faced by appellant needs to be assessed @ 100%.

In the present case, perusal of copy of driving license (Ex.P-5) showed that appellant was 30 years of age at the time of motor vehicular accident,



thus, loss of future income by adding 40% future prospects by applying multiplier of 17 is accordingly assessed as Rs.17,13,600/- ($6,000 + 40\% = 8400 \times 12 \times 17$).

Assessment under “other pecuniary heads”

[8.4]. Upon perusal of copy of discharge summary; follow-up card (Ex.P-2) and the copy of out-patient card (Ex.P-3) as well as the averments made in the affidavit of the appellant, it is evident that he kept on visiting PGIMER, Chandigarh for repeated surgeries and follow-up treatment from the date of last discharge i.e., 30.11.2004 till 07.09.2007, thus, in such circumstances, appellant is held entitled to a compensation of Rs.1,50,000/- as “Transportation charges”.

Appellant remained admitted in PGIMER, Chandigarh from 18.11.2004 to 01.12.2004 (14 days); 15.03.2005 to 05.04.2005 (22 days) and 25.11.2005 to 30.11.2005 (6 days) and would have thus, required attendant and nutritious diet during such period. Also, from the discharge summary (Ex.P-2) it was evident that appellant was advised to undergo physiotherapy during post operation rehabilitation period. In such circumstances, after placing reliance on the decision rendered by the Hon’ble Supreme Court in case of **“Kajal vs Jagish Chand and Ors.”**, reported as **2020(2) R.C.R.(Civil) 27**, whereby attendant charges in the year 2007 were assessed as Rs.5,000/- per month, this Court in its humble opinion, cautiously assesses attendant charges @ Rs.3,500/- per month in the present case.

Further, the Hon’ble Apex Court in case of **“Abhimanyu Pratap Singh vs. Namita Sekhon & Another”**, reported as **2022(3) R.C.R.(Civil) 557**, held that multiplier formula should be used while computing attendant charges. Thus, compensation for attendant charges while applying the multiplier of 17 is assessed as Rs.7,14,000/- ($3500 \times 12 \times 17$). Compensation for physiotherapy



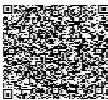
charges is assessed as Rs.1,00,000/-; special diet as Rs.1,00,000/- and future medical expenses as Rs.1,00,000/- while placing reliance on the judgment of the Hon'ble Supreme Court in case of **"Jagdish vs Mohan and others"**, reported as **(2018) 4 SCC 571**.

Assessment under 'non-pecuniary heads'

[9]. In motor accident cases, determining the value of pain and suffering is a complex process that involves consideration of various factors and subjective assessments. Unlike economic damages such as medical expenses or loss of wages, which can be calculated based on objective evidence, pain and suffering damages are more intangible and subjective. While no amount of compensation can alleviate the mental trauma and agony caused to the injured and loss to the future enjoyment of amenities of life, but societal balance could be maintained if he could be awarded some lumpsum amount on account of permanent disability.

In the present facts, the appellant was rendered unable to continue his vocation, remained hospitalized for 42 days and even suffered physical deformity due to shortening of limb by 2 inches. In **Abhimanyu's** case (supra) the Hon'ble Supreme Court held as under:-

"21. Under the head "non-pecuniary damages", the claimant has faced the pain, suffering and trauma as a consequence of injuries. It is to observe that to award compensation under the head "pain, shock and suffering", multiple factors are required to be considered from the date of accident, which include the prolonged hospitalization and regular medical assistance, nature of the injuries sustained, the operations underwent and the consequent pain, discomfort and suffering. Simultaneously, he has to suffer post-accident agony for whole life, including the amenities of life, which he can enjoy as a normal man but unable to do so on account of permanent disability. In the era of competition, he can perform better as a normal man but is unable to compete with others. Therefore, under the



head "pain, shock and suffering", amount of compensation deserves to be granted.

23. *Considering the facts and circumstances of the case and nature of injuries in our considered opinion, the appellant is entitled for a sum of Rs.4,00,000/- in the head of loss of amenities of life and marital bliss, pain and sufferings, loss of enjoyment and loss of expectancy....”*

Therefore, after giving thoughtful insight to the facts and circumstances of the present case, the compensation under the head of pain and sufferings is assessed as Rs.4,00,000/-.

Conclusion

[10]. In view of what has been discussed hereinabove, the appellant/claimant shall be entitled for the grant of compensation in the following manner:-

Sr.No.	Nature	Amount in Rupees
1	Loss of Income (as awarded by ld. Tribunal)	Rs.24,000/-
2	Loss of Future Income	Rs.17,13,600/-
3	Medical Expenses/Hospitalization (as awarded by ld. Tribunal)	Rs.83,500/-
4	Pain & Suffering	Rs.4,00,000/-
5	Attendant charges	Rs.7,14,000/-
6	Special Diet	Rs.1,00,000/-
7	Future Medical Treatment	Rs.1,00,000/-
8	Physiotherapy Charges	Rs.1,00,000/-
9	Transportation	Rs.1,50,000/-
	Total Compensation	Rs.33,85,100/-

	Amount Awarded by the Tribunal	Rs.2,20,000/-
	Enhanced Amount	Rs.31,65,100/-

[11]. The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case and as per the observations made by the Hon’ble Supreme Court in Smt. Supe Dei and others Vs. National Insurance Company Limited and other, (2009) (4) SCC 513 approved in a subsequent judgment titled as Puttamma and others Vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443 the interest is enhanced @ to 9% per annum on the amount of compensation awarded to the appellant/claimant from the date of institution of claim petition till its realization but excluding the period of delay in filing of the present appeal. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

[12]. In view of aforesaid modification, the present appeal stands disposed of. Pending miscellaneous application(s) if any, shall also stand disposed of.

December 17, 2024

Atik

Whether speaking/reasoned

Whether reportable

(HARKESH MANUJA)

JUDGE

Yes/No

Yes/No