IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-1205-2017
Date of decision : 27.11.2024

Gurpreeet Singh ...... **Appellant**

versus

Rajesh Kumar and others ...... **Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Nitish Garg, Advocate
for the appellant.

Mr. Munish Goel, Advocate
for respondent No.3-United India Insurance Co.

Mr. Bhupinder Singh Walia, Advocate
for respondent No.6-National Insurance Co.

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PANKAJ JAIN, J. (Oral)

1. Claimant is in appeal. Claim petition was filed under Section 163-A of the Motor Vehicles Act seeking compensation on account of injuries sustained by the claimant in a motor vehicular accident dated 16.05.2015.

2. It was claimed that claimant was a pillion rider, sitting behind Bahadur Singh-respondent No.4, who was driving the scooter. The scooter met with accident with car being driven by respondent No.1 in a rash and negligent manner. Claimant lost his foot. Claimant was 36 years of age and was working as Conductor with Roop Kanwal Transport Company at a monthly salary of Rs.3300/- and suffered permanent disability to the extent of 50%. Tribunal applied multiplier

method and calculated compensation for 100% permanent disability as Rs.6,33,600/-, but awarded 1/2 thereof for 50% disability only. Rs.48,198/- have been awarded for medical expenses and hospital charges on actual basis. Further amount of Rs.5,000/- has been paid on account of pain and suffering. It has come on record that the claimant remained hospitalized w.e.f. 16.05.2015 to 13.06.2015. His left foot stands amputated.

2. Counsel for the claimant submits that loss of income of the claimant ought to have been assessed by assessing his functional disability which is 100%, as he is unable to discharge his vocational duties. He was earlier employed as Conductor in a private bus company. Due to loss of foot, he has been rendered crippled for whole of life and will not be able to pursue his livelihood. Counsel refers to ratio of law laid down by Supreme Court in the case of ***Pratap Narain Singh Deo vs Srinivas Sabata And Anr, (1976) 1 SCC 289***. He further submits that a meagre amount of Rs.5,000/- has been awarded for pain and suffering. It has come on record that the appellant remained hospitalized for a month, yet nothing has been awarded for loss of income, special diet and transportation charges. Claimant has to spend considerable amount on artificial limb and nothing has been awarded on account of the same.

3. *Per contra*, counsel for the respondents however submits that the present claim petition was filed under Section 163-A which has a structural formula and the Tribunal rightly awarded compensation.

4. I have heard counsel for the parties and have carefully gone through the records of the case.

5. So far as objection with respect to provision contained in Section 163-A is concerned, the same sans merit. Prior to amendment Act No.32 of 2019, Section 163-A as on the statute book read as under:-

> *"163A. Special provisions as to payment of compensation on structured formula basis*.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
>
> [THE SECOND SCHEDULE
>
> (See Section 163 A)
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> SCHEDULE FOR COMPENSATION FOR THIRD PART FATAL ACCIDENT/INJURY CASES CLAIMS
>
> 1. Fatal Accidents:

Annual Income		Rs. 3000	Rs. 4200	Rs. 5400	Rs. 6600	Rs. 7800	Rs. 9000	Rs. 10200	Rs. 11400	Rs. 12000	Rs. 1800	Rs. 24000	Rs. 36000	Rs. 40000
AGE OF VICTIM	MULTIPLIER					RUPEES IN THOUSAND								
	compensation in case of death													
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Up to 15 yrs.	...15	60	84	108	132	156	180	204	228	240	360	480	720	800
Above 15 yrs. but not exdg. 20 yrs.	...16	57	79.8	102	125.4	148.2	171	193.8	216.6	228	342	456	684	760
Above 20 yrs. but not exdg. 25 yrs.	...17	54	75.6	97.2	118.8	140.4	162	183.6	205.2	216	324	432	648	720
Above 25 yrs. but not exdg. 30 yrs.	...18	51	71.4	91.8	112.2	132.6	153	173.4	193.8	204	306	408	612	680
Above 30 yrs. but not exdg. 35 yrs.	...17	50	67.2	86.4	105.6	124.8	144	163.2	192.4	192	288	384	576	640
Above 35 yrs. but not exdg. 40 yrs.	...16	50	63	81	99	117	135	153	171	180	270	360	540	600
Above 40 yrs. but not exdg. 45 yrs.	...15	50	58.8	75.6	92.4	109.2	126	142.8	159.6	168	252	336	504	560
Above 45 yrs. but not exdg. 50 yrs.	...13	50	50.4	64.8	79.2	93.6	108	122.4	136.8	144	216	286	432	480
Above 50 yrs. but not exdg. 55 yrs.	...11	50	50	54	66	78	90	102	114	120	180	240	360	400
Above 55 yrs. but not exdg. 60 yrs.	...8	50	50	50	52.8	62.4	72	81.6	91.2	96	114	192	286	320
Above 60 yrs. but not exdg. 65 yrs.	...5	50	50	50	50	50	54	61.2	68.4	72	108	144	216	240
Above 65 yrs.	...5	50	50	50	50	50	50	51	57	60	90	120	180	200

> NOTE: The amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1 /3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive.
>
> 2. Amount of compensation shall not be less than Rs. 50,000.
>
> *3. General Damages (in case of death):*
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> The following General Damages shall be payable in addition to compensations outlined above:

(i)	Funeral expenses	-Rs. 2,000/-
(ii)	Loss of Consortium, if beneficiary is the spouse	-Rs. 5,000/-
(iii)	Loss of Estate	-Rs. 2,500/-
(iv)	Medical Expenses—Actual expenses incurred before death supported by bills/vouchers but not exceeding	-Rs. 15,000/-

4. General Damages in case of Injuries and Disabilities

(i)	Pain and Sufferings	
	(a) Grievous injuries	-Rs. 5,000/-
	(b) Non-grievous injuries	-Rs. 1,000/-
	Medical Expenses—Actual expenses incurred supported by bills/vouchers but not exceeding as one time payment	-Rs.15,000

5. Disability in non-fatal accidents:
The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.

PLUS either of the following:—
(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or
(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.
Injuries deemed to result in Permanent Total Disablement / Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.
6. Notional income for compensation to those who had no income prior to accident:—
Fatal and disability in non-fatal accidents:—

(a)	Non-earning persons	-Rs. 15,000/-
(b)	Spouse	—Rs. l/3rd of income of the earning/surviving spouse

In case of other injuries only "general damage" as applicable.]"

6. In view of above in case of permanent disability, compensation needs to be computed applying multiplier method. Test

for evaluating permanent disability will be as applicable to the provision of Workmen's Compensation Act (Now known as Employee's Compensation Act, 1923). Meaning thereby, ratio of law as laid down by 4 Judges bench in ***Pratap Narain Singh Deo vs. Srinivas Sabata (1976) 1 SCC 289,*** will be applicable in present case on all four corners.

7. Claimant was working as bus conductor prior to accident. His left foot stands amputated owing to injuries suffered in the accident. Meaning thereby, he is disabled from carrying out his professional duties. Thus, the functional disability of claimant is assessed as 80% in view of law laid down by Apex Court in ***Pratap Narain Singh Deo's case (supra).***

8. Supreme Court in the case of ***Sidram vs. The Divisional Manager, United India Insurance Co. Ltd. and anr. (2023) 1 RCR Civil 444,*** while awarding compensation under pecuniary and non pecuniary heads referred to the following heads:-

A. Pecuniary expenses	
1.	Loss of earning due to disability
2.	Loss of earning during treatment
3.	Medical expenses
4.	Future medical expenses
5.	Attendant charges
6.	Litigation expenses
7.	Loss of conveyance, special diet etc.
B. Non Pecuniary expenses	
1.	Pain and suffering
2.	Marriage prospects
3.	Loss of amenities

9. The compensation awarded to the claimant is as under:-

Loss of earning due to disability	Since appellant has lost his left foot and would not be able to discharge his vocational duties, his functional disability is treated as 80%. Thus, loss of earning is enhanced as under:- 3300x12x16x80% = **Rs.5,06,880/-**
Loss of earning during treatment	Appellant remained hospitalized for one month. He is not expected to have walkd the next day. Thus, his loss of earning during treatment is assessed at Rs.3300x2 = **Rs.6600/-**.
Medical /future medical expenses	Under medical expenses, Tribunal has granted him Rs.48,198/- on actual basis. The same is maintained. Further nothing has been granted under the head of future medical expenses. The same is assessed @ **Rs.50,000/-.**
Attendant charges	Claimant is awarded attendant charges for two months @ Rs.2,000/- per month i.e. Rs.2000 x 2 = **Rs.4000/-**
Litigation expenses	**Rs.10,000/-**
Loss of conveyance and special diet	**Rs.10,000/-**
Pain and suffering	Under the head of pain and suffering, for a person who remained hospitalized for a month and had to go amputation of his left foot Rs.5,000 is to meagre. The same is enhanced to **Rs.50,000/-.**
Marriage prospects	There is nothing on record that the claimant is unmarried. He need not be awarded any compensation under the said head.
Loss of amenities	Keeping in view that the appellant is in prime age of 36 years, he is awarded **Rs.50,000/-** under this head.
Interest awarded by the Tribunal @ 7% per annum is enhanced to 9% per annum.	

10. With the aforesaid modification, the appeal is disposed off.

(PANKAJ JAIN)
JUDGE

27.11.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No