

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4528-2018 (O&M)
Date of Decision: January 23, 2024

Satpal Singh
...Appellant

VERSUS

Khaminder Singh and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Naveen Batra, Advocate
for the appellant.

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

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation, granted on account of injuries sustained by him, in a motor vehicular accident.

On appraisal of the evidence brought on record, learned Motor Accident Claims Tribunal vide Award dated 11.08.2017, had granted compensation to the extent of Rs.2,98,896/- to the appellant, the detail whereof, in tabular form is as herein given:-

On account of medical bills		
Ex.P4	:	Rs.60,000/-
Ex.P5 to Ex.P21	:	Rs.53,896/-
Total	:	Rs.1,13,896/-
Transportation charges	:	Rs.5,000/-

Special diet	:	Rs.5,000/-
Loss of earning	:	Rs.20,000/-
Disability and loss of future income	:	Rs.1,00,000/-
Pain and suffering	:	Rs.50,000/-
Attendant charges	:	Rs.5,000/-

Being dissatisfied with the awarded amount, the appellant-claimant has filed the present appeal for seeking enhancement of the compensation.

Be it noted that, the present respondents, who have been made liable to pay the compensation, have not filed any appeal. It is only the appeal filed by the appellant-claimant.

In this backdrop, learned counsel for the appellant-claimant underscores that the appellant-claimant had suffered 50% permanent disability and is unable to perform everyday activities and he requires constant support, even, for the confined life, he has been forced to live after the accident. Also, it is submitted that prior to the accident, he was working as a Driver. In fact, on account of the injury sustained on the lower left foot, he is unable to further follow his avocation. Also, it is submitted that there are non-quantifiable implications, on the life of the appellant-claimant. As such, he made a prayer for extensive enhancement of the compensation.

On the other hand, learned counsel for the Insurance Company has refuted the claim the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon and the compensation, already granted is just and reasonable. Thus, he

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submits that the appeal sans merit and deserves to be dismissed.

It is categorical claim of the appellant-claimant that he was 38 years old, at the time of the accident and he was a driver by profession and was also doing the work of dairy farming. He further deposed that on 06.09.2012, while he was going to J.P. Factory, after parking his truck bearing registration No.HP-64-6797 and had reached near the gate of J.P. Factory, then suddenly, truck bearing registration No.HP-12D-2851, driven by respondent No.1-Khaminder Singh, in a rash and negligent manner, struck against him, as a result whereof, he had sustained multiple injuries on his body. His left foot was damaged. To so substantiate the fact of injuries sustained by him in the accident in question, the appellant-claimant, in his affidavit Ex.PW1/A, has categorically reiterated the manner of taking place of the accident and further about registration of the FIR, at his instance. Further, he deposed about the injuries sustained by him in the accident in question. Besides himself, the appellant-claimant has also examined PW-2 Dr.Saurab Sharma, Kailash Hospital, Anandpur Sahib, who had deposed with regard to the admission of the appellant-claimant in his hospital on 06.09.2012 and he was diagnosed to be having crushed injury, left foot, with history of road side accident. He also deposed that patient was discharged on 27.09.2012. He proved the admission and discharge record, which is Ex.P2 (consisting of pages No.1 to 22), copy of summary Ex.P3 and hospital bill Ex.P4. This witness also deposed that the patient was operated on 07.09.2012. He also proved other original bills, which are Ex.P5 to Ex.P21. PW-3 Balwinder Singh Multani, Medical Officer, Civil Hospital, has been examined, who, on the basis of the record, has proved the disability

certificate of the appellant-claimant, which is Ex.PW3/A. He also deposed about himself to have examined the appellant-claimant for his disability of left lower limb, which was assessed to be 50% permanent in nature, in relation to left lower limb. Dr.Varinder Singh, who had prepared the disability certificate, was stated to have died and on this account, PW-4 Varinder Pal Singh, Junior Assistant, Civil Hospital, Rupnagar, was examined, who had proved the death certificate of Dr.Varinder Singh, which is Ex.PW4/A and has also deposed about disability certificate Ex.PW3/A, to have been prepared under the signatures of said Dr.Varinder Singh..

Though, the respondents have contested the claim petition of the appellant-claimant, but however, no evidence to rebut the aforesaid evidence, with regard to the nature of injuries sustained and treatment undergone, has been led by the respondents. In fact, respondent No.1-Khaminder Singh, has not stepped into witness box.

Perusal of the disability certificate reveals about the injury to have been suffered on left lower limb. The details of the injuries, as such, has been mentioned in the disability certificate, which relates to stiffness and loss of dorsiflexion. It was observed in the disability certificate that there was shortening of left leg by 1 inch and limping was present. It was opined therein that patient had 50% permanent disability, relating to lower limb.

In the light of the same, it is submitted that the compensation, so worked upon by learned Tribunal, is miserably on lower side. In fact, it is submitted that earnings of the appellant-claimant have also been taken on lower side. It is specific claim of the appellant-claimant that he was working as driver and soon before the accident also, he was driving the truck bearing

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registration No.HP-64-6797, which, he had parked, before proceeding towards J.P. Factory, when the accident had occurred. Such being the factual position, there is no reason coming forth to discard the testimony of the appellant-claimant, about the avocation of driver, being followed by him. The essential circumstances, coming forth, from the evidence ought to be taken into consideration. Soon after the accident, the appellant-claimant was taken to the private hospital, where he remained admitted for about 20 days. Such being the circumstances spelt out, condering him to be working as driver, his earnings, in modest estimate, can conveniently be taken to be **Rs.6,000/-** per month. Taking it to be so, the compensation, so worked upon by learned Tribunal, which is inadequate, calls for re-determination, more particularly, considering the age of the appellant-claimant, at the relevant time.

Before proceeding further, it is essential to note that the Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be '**justly**' determined. A person therefore, is not only to be compensated for the injury suffered due to the accident, but also for the loss suffered, on account of the injury and his inability to lead the life, he led prior to the life altering event.

A useful reference is made to *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, wherein, the Hon'ble Apex Court, made the relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

"...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead

one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law.”

The Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his/her life, on account of his/her physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count, but the functional disability, on account of injury sustained, can be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343.***

The efforts of the Courts must always be to substantially ameliorate the misery of the claimant and recognize his actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

As already observed aforesaid, the appellant-claimant had suffered crushed injury on the left lower limb and as per the disability certificate, proved in evidence, he had suffered shortening of leg by 1 inch and limping was present and he was assessed to be having 50% permanent disability, relating to his left lower limb. As observed aforesaid, the appellant-claimant was working as driver. Soon before the time of accident

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also, he was driving the truck bearing registration No.HP-64-6797. Considering the same, the kind of injury sustained by him, must have had direct impact upon his avocation. On account of shortening of leg and limping, there is bound to be decrease of body functionality. Though, shortening of leg by 1 inch, in itself, may not debar him from following the same avocation, but however, his efficiency is bound to be affected by the same. It will be having impact upon the control to be exercised by the driver, while driving the truck and therefore, the efficiency is bound to be affected, on account of decrease in body functionality.

Considering all the aforesaid factors, in modest estimate, the loss of earnings, on account of permanent disability can conveniently be taken to be 25%.

Looking at age of the appellant-claimant to be 38 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, 25% has to be added, on the count of 'future prospects'. Thus, the earnings of the injured-appellant comes to be Rs.6,000+1500(25%)=Rs.7500/- and annual earnings comes to be Rs.90,000/-.

In consonance with the *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '15' and also multiplying the same with 30% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as $\text{Rs.90000} \times 15 \times 25 / 100 = \text{Rs.3,37,500/-}$. Accordingly, under the head of loss of earnings, on account of disability, the amount awarded by the Tribunal, is enhanced proportionately to

Rs.3,37,500/-.

The total of the medical bills, which have been proved before learned Tribunal is **Rs.1,13,896/-** and the same has been appropriately granted.

Besides the same, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of the conveyance for 'to and fro' to the hospital, substantial amount must have been spent by the family of the appellant-claimant. Thus, on the count of 'transportation charges', the compensation, so granted by learned Tribunal stands enhanced to **Rs.20,000/-**.

Obviously, during the period of treatment and some time thereafter, in the minimum, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, the amount of Rs.5000/-, as granted by learned Tribunal, is enhanced to **Rs.20,000/-**.

Furthermore, for some period of time, after the accident, in the minimum and even, looking at his condition with disability and more particularly, looking at the kind of injuries sustained, the appellant-claimant must have been looked after by a by-stander/attendant throughout. Even if, the appellant-claimant was being looked after only by his family members, then also, it should be noted that they could perform the role of care-giver, only by diverting their own time, from any form of gainful employment, which could have generated some income. Thus, on the count of 'attendant charges', the compensation, so granted by learned Tribunal stands enhanced to **Rs.20,000/-**.

On the count of 'pain and suffering', the compensation of

Rs.50,000/-, so awarded by learned Tribunal is appropriate and the same is granted.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.3,37,500/-
2.	Medical Bills	Rs.1,13,896/-
3.	Transportation charges	Rs.20,000/-
4.	Special rich diet	Rs.20,000/-
5.	Attendant charges	Rs.20,000/-
6.	Pain and suffering	Rs.50,000/-
Total		Rs.5,61,396/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.5,61,396-2,98,896=Rs.2,62,500/-**. On the enhanced amount of the compensation i.e. **Rs.2,62,500/-**, 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. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

Accordingly, the impugned Award dated 11.08.2017 stands modified, to the extent, as indicated aforesaid.

With the above observations, the present appeal stands allowed.

January 23, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No