IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-2761-2012 (O&M)

Balwinder Ram Mahey

...Appellant

VERSUS

Jaspal Singh and others

...Respondents

(ii) FAO-2281-2018 (O&M)

Balwinder Ram Mahey

...Appellant

VERSUS

Jaspal Singh and others

...Respondents

Date of Decision: May 03, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.M.S.Sachdev and Ms.Mehar Sachdev, Advocates
for the appellant.

Mr.Suvir Dewan, Advocate
for respondent No.3.

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ARCHANA PURI, J.

These are two appeals filed by the appellant-claimant, thereby, questioning the adequacy of the compensation awarded by learned Motor Accident Claims Tribunal, firstly vide Award dated 23.03.2012 and secondly, vide Award dated 19.09.2017, on account of injuries sustained by him, in a motor vehicular accident.

The accident in question had taken place on 21.05.2009. Suffice to consider that, so far as factum of the accident, involvement of three-wheeler, manner of taking place of the accident as well as the role assigned to respondent No.1 and the liability fastened upon the respondents is concerned, none of the respondents have filed any appeal. Therefore, there is no necessity to further dwell on these aspects.

Be it noted that both the appeals have been filed by the appellant-claimant for seeking enhancement of the compensation.

At first instance, the claim petition was filed on 12.05.2010. On appraisal of the evidence, brought on record, learned Tribunal besides recording the finding with regard to the manner of taking place of the accident and involvement of three-wheeler, had also further concluded about the claimant to be working as an Advocate and that he had sustained various injuries and further, worked upon the various aspects of compensation, such like, medical expenditure on the treatment, loss of earnings, special diet, pain and suffering, physiotherapy etc. However, with regard to the future medical expenses, learned Tribunal had given an opportunity to file claim petition for future expenses of the treatment, which will be subject to removal of the implants only and not for any other treatment. Thus, the compensation to the extent of Rs.5,10,523/- was awarded.

Being aggrieved, the appellant-claimant filed an appeal i.e. FAO-2761-2012 for seeking enhancement of the compensation.

Since opportunity was granted for filing the claim petition on the ground of future medical expenditure incurred for removal of the implants, the appellant-claimant had filed another claim petition, on the basis whereof, Award dated 19.09.2017 was passed, vide which, the compensation was awarded to the extent of Rs.1,00,282/- i.e. Rs.75,282/- on account of the medical expenditure incurred and Rs.25,000/-, on the count of 'pain and suffering'.

Being aggrieved with this extent of compensation, the appellant-claimant has also filed subsequent appeal i.e. FAO-2281-2018, for seeking enhancement.

However, at the very outset, it is pertinent to mention that in the claim petition, initially filed, when the assessment of compensation was worked upon, it was not appropriate for the Tribunal to have kept the compensation, with regard to consequential surgical intervention, as open end. It could have been worked upon as future medical expenses, but however, it was not so done. Neither any of the parties had knocked the door of the Court to challenge the said open end prospective compensation.

But anyhow, it is pertinent to mention that in the initial claim petition, the claimant had sought future medical expenses also and therefore, the same can be considered in the appeal i.e. FAO-2761-2012. The maintainability of the subsequent claim petition, as inevitable consequence for removal of the implants is more or less of academic interest, at present, since this aspect could be considered, while considering the initial Award.

It is categoric claim of the appellant that he is an Advocate, practising at Jalandhar. He was 40 years, at the time of accident. He had sustained multiple injuries, including compound fracture on the upper end of right tibia, with vascular injury and fracture proximal on right hand ring finger. He had also sustained multiple injuries on other parts of the body.

With regard to the same, suffice to consider the testimony of appellant himself, who stepped into witness box as PW-1 as well as testimony of PW-5 Dr.Mukesh Mishra, who had categorically deposed about the admission of claimant in his hospital from 21.05.2009 to 01.06.2009. He has also given the detail of the injuries, found on the person of claimant as well as manner of treatment undergone by him. The discharge summary is also coming on record, which also reveals that initially, claimant was taken to Sacred Heard Hospital and therefrom, he was shifted to Joshi Hospital and Trauma Centre, with right leg splinted on a krammer wire splint and he had also sustained injuries in right hand. He was diagnosed to be a case of 1) compound # upper end (Rt) tibia with vascular injury; 2) # proximal phalanx (Rt) hand ring finger. Also, from this discharge summary, it is evident that the claimant was given 1) ORIF (plating) # upper end tibia with Rt popliteal Artery Embolectomy and vascular repair; 2) K-wire fixation of Rt. 4th finger proximal phalanx.

Considering the injuries so suffered and kind of treatment undergone by him and also considering the appellant-claimant to be practising Advocate and further considering other evidence, brought on record, learned Tribunal had awarded compensation, which in tabular form is reproduced as herein given:-

Medical expenses (detailed below) Ex.P2 to Ex.P4 = Rs.4381/- Ex.P5, Ex.P25 to Ex.P29 = Rs.1,83,350/- Ex.P6 = Rs.10,500/- Ex.P7 to Ex.P12 = Rs.29,109/- Ex.P13 to Ex.P21 and Ex.P72 = Rs.24,383/- Ex.P31 = Rs.22,800/-	Rs.2,74,523/-
Attendant charges	Rs.44,000/-
Taxi charges	Rs.16,000/-

Physiotherapist	Rs.70,000/-
Loss of earnings while considering monthly income as Rs.12,000/- per month	Rs.48,000/- (for four months since admission)
Thereafter, for about three months, loss of earnings to the extent of 50%	Rs.18,000/- (Rs.6000x3)
Pain and suffering	Rs.30,000/-
Special diet	Rs.10,000/-

It is pertinent to mention that, so far as, considering the removal of implants to be done in future, learned Tribunal had given an opportunity to file claim petition for claiming future expenses of the treatment, which would be subject to removal of implants only and not for any other treatment. In this manner, as worked upon aforesaid, total compensation awarded was **Rs.5,10,523/-**.

Being aggrieved, as observed, initially **FAO-2761-2012** was filed. However, subsequently, appellant-claimant had got removed the implants and thereafter, subsequent claim petition was filed and working upon the bills, proved in evidence, the compensation to the extent of Rs.1,00,282/- was awarded. Being dissatisfied, the appellant-claimant filed another appeal i.e. **FAO-2281-2018**.

Time and again, the Courts have reiterated the concept of 'just' compensation to be awarded to the victim of the accident. It ought to be fair, reasonable and equitable. The determination of quantum of compensation is a fact dependent exercise, which must be liberal and not parsimonious. It must be emphasized that the compensation is more comprehensive form of pecuniary relief, which involves broad-based approach.

The Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation, as per the contemporaneous position of an individual, which should be essentially forward-looking. A person is not to be compensated for the injuries suffered, due to the accident, but also for the loss suffered, on account of the injury and his inability to lead the life, he/she led prior to the accident in question. It should always be kept in mind that the measure of compensation, must reflect a genuine attempt of the law, to restore the dignity of the being. Thus, 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 injury suffered and impact of the same, upon the profession/job followed by the victim and upon the extent of his earnings.

Though, it is impossible to equate human sufferings and personal deprivation with money, but however, the Act enjoins upon the Courts to do so, in an attempt to help restore the self dignity of the claimant, by awarding **'just compensation'**. In ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the Hon'ble Apex Court held that the 'just' compensation is adequate compensation and the award must be just that-'**no less and no more'**.

Now, reverting to the case in hand, undisputedly, the appellant-claimant is a practising lawyer. He was about 40 years old, at the relevant time. He had sustained injuries, as detailed aforesaid and on account of the injuries, he remained admitted in the hospital and had undergone treatment. There was implantation done.

Very true, no disability certificate has been obtained by the appellant-claimant. In the given circumstances, even though, the permanent disability, as such, may not be established, but however, the impact of the injuries, on the professional life of the appellant as well as the consequential impact, ought to be considered.

The appellant-claimant has asserted his earnings to be Rs.35,000/- per month. However, income tax receipts coming on record, are Ex.P55, P56 and P57. Soon before the accident, the acknowledgment receipt for the assessment year 2009-10 is Ex.P56, reveals about the earnings of the claimant to be Rs.1,53,200/- and in the subsequent period i.e. after the accident, the acknowledgment receipt for the assessment year 2010-2011 is Ex.P57, which reflects the earnings of the appellant-claimant to be Rs.30,000/-, However, Ex.P57 is the acknowledgment receipt, with regard to the return furnished, after taking place of the accident. Even though, there is bound to be reduction in the extent of earnings, but it is to be, to this extent, as depicted in Ex.P57, as such, cannot be considered, as chances of showing the earnings, at lowest level, cannot be ruled out, as it was furnished, after the accident by the appellant-claimant.

But anyhow, considering Ex.P56, which is the acknowledgment receipt relating to assessment year 2009-2010, learned Tribunal had appropriately considered the earnings of the appellant-claimant as Rs.12,000/- per month.

The appellant is a practising lawyer and considering this nature of profession, it is quite obvious that personal services are required to be rendered towards the clients. Keeping in view the same, it is significant to note that on account of such injuries, more particularly, of the lower limb, the appellant-claimant, must have remained confined to the bed for a pretty long period. Learned Tribunal, while assessing the earnings as Rs.12,000/-

per month, had worked upon the loss of earnings, for a period of his hospitalization i.e. from 21.05.2009 to 01.06.2009 and for further 3½ months, which is on lesser side. However, in the minimum, the appellant-claimant must have been deprived of rendering services to his clients, in modest estimate, for at least a period of six months and therefore, the loss of earnings, has to be worked upon for this period i.e. Rs.12000x6=**Rs.72,000/-**.

Even, on the ground of 'pain and suffering', an amount of Rs.30,000/- has been awarded. However, this too calls for enhancement. Firstly, the appellant-claimant must have remained under trauma and pain for having undergone surgery, immediately after the accident. Considering the same, the amount awarded on the count of 'pain and suffering' stands enhanced to **Rs.50,000/-**.

For the healing process, there is bound to be intake of nutritious diet by the appellant-claimant, for the period, for which he remained confined to bed i.e. approximately for six months. Thus, on the count of 'special diet', the compensation stands enhanced from Rs.10,000/- to **Rs.30,000/-**.

During the period of his admission and also for the follow-up treatment, various trips to hospital must have been made by the appellant. There is bound to be restrictive movement, apart from the hospital visits also. Furthermore, he would not have been able to drive his vehicle, for a pretty long time. Thus, on the count of transportation, another amount of **Rs.30,000/-** is awarded.

The compensation awarded by learned Tribunal, on the counts of 'attendant charges' to the extent of **Rs.44,000/-** and 'medical expenses' to the extent of **Rs.2,74,523/-**, is just and appropriate.

Moreover, during the process of recovery, the services of physiotherapist, is bound to have been availed by the appellant-claimant, at least for a period of six months. Considering the same to be a skilled services, the amount of Rs.70,000/- awarded by learned Tribunal stands enhanced to **Rs.1,00,000/-**.

However, it is quite obvious that on account of inevitable consequences of injuries sustained and the surgery undergone by the appellant-claimant, there was bound to be future medical expenditure. This aspect was kept open end by learned Tribunal, as a result whereof, subsequent claim petition was filed. The subsequent evidence led, establishes about the appellant-claimant to have remained admitted in the hospital for removal of the implants from 01.06.2015 to 03.06.2015. The removal of the implants was consequential surgical intervention.

Considering the same, the appellant-claimant had passed through the aforesaid process of surgical intervention and remained admitted in the hospital for the recovery, besides the medical expenditure of Rs.75,282/-. He had also again undergone through pain and suffering and there must have been consequential expenditure also, on various counts, like, attendant charges, special diet etc. Considering all these aspects and the expenditure incurred, another amount of **Rs.1,50,000/-** is awarded as 'future medical expenses'.

Accordingly, the appellant-claimant is held entitled for compensation as under:-

Loss of earnings	:	**Rs.72,000/-**
Pain & suffering	:	**Rs.50,000/-**

Special Diet	**:**	**Rs.30,000/-**
Transportation	**:**	**Rs.30,000/-**
Attendant charges	**:**	**Rs.44,000/-**
Medical expenditure	**:**	**Rs,2,74,523/-**
Services of physiotherapist	**:**	**Rs.1,00,000/-**
Future medical exigencies	**:**	**Rs.1,50,000/-**
Total	**:**	**Rs.7,50,523/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.7,50,523-6,10,805=Rs.1,39,718/-**. On the enhanced amount of the compensation i.e. **Rs.1,39,718/-**, 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 23.03.2012 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, FAO-2761-2012 stands allowed whereas FAO-2281-2018 stands disposed of.

May 03, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**