

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

FAO No.5229 of 2014

Date of Decision: 09.01.2017

Pawan Kumar

....Appellant

Versus

Satish and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. J.P. Sharma, Advocate
for the appellant.

Mr. M.B. Jain, Advocate
for respondent No.3.

DAYA CHAUDHARY, J.

C.M. No.14792 -CII of 2014

There is delay of 100 days in filing of the present appeal.

For the reasons mentioned in the application, delay of 100 days
in filing of the present appeal is condoned.

Civil Misc. Application is accordingly disposed of.

FAO No.5229 of 2014

The present appeal has been filed to challenge the impugned
award dated 15.10.2013 passed by the Motor Accident Claims Tribunal,
Narnaul (here-in-after referred to as 'the Tribunal'), whereby, the
compensation of ₹ 3,40,000/- has been awarded to the claimant-injured,
which is stated to be on the lower side.

Briefly, the facts of the case, as made out in the present
petition, are that appellant-Pawan Kumar was student of 10+2. On

05.10.2011, he along with his uncle Rajesh was going on motor cycle No.GJ-12MS-9520 from Village Mairawas to Mohindergarh. The motor cycle was being driven by Rajesh Kumar. The offending vehicle came from opposite side which was being driven by respondent No.1 in a rash and negligent manner. Claimant and his uncle Rajesh fell on the road as their motorcycle was hit by the tractor which was being driven by respondent No.1. The appellant sustained multiple and grievous injuries and was taken to General Hospital, Narnaul. Thereafter, he was taken to Pooja Hospital, Narnaul. Subsequently, he was referred to SMS Hospital, Jaipur. There was a fracture in right thigh and right knee joint and iron rod was inserted permanently. He remained admitted in the hospital at Jaipur from 05.10.2011 to 10.10.2011. An amount of ₹ 2,50,000/- was spent on his treatment. FIR No.417 dated 08.10.2011 was registered under Sections 279 and 337 IPC at Police Station Mohindergarh.

A claim petition was filed before the Tribunal under Sections 166 and 140 of the Motor Vehicles Act, 1988. In the claim petition, it was mentioned that the claimant sustained multiple and grievous injuries and the said injuries were due to rash and negligent driving of the offending vehicle by respondent No.1. He remained under treatment for about nine months and was also operated thrice. The claimant was entitled for compensation of not only the actual amount, which was spent by him but for transportation and special diet as well. The disability was of 30% on account of range of motion of right knee joint. He lost one year of his study and as such, he was entitled for compensation for permanent disability and his future matrimonial prospects also became less. He claimed compensation to the tune of ₹ 15 lacs.

The Tribunal partly allowed the claim petition and the petitioner was held entitled for compensation to the tune of ₹ 3,40,000/- which was to be recovered from the respondents jointly and severally along with interest at the rate of 7.5% per annum from the date of petition till realization vide award dated 15.10.2013.

The present appeal has been filed for modification of the award passed by the Tribunal on the ground that the amount of compensation awarded to the appellant is on the lesser side. Learned counsel for the appellant submits that the compensation of pain and suffering, attendant charges, special diet, transportation and loss of amenities have not been awarded properly. The appellant has also suffered a lot with regard to education as one year of his education was lost. The loss of future prospectus has also not been compensated properly.

Learned counsel for the respondent-Insurance Company has opposed the submissions made by learned counsel for the appellant on the ground that the appellant has been awarded compensation of ₹ 3,40,000/- and he is not entitled for the amount beyond his expenditure. As far as the claim of other expenses like transportation and diet are concerned, the reasonable amount has been awarded, whereas, no evidence was placed on record to show that more amount was incurred by the claimant.

Heard the arguments of learned counsel for the parties and have also perused the impugned award as well as other documents on the file.

Admittedly, the petitioner met with an accident and received serious injuries, due to which, he remain admitted in the hospital at Jaipur. Initially, he remained admitted in Pooja Hospital, Narnaul and thereafter, he was referred to S.M.S Hospital, Jaipur. In the claim petition, he has

stated that he spent a sum of ₹ 2,50,000/- on his treatment. He has also placed on record the admission and discharge record of S.M.S Hospital, Jaipur as Exhibit PW-2/A and Exhibit PW-2/B. He remained admitted on three occasions and operation was also done upon his knee. The appellant had placed on record the medical bills as Exhibits P-1 to P-37 to show that he has spent an amount of ₹ 56,570/- on his treatment. However, no other bills were proved by him. Only on the basis of presumption/assumption to the effect that some more amount might have been spent by him in purchasing medicines, for which, no bill was issued by the shopkeeper, ₹ 60,000/- was allowed for treatment expenses. An amount of ₹ 15,000/- has been awarded for transportation expenses, ₹ 30,000/- for attendant charges and ₹ 10,000/- for special diet has been allowed to him.

Undisputedly, the appellant was a student of 10+2 class and he could not appear in the examination held on 03.10.2011 and 04.10.2011 and lost one year of his studies. PW-3 Surender Kumar, Principal, Rao Jairam School, Mohindergarh appeared and proved that the appellant was a student of 10+2 and could not attend all the examination of 2nd semester of Session 2011 and a sum of ₹ 3,40,000/- has been awarded by the Tribunal.

The object of awarding damages is to make good the loss suffered as a result of wrong done but it is to be awarded in a reasonable and equitable manner. The court or the tribunal is to assess the damages objectively and exclude from consideration any speculation or fancy. A person is not only to be compensated for the physical injury but also for the loss which he has suffered as a result of such injury. Meaning thereby, he is to be compensated for his inability to lead his full life and his inability to enjoy those normal amenities which he would have enjoyed. It is to be

compensated as per ratio of judgment of Hon'ble the Apex Court rendered in ***Raj Kumar vs Ajay Kumar and another 2011(1) SCC 343***.

No doubt, the future loss of earning is not to be assessed on the basis of percentage of permanent disability but on the basis of percentage of functional disability i.e the effect and impact of such permanent disability on his earning capacity. Percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability, is different from the percentage of permanent disability. The claimant is to be compensated for his inability to lead a full life and his inability to enjoy those normal amenities which he would otherwise have enjoyed.

By having temporary disability, due to which a loss of use of some part of the body is there on account of the injury, which may cease to exist at the end but in case of permanent disability, it can either be partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions which he could have performed before the accident. Sometimes, due to injuries, he is able to perform some of them but still some difference is there. Loss of future income cannot be calculated on the basis of percentage of disability but it depends on the effect of disability on future earnings. For instance, if a driver lost his left hand in accident and his percentage of permanent disability is 60% but his loss of future earning capacity would be 100%. However, in case of Clerk in Government Office loss of left arm will not be 100%. There cannot be a hard and fast rule but the circumstances are necessary to be considered.

The claimant appellant was a student of 10+2 and he received 30% permanent disability and has lost two semesters, which have resulted into wastage of one year of his career.

By considering the future prospectus and loss of study of the appellant, an amount of ₹ 50,000/- has been awarded. Similarly, an amount of ₹ 50,000/- for pain and suffering already awarded. An amount of ₹ 75,000/- awarded towards permanent disability as a rod was inserted in the leg of the appellant, which is also on the lesser side. An amount of ₹ 50,000/- has been awarded for lowering down the prospects of marriage, which also appears to be on the lower side.

Accordingly, the present appeal is partly allowed and by considering the facts and circumstances of the case and the nature of injuries, an amount of ₹ 50,000/- is enhanced to ₹ 75,000/- for loss of study and from ₹ 50,000/- to ₹ 75,000/- for pain and suffering and also one lac from ₹ 75,000/- for permanent disability as well as ₹ 75,000/- from ₹ 50,000/- for lowering the prospects of marriage.

However, the learned Tribunal, Narnaul is directed to calculate the amount as mentioned above and the same be paid to the appellant after calculation within a period of two months from the date of receipt of certified copy of this order.

(DAYA CHAUDHARY)
JUDGE

09.01.2017
gupreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes