

**IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA**

**FAO No. 523 of 2003**

**Date of Decision: 29.3.2006**

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Prem Dass

...Appellant.

**Versus.**

Haryana Roadways &anr.

.. Respondents.

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***Coram:***

***The Hon'ble Mr. Justice Deepak Gupta, Judge.***

***Whether approved for Reporting?***

**For the Appellant(s):        Mr. G.R.Palsara, Advocate.**

**For the Respondent(s):     Mr.Ashwani Sharma, Advocate, for respondent  
   No.1.  
   Mr. Javed Khan, Advocate for respondent No.2.**

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**Deepak Gupta, J. (Oral).**

This appeal by the claimant has been filed for enhancement of compensation and is directed against the award of Motor Accident Claims Tribunal, Mandi in claim petition No.23 of 1998, decided on 20.2.2003.

Since the only question involved in this appeal is with regard to the compensation, it is not necessary to give other facts in details and only the evidence necessary to decide this aspect of the matter is being discussed.

The claimant Prem Dass was travelling in bus No.HRO-37-4420 belonging to Haryana Roadways. On 26.10.1997 at about 2 p.m.

near Jagadhari this bus met with an accident resulting in injury to the claimant. He was first treated at Jagadhari and then shifted to Civil Hospital, Yamunanagar. He remained admitted for one day at Yamunanagar and thereafter he was brought to Mandi. The accident was proved by FIR Ex.PW1/A and the injuries vide discharge slip Ex.PW1/B. This discharge slip also discloses that the claimant/petitioner was found to be suffering from post dislocation of his hip joints. Thereafter the claimant who belongs to Mandi got himself treated at Mandi from PW2. Dr. Harish Behal. When this treatment was done, it was found that the petitioner was not recovering and finally he was advised to get his CT scan. This advice was given by Dr. Behal vide OPD slip Ex.PW1/F. PW2 has also proved various slips Exts. PW1/C to PW1/F. The CT scan report Ex.PW1/G is dated 11.9.1998. According to this report, the petitioner's right hip joint was found normal but there was old comminuted fracture of the acetabulum on the left hip joint. Thereafter the petitioner consulted the doctor at PGI Chandigarh vide OPD slip Ex.PW1/H who gave his report Ex.PW1/H in which it was mentioned that the petitioner/claimant may require total joint replacement. However, this doctor was not examined in evidence.

PW2 Dr.Harish Behal has also proved the disability certificate Ex.PW1/J. This disability certificate has been issued on 6.10.2001 and it shows that due to fracture of the hip left joint the petitioner has

suffered 30% disability. It is true that this disability has been shown to be temporary. However, it is also observed in the disability certificate that the condition of his joint is likely to deteriorate with the passage of time and will need further treatment. PW2 Dr. Harish Behal in his statement has also stated that the condition of the petitioner is likely to deteriorate and it is not likely to improve.

The petitioner/claimant is employed as Assistant with the Life Insurance Company at Mandi and continues to be in the same job. The total salary of the petitioner in the year 2002 has been shown as Rs.11566/- but what was the salary at the time of the accident has not been proved. Vide Ex.PW1/L, it has also been proved that the petitioner remained on medical leave from 26.10.1997 to 17.2.1998.

In injury cases, the law is well settled that the compensation has to be granted under two main heads i.e. pecuniary and non pecuniary damages. Under the head of pecuniary damages, compensation has to be awarded on account of cost of medical treatment, medicines, attendant charges, special diet, transportation etc. In addition to this, under this head, the injured is also entitled to actual loss of income which he has suffered for the period he remained under treatment and the estimated future loss of income.

Under the head non-pecuniary damages, the injured is entitled to compensation for (i) mental agony, pain and suffering and (ii)

future discomfort, loss of amenities etc. It is in the light of these principles that the compensation is being assessed.

The learned Tribunal has only awarded Rs.40,000/- to the claimant-petitioner. The compensation awarded by the learned Tribunal is grossly inadequate and not at all inconsonance with the well settled principles relating to assessment of compensation. I also find that there are glaring mistakes in the award of the learned Tribunal. The Tribunal has discarded the disability certificate on the ground that the same was prepared on 26.9.1998 whereas the accident had occurred on 26.10.1997. In fact this is a clear case of misreading or misquoting the evidence since the disability certificate clearly shows that it was prepared on 6.10.2001. The Tribunal, therefore, erred in totally discarding this disability certificate. Secondly, the Tribunal has also committed a grave error in not relying upon the CT scan Ex.PW1/G on the ground that it was belatedly prepared. It appears that the Tribunal did not care to go through the entire record. The record shows that from 26.10.1997 upto the time of preparation of the report on 11.9.1998, the petitioner time and again was going to the hospital at Mandi as is evident from O.P.D.slips Ex.PW1/C to Ex.PW1/E. The doctor had advised the CT scan only on 8.9.1998 and the CT scan was got done on 11.9.1998. There is no delay in getting the CT scan done and it is directly attributable to the injuries as reflected in the report. The CT scan report only proves that the

petitioner had suffered fracture of the left hip joint which was initially detected at the time of admission of the petitioner in the hospital. The tribunal should not have discarded this evidence.

Admittedly, the petitioner/claimant has spent only one month as indoor patient in the hospital but the fact remains that he remained on leave for about three months and twenty days after the accident. It is also in the evidence that the claimant/petitioner is an employee of the Life Insurance Corporation of India. Though, he has stated that he has spent a large amount on his treatment but no evidence in this regard has been brought on record probably due to the fact that the medical expenses must have been reimbursed to him. Even though major medical expenses may have been reimbursed to him but still there are associated expenses which may not be reimbursed and, therefore, in my opinion, it would not be unreasonable to award Rs.5000/- in all to the claimant on account of medical treatment, special diet etc.

The claimant/petitioner admittedly remained on leave for 115 days and he must have required at least one attendant for at least four months. It is settled law that even the gratuitous service rendered by family members and friends has to be compensated for by the tortfeasor. Therefore, he is awarded Rs.5000/- on account of attendant charges.

The learned Tribunal has held that no transportation expenses were involved with regard to his treatment. This cannot be accepted.

The accident took place at Jagadhari and obviously from Yamunanagar, the petitioner must have come back to Mandi and thereafter at least once he has gone to Chandigarh to get his C.T.scan done. On all these occasions he must have been accompanied by an attendant and, therefore, he is awarded Rs.5000/- for transportation charges.

The petitioner/claimant has proved on record his salary statement Ex.PW1/M which shows that in June, 2002, his salary was Rs.11566/-. However, his salary as on 26.10.1997 has not been proved. By way of guess work, it can be presumed that in October, 1997, he must have been getting salary of at least Rs.8,000/- per month. He is, therefore, awarded Rs.30,000/- for loss of income.

As far as future income is concerned, it stands proved on record that though the claimant/petitioner had suffered permanent disability he is continuing in the same job and there is no loss of future income.

Under the head non-pecuniary damages, the petitioner/claimant is awarded a sum of Rs.15000/- on account of pain and suffering.

Now comes the question with regard to the assessment of compensation for future discomfort, loss of amenities etc. Since I have not awarded any amount on account of future loss of income while calculating the compensation under this head, I am also taking into consideration the factor that after his retirement the petitioner's disability may affect his earning capacity. The petitioner has suffered

30% disability as per the doctor. The petitioner in all probability requires hip replacement. His condition is not likely to be improved. He is to walk with limp and to live with this disability throughout his life. The petitioner was 37 years old at the time of the accident. In the prime of his life, the petitioner has been crippled and cannot walk like a normal human being. Keeping all these factors and especially keeping in view the fact that as per the doctor, he will require hip replacement in future, I think that it is a fit case where he should be awarded Rs.70,000/- under the head of loss of amenities, future discomfort etc.

The total compensation payable to the petitioner/claimant works out to Rs. 1,30,000/-. On this amount of Rs. 1,30,000/- the petitioner/claimant shall also be entitled to interest at the rate of 9% per annum w.e.f. 23.2.1998 the date of filing of the claim petition till deposit of the amount.

Respondent – Haryana Roadways is directed to deposit the enhanced amount in the Registry of this Court along with interest within 12 weeks from today, failing which it shall be liable to pay interest at the rate of 12% per annum w.e.f. today.

In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is modified and the amount of compensation is enhanced from Rs.40,000/- to Rs.1.30,000/- along with interest as aforesaid. No costs.

March 29, 2006.  
s.

( Deepak Gupta ), J.

