

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

FAO No. 7609 of 2014
DATE OF DECISION : 29.09.2017

Rakesh Kumar

.... APPELLANT

Versus

Mahender Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Dalel Singh Nain, Advocate, amicus curiae,
 for the appellant.
 Ms. Vandana Malhotra, Advocate, for respondent No.3.

AVNEESH JHINGAN, J. (Oral)

None has appeared on behalf of the appellant for the last three dates. Mr. Dalel Singh Nain, Advocate, who is present in the court, is appointed as amicus curiae to assist the court on behalf of the appellant. Complete paper-book has been handed over to him. After going through the same, he submits that he is ready to assist the court on behalf of the appellant. Accordingly, the appeal is taken up for hearing.

The present appeal has been filed against the award dated 24.04.2013 passed by the Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal') in MACT Case No. 424 of 2009.

On 30.04.2009, appellant Rakesh Kumar, aged 19 years, met with a motor vehicular accident. He was going on motor cycle bearing registration No. HR-34B-2098, which was struck by a bus bearing registration No. RJ 01P-3053 (for short, 'the offending vehicle'). The bus was being driven rashly and negligently. As a result of the accident, the

appellant suffered injuries resulting into 7% disability on account of range of motion of left hip joint reducing by 10% with deep complication.

A claim petition under Section 166 of the Motor Vehicles Act, 1988, was filed by the appellant.

The Tribunal, after considering the evidence and witnesses, awarded a sum of ₹ 79,806/- along with interest at the rate of 7% per annum, which included ₹ 20,000/- for pain and sufferings.

Aggrieved of the said award, the present appeal has been filed by the claimant for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellant argued that a young boy, who has suffered 7% permanent disability, has not been granted any amount for his disability. He further argued that the amount awarded for pain and sufferings is on the lower side and same requires to be enhanced. He further contended that awarding of compensation under various pecuniary and non-pecuniary heads has not been considered by the Tribunal.

Learned counsel for respondent No.3 – Insurance Company has defended the award passed by the Tribunal. She has argued that nothing has come on record, from where it can be established as to how much is the loss suffered by the appellant on account of disability and no proof of income was produced before the Tribunal.

The contentions raised by learned counsel for the appellant deserve acceptance. Hon'ble the Apex Court in ***G. Ravindranath @ R.***

Chowdary Versus E. Srinivas and another, 2013(12)SCC 455, held as under:

"It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains), which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent

disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

From a perusal of the above decisions, it is evident that in case of non-fatal injuries, pecuniary and non-pecuniary damages should be compensated.

In the present case, a young boy of 19 years of age has suffered disability, may be 7%, but due to injury his hip movement has been reduced, meaning thereby that his future prospect, not only with regard to earning, but with regard to marriage has been adversely effected.

Keeping in view the facts and circumstances of the case, the amount awarded by the Tribunal is enhanced, and compensation under the heads for which it has not been awarded by the Tribunal is awarded as per the table given below :-

<i>Head</i>	<i>Amount awarded by the Tribunal</i>	<i>Now awarded by this court</i>
Medical expenses	₹ 59,806/-	₹ 59,806/- (no enhancement)
Pain and sufferings	₹ 20,000/-	₹ 50,000/- (enhanced by ₹ 30,000/-)
Disability	Nil	₹ 25,000/- (enhanced by ₹ 25,000/-)
Attendant	Nil	₹ 20,000/- (enhanced by ₹ 20,000/-)
Transportation	Nil	₹ 10,000/- (enhanced by ₹ 10,000/-)
Special Diet	Nil	₹ 20,000/- (enhanced by ₹ 20,000/-)
Loss of marriage prospects	Nil	₹ 50,000/- (enhanced by ₹ 50,000/-)
Total	₹ 79,806/-	₹ 2,34,806/- (enhanced by ₹ 1,55,000/-)

Since there is nothing on record to prove the actual impact of disability on the income of the appellant, therefore, lump sum amount of ₹ 25,000/- is being awarded for disability.

In view of the above, the award dated 24.04.2013 is modified to the extent that the compensation of ₹ 79,806/- awarded by the Tribunal is enhanced to ₹ 2,34,806/-. The appellant shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed and disposed of accordingly.

September 29, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes