



FAO No.2415 of 2011 (O&M)

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

**CM Nos.8194-CII & 8195-CII of 2011 in/&
FAO No.2415 of 2011 (O&M)**

Date of Reserve: 23.07.2024

Date of Decision: 22.10.2024

DEEPTI GUPTA

.....Appellant(s)

Vs

SHANKAR LAL AND OTHERS

....Respondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Ms. Amandeep Kaur, Advocate for
Mr. RajeshGupta, Advocate for the appellant.

None for respondent Nos.1 and 2.

Mr. D.K. Dogra, Advocate for respondent No.3/Insurance Company.

HARKESH MANUJA, J.

CM Nos.8194-CII & 8195-CII of 2011

Vide present application(s) filed under Order 41 Rule 27 read with Section 151 of Code of Civil Procedure, 1908 prayer is for seeking permission about production of additional evidence and placing on record copy of disability certificate of the appellant.

Notice of the application.

Learned counsel for the non-applicant submits that he is ready for making his submission on the application.

Having heard learned Counsel for the parties; the authenticity of the document sought to be produced not being in dispute at the hands of respondent No.3; the disability certificate having substantial relevance upon the merits of the appeal in hand is permitted to be taken on record as additional evidence in the interest of justice. As the same would even help the Court to arrive at determination of just compensation and accordingly the prayer is allowed and the same is taken on record as piece of evidence.



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Main Case

[1]. By way of present appeal, challenge has been laid to an award dated 03.06.2010 passed by the learned Motor Accident Claims Tribunal, Panipat (hereinafter to be referred as “the Tribunal”), whereby an amount of Rs.54,354/- was awarded as compensation to the appellant/claimant along with interest @ 6% per annum.

Brief Facts

[2]. The appellant/claimant, Deepti Gupta, being injured filed claim petition before the learned Tribunal praying for grant of compensation on account of injuries suffered by her in a motor vehicular accident which took place on 05.12.2008, while alleging rash and negligent driving by respondent No.1/driver.

[3]. After going through the claim petition and evaluating the evidence led by both the parties, learned Tribunal arrived at a conclusion that the accident occurred on account of rash and negligent driving of respondent No.1/driver and awarded compensation in the following manner:-

S.No	Heads of Claim	Amount (in Rs)
1.	Medical bills and treatment charges	Rs.29,254/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation	Rs.5,100/-
	TOTAL	Rs.54,354/-

[4]. Being aggrieved against the award dated 03.06.2010, the present appeal has been preferred by the appellant for enhancement of compensation. Facts as specified in the claim petition and the issue regarding negligence of the driver as held by the Tribunal in favour of the appellant being not assailed, therefore, for the sake of brevity, those are not being repeated here.

**FAO No.2415 of 2011 (O&M)****Arguments**

[5]. Learned counsel for the appellant submitted that no compensation has been awarded by the learned Tribunal on account of attendant charges; loss of income during the hospitalization period; loss of future income while considering the 30% permanent disability suffered by the appellant; besides for nutritious diet. Further, he submitted that compensation granted for transportation was also on lower side and the same is liable to be enhanced.

[6]. On the other hand, learned counsel representing respondent No.3/Insurance Company submitted that appellant/claimant had been adequately compensated and as such the impugned award warrants no interference and the present appeal is liable to be dismissed.

Discussion

[7]. I have heard learned counsel for the parties and perused the paper book of the case. I find force in the arguments advanced by the learning counsel for the appellant/claimant.

On the aspect of enhancement of compensation**Assessment under “loss of income and future loss”**

[8]. To prove her case, appellant/claimant appeared as PW2 and tendered in evidence her affidavit as Ex.PW2/A; copy of medical bills, transportation charges and treatment record as Ex.P34 to Ex.P86; transportation receipts as Ex.P3 to Ex.P8 and copy of Disability Certificate as Annexure A-1.

[8.1]. In the present case, appellant/claimant suffered injuries on her left lower limb and was operated upon for it. She remained admitted in PGIMS, Rohtak from 05.12.2008 to 16.01.2009 as per OPD card and Discharge summaries (Ex.P84, Ex.P85 and Ex.P86). Further, a perusal of the disability certificate

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(Annexure A-1) of the injured shows that she suffered 30% permanent disability due to injuries in her right hip joint. The appellant/claimant was a student at the relevant time and due to the injuries suffered, she would face difficulty in continuing her studies as well as her future prospects in life. Even though this fact was not corroborated by any evidence at this stage, however, the appellant in her affidavit claimed to have taken admission for B.Ed. course and, thus, in given facts it may not be over jealous to assume that appellant was going to face functional disability of at least 30%.

[8.2]. In the year 2009 the Labour Commissioner, Haryana vide letter No. 26708 dated 25.08.2009 fixed minimum wages for unskilled labourer @ Rs. 150/- per day (Rs.3,914/- per month). Appellant being a student could not be compared to have equal earning capacity as that of unskilled labourer and, thus, her income is assessed as Rs.5,000/- per month. The appellant remained in hospital from 05.12.2008 to 16.01.2009 (43 days). In such circumstances, her loss of income during hospitalization is assessed as Rs.7,181/- {Rs. 167 per day(rounded off) x 43}. Further, from a perusal of disability certificate (Annexure A-1) it is evident that she was 28 years of age in the year 2010, thus, she would have been 26 years of age at the time of motor vehicular accident and as such, for computing her future loss of income multiplier of 17 is to be applied and after considering the fact that appellant suffered functional disability of 30%, the same is assessed as Rs. 3,06,000/- (Rs.5,000 x 30/100 x 12 x 17).

Assessment under “Other Pecuniary Heads”

[8.3]. Upon perusal of OPD card and Discharge summary (Ex.P84, Ex.P85 and Ex.P86) it is evident that appellant was hospitalized from 05.12.2008 to 16.01.2009 (43 days), thereby requiring attendant and nutritious diet. Thus, the



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compensation under the heads of special diet, attendant and transportation is assessed as Rs.50,000/. Further, the compensation awarded towards the medical bills and medicine expenses by learned Tribunal was rightly assessed and as such, require no interference.

Assessment under “Non-Pecuniary Heads”

[9]. In the present motor vehicular accident, appellant/claimant suffered injuries which affected her future earning capacity and she even remained admitted in hospital for 43 days in total. Therefore, compensation awarded for “pain and suffering” @ Rs.20,000/- is on the lower side and the same is reassessed as Rs.1,00,000/-.

Conclusion

[10]. In view of what has been discussed hereinabove, the appellant/claimant shall be entitled for the grant of compensation in the following manner:-

Sr.No.	Nature	Amount in Rupees
1.	Loss of Income (41 days)	Rs.7,181/-
2.	Loss of future earning capacity/income [30% (percentage disability) of total income]	Rs. 3,06,000/-
3.	Medical Expenses/Hospitalization (as awarded by Id. Tribunal)	Rs.29,254/-
4.	Pain & Suffering	Rs.1,00,000/-
5.	Attendant charges, Transportation and Special Diet	Rs.50,000/-
	Total Compensation	Rs.4,92,435/-
	Amount Awarded by the Tribunal	Rs.54,354/-
	Enhanced Amount	Rs.4,38,081/-



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[11]. The grant of interest @ 6% per annum is not just in view of the facts and circumstances of the present case and as per the observations made by the Hon’ble Supreme Court in *Smt. Supe Dei and others Vs. National Insurance Company Limited and other, (2009) (4) SCC 513* approved in a subsequent judgment titled as *Puttamma and others Vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443* the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimant from the date of institution of claim petition till its realization while excluding the period of delay in filing the present appeal. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

[12]. In view of aforesaid modification, the present appeal stands disposed of. Pending miscellaneous application(s) if any, shall also stand disposed of.

October 22, 2024
Atik

(HARKESH MANUJA)
JUDGE

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