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(2013) 10 P&H CK 0357

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 326 of 2012 (O and M)

Jaspal Singh APPELLANT

Vs

Aman Kumar and Others RESPONDENT

Date of Decision: Oct. 8, 2013

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Advocate: R.S. Mamli, for the Appellant; Lalit Garg, Advocate for Respondent No. 3-Insurance Company, for the Respondent

Final Decision: Allowed

Judgement

Vijender Singh Malik, J.

This is claimant''s appeal for enhancement of compensation. Jaspal Singh, the claimant suffered injuries in a roadside accident that took place on 5.5.2007. The claim petition brought u/s 166 of the Motor Vehicles Act, 1988 for compensation in a sum of Rs. 10 lakhs has been allowed by learned Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (for short, "the Tribunal") vide award dated 1.9.2011 in a sum of Rs. 95,777/-. In the accident that took place on 5.5.2007, the claimant suffered injuries. He suffered fracture of his left arm and ribs on the left side of the chest. He was taken to Kohli Hospital, Jagadhri where he remained admitted upto 21.5.2007. His left arm was operated upon and a T-plate was fixed in his left arm. Claiming that he was continuing with the treatment till the filing of the petition, a sum of Rs. 2 lakhs is claimed to have been spent on the treatment including special diet and transportation charges. He has claimed that one more operation is to be conducted in his case for removal of the T-plate. He has also claimed that he is an agriculturist and on account of the injuries, he remained bedridden for months together and has been unable to do his day to day work. He suffered huge financial loss on account of the injuries. He is still unable to look after his land. He has claimed that he has become permanently disabled. Hence, a sum of Rs. 10 lakhs has been claimed as compensation.

2. The respondents have resisted the claim petition. They have denied the injuries, treatment, expenses in the treatment and other allied aspects of the claim made by the claimant. They have denied the claimant to have spent Rs. 2 lakhs in his treatment. They have denied the claimant to deserve a sum of Rs. 10 lakhs as compensation. Hence, the claim petition is prayed to be dismissed.

3. Learned Tribunal noticed the statement of Dr. Dinesh Kaushik from the hospital of Dr. Pardeep Kohli, Jagadhri who appeared as PW-1. Dr. Dinesh Kaushik has stated that Jaspal Singh was admitted in their hospital as a roadside accident case with fracture neck of humerus left side and fracture ribs of left side. He has also stated about operation and fixation of plate on the humerus of the claimant and his discharge on 21.5.2007. Learned Tribunal noticed the statement of Dr. Vikas Paul [PW-7] who has stated that the claimant suffered permanent disability to the tune of 15%. Learned Tribunal found a sum of Rs. 46,777/- as having been spent on his treatment, transportation and special diet. Taking into account the disability and other aspects, the following amounts were assessed as compensation:

4. Learned counsel for the appellant has contended that the appellant is an agriculturist. According to him, 15% disability to an agriculturist would mean serious disability because that would hamper the agricultural work of the claimant. According to him, not only humerus, his left ribs were also fractured and the claimant suffered lot of pain for which learned Tribunal has not adequately compensated him. He has further submitted that loss of income during treatment is awarded for two months while in such cases, more than three months are taken in recovery. He has further submitted that learned Tribunal has taken into account the bills of Rs. 46,777/- and did not allow a fraction of it as compensation for the expenses incurred without obtaining bills. According to him, learned Tribunal has wrongly added special diet and expenses on transportation in the aforesaid amount because the said amount is only for the expenses on treatment.

5. Learned counsel for respondent No. 3 has contended that adequate amount has already been assessed in this case. According to him, no enhancement thereto could be made in the given facts of this case.

6. Fracture of ribs is extra painful because with every coming and going of breath pain is felt in such a case. Apart from the fracture of ribs on the left side of chest, there had been fracture of humerus and learned Tribunal appears to have not properly compensated the appellant for his pain and suffering by awarding a sum of Rs. 10,000/-. In the given facts of the case, I enhance the same and assess a sum of Rs. 25,000/- as compensation for pain and suffering.

7. I cannot believe that the bills amounting to Rs. 46,777/- would contain any bill for special diet or transportation. As the claimant had mentioned in the petition that a sum of Rs. 2 lakhs was spent on his treatment including expenses on transportation and special diet etc. that expression seems to have been borrowed by learned

Tribunal in this regard. No amount has been added to the amount of the bills for the expenses incurred without obtaining bills. Therefore, a sum of Rs. 50,000/- is assessed by me as compensation for the medical expenses.

8. There is disability of 15% and if we go by the percentage formula of Rs. 2000 per percentage of disability, a sum of Rs. 30,000/- would be the compensation. However, that formula may not be applicable in case of an agriculturist in whose case this disability would amount to functional disability. In the case in hand, learned Tribunal has assessed a sum of Rs. 30,000/- not only for loss of income due to disability but also for loss of amenities and enjoyment of life which shows that the compensation is highly inadequate. Therefore, I assess a sum of Rs. 75,000/- as compensation for loss of income and loss of amenities and enjoyment of life on account of the disability.

9. Taking up the question of future operation, I am of the view that no evidence worth the name has been brought on the point. None of the two doctors examined in this case has stated that the claimant would require any surgery for removal of the plate. Now, we have come to a stage where the implants are not rejected by the body and they do not require to be removed after a lapse of time. Therefore, the claimant would not be entitled to any amount as compensation for any future surgery.

10. It is a case where at least three months would have been required by the claimant to recover. For three months, he would not have been able to earn anything. Therefore, I assess a sum of Rs. 10,000/- as loss of income during treatment. Adding to the aforesaid amount a sum of Rs. 10,000/- each for special diet, compensation for expenses on transportation and attendant, I assess a sum of Rs. 1,90,000/- as the compensation payable to the appellant. Consequently, the appeal is allowed enhancing the compensation from Rs. 95,777/- to Rs. 1,90,000/- with other terms regarding rate of interest etc. appearing in the award of the Tribunal remaining the same.