

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 3102 of 2002(O&M)

Date of Decision: September 17 , 2015.

Nepal Singh

..... APPELLANT (s)

Versus

Jasvinder Singh and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for respondent No.2 – Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Present appeal has been preferred by injured-claimant, Nepal Singh praying for enhancement of the compensation awarded to him by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as, the 'Tribunal') vide impugned award dated 28.02.2002.

Facts as revealed in the claim petition are that, appellant-claimant was returning to his village Massingan from Matehari Shekhan, Tehsil and District Ambala on his motorcycle on 05.11.1997. He was driving his motorcycle at a moderate speed on the correct side of the road. When he

reached near village Naneola, District Ambala on Matchari Shekhon-Devisgarh road at about 6.10 p.m., a Rajdoot motorcycle bearing registration No. HR41-4801 being driven at a high speed in a rash, negligent and zig-zag manner by respondent No.1 – Jasvinder Singh came from behind and hit the appellant's motorcycle. Resultantly, appellant suffered grievous injuries including fracture of knee-joint of left leg. He was taken to Rajindra Hospital and Medical College, Patiala thereafter, referred to CMC, Ludhiana. Amputation of his left leg right upto the middle of thigh above the knee had to be conducted on 06.11.1997. He was discharged after 15 days. On the assurance of respondent No.1, matter was not reported to the police.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 was preferred by the appellant claiming compensation to the tune of ₹12 lacs with the averment that he was aged 24 years at the time of accident and earning ₹5,000/- per month.

Claim was resisted by the respondents. Respondent No.1 while admitting the accident, took a stand that it was the rash and negligent driving of motorcycle by the claimant himself that led to the accident, respondent No.1 was not at fault.

Respondent No.2 – Insurance Company took an objection that there is no evidence to prove the factum of the accident, in question. No FIR or DDR had been lodged. Other averments were also denied.

Learned Tribunal framed following issues on the basis of the pleadings of the parties:-

“1. Whether the claimant Nepal Singh sustained injuries in this

road side accident allegedly caused due to rash and negligent driving of motorcycle No. HR-41-4801, by its driver respondent No.1, as alleged? OPP

2. If issue No.1 is proved then to what amount of compensation the claimant is entitled to and from whom? OPP
3. Whether the respondent No.1 was not holding valid and effective driving licence at the time of alleged accident? OPR
4. Whether the claimant has filed this claim-petition in collusion with respondent No.1? OPR
5. Relief.”

On consideration of the evidence on record, learned Tribunal concluded that the accident in question in which the claimant sustained injuries, was caused due to the rash and negligent driving of motorcycle No. HR-41-4801 by its driver Jasvinder Singh, respondent No.1. Said finding has attained finality.

Learned Tribunal awarded a sum of ₹1,85,000/- on account of the disability, pain and suffering etc. suffered by the claimant, detail thereof is as under:-

- | | |
|---|-------------|
| 1. For General damages and for loss of income : | ₹1,25,000/- |
| 2. For Medicines, treatment etc. | : ₹25,000/- |
| 3. For Transportation | : ₹10,000/- |
| 4. For Pain and suffering | : ₹15,000/- |
| 5. For Balanced diet | : ₹10,000/- |
| Total: | ₹1,85,000/- |

Age of the claimant was taken to be 21 years at the time of accident. On concluding that there is no proof to show that he was working as a mason, he was treated to be a labourer earning ₹1,500/- per month. Disability

was taken to be 50% qua the whole body.

Learned counsel for the appellant contends that functional disability should have been assessed by the Tribunal which is definitely much more than 50% due to amputation of the appellant's leg. Furthermore, he is entitled to enhanced compensation on account of loss of income. Even the minimum wages of a labourer were much more than ₹1,500/- per month at the time of accident. Nothing has been awarded on account of loss of future income or loss of prospects of marriage and future medical expenses. Appellant was also not awarded any compensation on account of the cost of artificial limb. He, therefore, prays for enhancement in the compensation awarded to the appellant.

Learned counsel for respondent No.2 – Insurance Company refutes the abovesaid averments and submits that adequate compensation has already been awarded by the learned Tribunal and there is no scope for any further enhancement.

I have heard learned counsel for the parties and gone through the record.

A perusal of the statement of PW2 Dr. P.K.Nigam, Orthopaedics Surgeon, Civil Hospital, Ambala Cantt clearly indicates that the finding of the Tribunal in respect to the disability of 80% with regard to a particular limb is clearly erroneous. PW2 Dr. P.K.Nigam has clearly stated as under:-

“On 17.1.2001, while I was member of Handicapped Board, Ambala, I alongwith the other members of the Board examined Nepal Singh son of Kartar Singh, resident of Massingan, District Patiala and found that he was having amputation left thigh above

knee in its middle. The disability given was 82%. **It was permanent in nature and relates to whole of the body** (*emphasis added*). The disability certificate is Ex.PW2/1 which bears my signatures and the signatures of the other members of the Board i.e. Doctor R.K.Patnaik, the then Civil Surgeon, Ambala and Doctor S.L.Kaushik, the then P.M.O., Ambala City.

I have brought the original register of the Board and the certificate Ex.PW2/1 is the correct as per this register which I have brought today.”

Suggestion that the disability is with regard to a particular limb was specifically denied by PW2 Dr. P.K.Nigam in his cross-examination. He has specified that the disability is with regard to the whole body.

PW1 Satish Philip, Senior Resident, Department of Orthopaedics, CMC, Ludhiana has stated as under:-

“I have brought the summoned record i.e. treatment and disability record of the patient, Nepal Singh. As per record, patient Nepal Singh was brought to casualty of our hospital on 06.11.1997 as a case of road side accident. He was having fracture of femur on the left side, fracture of both bones legs on the left side and the limb was found to be badly crushed. As the condition of the limb was bad and could not be saved therefore, operation for amputation above knee was conducted on 06.11.1997. The patient was suffering from gangrene. At the time of arrival, the patient was in the shock, therefore, 3 units of blood was given to the patient.”

Therefore, there is no dispute regarding the injuries suffered by the appellant or the nature of permanent disability. In view of the above, finding of the Tribunal that appellant suffered 50% disability qua the whole body is set

aside. In view of the positive evidence on record, it is held that claimant has suffered disability of 80% qua the whole body.

To prove that appellant was doing the work of mason, PW4 Joga Singh has been examined by the appellant. Learned Tribunal has disbelieved this witness on the ground that no record has been produced. It is difficult to envisage a situation where a person working as a petty mason could be expected to maintain records, bills, receipts etc. Furthermore, in the year 1997 even the minimum wages of a unskilled labourer were not less than ₹1,800/- per month. Therefore, assessment of the income at ₹1,500/- per month by the learned Tribunal is unjustified. It is just and expedient to assess his income at the rate of ₹1,800/- per month.

It is further proved on record that the claimant was admitted first at Rajindra Hospital, Patiala and thereafter at CMC, Ludhiana where he was operated upon on 06.11.1997. He remained admitted there till 18.11.1997 and thereafter, was under treatment as an out-patient. Admittedly, claimant has not led any evidence to prove the bills of the prosthetic limb which he professes to have obtained. It can however not be denied that he would require an artificial limb (prosthetic) in view of amputation of his left lower limb upto the middle of thigh.

Hon'ble Supreme Court in Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765 has clearly held that functional disability of the claimant should be assessed keeping in view the entire facts and circumstances the case, particularly the vocation of the claimant.

It can not be disputed that even if the claimant is treated to be a labourer, loss of limb would definitely affect his livelihood to the extent of at least 80%. Keeping in view the age of the claimant, he is also entitled to 50% increment on account of the loss of future prospects. Multiplier of 18 as stipulated in Syed Sadiq's case (supra) as well as Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77 has to be applied in this case. He is, thus, entitled to compensation of ₹4,66,560/- [(1,800 x 80%) + (80% x 50% x 1,800) x12x18] on account of loss of future income/earning capacity.

Appellant-claimant is also entitled to a sum of ₹50,000/- on account of pain and suffering, ₹50,000/- towards loss of marriage prospects and ₹50,000/- towards loss of amenities. ₹50,000/- is awarded towards cost of artificial limb as well as future medical expense. Compensation awarded on account of special diet, transportation and medicines etc. is correct and is upheld. Appellant-claimant is, thus, entitled to total compensation of ₹7,11,560/- detail of which is as under:-

<i>Sr.No.</i>	<i>Heads of claim</i>	<i>Amount</i>
1.	Loss of earning capacity/future income	₹4,66,560/-
2.	Loss of marriage prospects	₹50,000/-
3.	Pain and suffering	₹50,000/-
4.	Loss of amenities	₹50,000/-
5.	Cost of artificial limb and future medical expense	₹50,000/-
6.	Medical expenses, treatment	₹25,000/-
7.	Special Diet	₹10,000/-
8.	Transportation expenses	₹10,000/-
	Grand Total =	₹7,11,560/-

Amount already awarded by the Tribunal to the claimant under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, this appeal is disposed of.

September 17, 2015.
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(LISA GILL)
JUDGE