

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

FAO No. 2482 of 2007(O&M)

Date of Decision: September 4 , 2015.

Dayal Singh

..... APPELLANT (s)

Versus

Daljeet Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashwani Arora, Advocate
for the appellant.

Mr. Sukhwinder Singh Sudan, Advocate
for respondent No.2.

Ms. Vandana Malhotra, Advocate
for respondent No.3 – 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.

Injured – Dayal Singh has preferred the instant appeal for the enhancement of compensation awarded to him by the Motor Accident Claims Tribunal, Ropar (hereinafter referred to as, the 'Tribunal') vide impugned award dated 14.03.2007.

Appellant-claimant filed petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of the injuries suffered by him in a motor vehicular accident, which occurred on 01.01.2005. Claimant

was travelling in a Swaraj Mazda and the accident was caused due to the rash and negligent driving of bus bearing registration No. PB-12D-9665 by respondent No.1 – Daljeet Singh near village Mamupur-Hasanpur T – point. Claimant was 55 years old at the time of accident, an agriculturist having 25 acres of land and running a dairy farm. He pleaded a monthly income of ₹25,000/- and claimed compensation to the tune of ₹2,00,000/-, for the loss suffered due to permanent disability, loss of earning, loss of earning capacity, medical expenses etc.

Learned Tribunal on appreciation of the evidence on record concluded that the accident had indeed been caused due to rash and negligent driving of the offending bus by its driver. It is not denied that the appellant suffered fracture of acetabulum and dislocation of hip and other injuries. He was admitted in Government Medical College and Hospital, Sector 32, Chandigarh on 02.01.2005 and discharged on 27.01.2005. However, no operation etc. was undergone by the claimant.

Tribunal allowed a sum of ₹5,000/- towards loss of earnings while observing that there is no clear evidence with regard to the earning of claimant. However, if the claimant's averment of owning 25 acres of land is accepted, the same would remain with him as a source of income. It is not the case of the claimant that earlier the said land was being cultivated by him and due to the injuries suffered by him he employed somebody else to work in the fields therefore, he was put to loss. A consolidated sum of ₹10,000/- was awarded on account of pain and suffering, attendant charges, transportation and special diet. ₹30,000/- was awarded on account of disability of 30% as proved by the

disability certificate vide Ex.P29 and evidence of PW2 Dr. Navtej Pal Singh. An amount of ₹4,000/- was awarded towards medical expenses. A sum of ₹30,000/- was allowed on account of the loss of amenities of life because of the disability suffered by him. Total sum of ₹79,000/- was awarded by the Tribunal.

Learned counsel for the appellant submits that claimant has suffered functional disability to the extent of 85%. He is an agriculturist and now unable to carry on his vocation. He has difficulty in walking as there is a foot drop. He also prays for an addition of 15% in the income on account of future prospects, age of the claimant being 55 years. It is urged that there was a loss of income for at least four months as claimant was unable to carry out his vocation. Sum of ₹30,000/- awarded by the Tribunal on account of the permanent disability should be enhanced. Compensation should be awarded separately for pain and suffering, attendant charges, transportation and special diet.

Learned counsel for the appellant further submits that the Tribunal while considering the question of loss of income for the period he remained unable to attend to his vocation has awarded a sum of ₹5,000/- for the period of 25 days' confinement in hospital while considering his income to be that of a casual labourer. Apart from the period of confinement, appellant is entitled to loss of income for further period of at least four months for which he could not work.

Learned counsel for respondents, on the other hand, while refuting the said averments submits that there is no ground whatsoever for any enhancement in the compensation already awarded by the Tribunal.

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

Contention of learned counsel for the appellant that functional disability to the tune of 85% has been suffered by the claimant, is not borne out from the record. There is no evidence on record to suggest that he is unable to carry out his vocation as an agriculturist on account of the disability suffered by him. Though sustained efforts were made to project that due to a 'foot drop' the claimant is unable to walk. But said contention is negated by evidence of Dr. Navtej Pal Singh. In his cross-examination, PW2 Dr. Navtej Pal Singh testified that the claimant can walk without crutches with some difficulty as there is a foot drop. Appellant has nowhere stated that he himself was tilling his land and after the accident, he had to engage another person for cultivating the same.

Argument of learned counsel for the appellant that claimant's income should be taken to be that of a casual labourer and loss of future income be calculated on the said basis keeping in view the guidelines laid down by the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765** is clearly fallacious and unacceptable for the reason that the pleas are inherently contradictory. On one hand, appellant claims to be an agriculturist owning 25 acres of land and on the other, he wants loss of future income to be calculated on the basis of the wages of a casual labourer. The appellant is not entitled to any compensation on account of loss of future income because the land in question continues to be with him. Furthermore, there is no evidence on record to prove that he was cultivating the land himself prior to the accident and thereafter had to engage

somebody else to do the same.

However, appellant-claimant is entitled to enhancement of the compensation on account of his physical disability of 30% i.e., ₹60,000/- (₹2,000/- per percentage of the disability) instead of ₹30,000/-. On account of pain and suffering, a sum of ₹30,000/- and on account of attendant charges ₹8,000/- is awarded. He is also entitled to ₹5,000/- each on account of special diet as well as transportation charges. Sum of ₹5,000/- towards loss of earnings and ₹4,000/- towards medical expenses is maintained. Appellant is, thus, entitled to total compensation of ₹1,47,000/- as under:-

<i>Sr.No.</i>	<i>Heads of claim</i>	<i>Amount</i>
1.	Permanent disability of 30% (₹2,000/- per percentage of disability)	₹60,000/-
2.	Pain and suffering	₹30,000/-
3.	Attendant charges	₹8,000/-
4.	Special Diet and transportation charges	₹10,000/-
5.	Medical expenses	₹4,000/-
6.	Loss of earnings	₹5,000/-
7.	Loss of amenities of life	₹30,000/-
	Grand Total =	₹1,47,000/-

Amount already awarded to the claimant by the Tribunal 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, present appeal is disposed of.

September 4 , 2015.
'om'

(LISA GILL)
JUDGE