

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

FAO No.130 of 2009 (O&M)

Date of decision : 31.08.2015

Sushil Kumar @ Sushil

...Appellant

versus

Joga Singh & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Diwan S.Adlakha, Advocate for the appellant.

Respondent No.1 ex-parte.

Mr. B.S.Taunque, Advocate for respondent No.3.

RITU BAHRI, J (Oral)

The appellant/claimant has come up in appeal against the order of the Motor Accident Claims Tribunal, Yamna Nagar (hereinafter referred to as 'the Tribunal') dated 03.09.2008, whereby he has been awarded a compensation of Rs.2,69,300/- on account of suffering 70% disability in a road accident, which has taken place on 17.08.2006.

Facts not in dispute are that on 17.08.2006, at about 7.00 p.m., the claimant was pulling his rickshaw towards Jagadhri and when he reached near Inder Lok Banquet Hall, Yamuna Nagar, a truck bearing No.PB-10W-9713 being driven in a rash and negligent manner by respondent No.1 came from Jagadhri side without blowing horn and hit his rickshaw after coming on the wrong side of the road. Due to the impact, the claimant sustained multiple grievous injuries. The front tyre of the truck ran over his right leg and the rickshaw was also

damaged. He was taken to Gaba Hospital, Yamuna Nagar where his right foot was amputated. He was a young man of 28 years and was earning Rs.6,000/- per month. The injuries have rendered him jobless.

The learned counsel for the appellant/claimant contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced, in view of the judgment of Hon'ble the Supreme Court of India in a case of ***Govind Yadav vs. The New India Insurance Co. Ltd., 2011(4) RCR (Civil) 817*** wherein a claimant who was working as a helper met with an accident and his leg was amputated resulting in 70% permanent disability. Since, he could not prove his salary, his salary was taken at Rs.3000 per month and his notional annual income comes to Rs 36000/- and loss of earning on account of 70% permanent disability came at Rs.25,200/- per annum and multiplier of 18 was applied. Further Rs.2 lacs were awarded towards future treatment and Rs.1.50 lacs towards pain and suffering and trauma and further Rs.1.50 lacs towards loss of amenities. In para 17, 18, 19 and 20 of the judgment, it has been observed as under:-

“17. A brief recapitulation of the facts shows that in the petition filed by him for award of compensation, the appellant had pleaded that at the time of accident he was working as Helper and was getting salary of Rs.4,000/- per month. The Tribunal discarded his claim on the premise that no evidence was produced by him to prove the factum of employment and payment of salary by the employer. The Tribunal then

proceeded to determine the amount of compensation in lieu of loss of earning by assuming the appellant's income to be Rs.15,000/- per annum. On his part, the learned Single Judge of the High Court assumed that while working as a Cleaner, the appellant may have been earning Rs.2,000/- per month and accordingly assessed the compensation under the first head. Unfortunately, both the Tribunal and the High Court overlooked that at the relevant time minimum wages payable to a worker were Rs.3,000/- per month. Therefore, in the absence of other cogent evidence, the Tribunal and the High Court should have determined the amount of compensation in lieu of loss of earning by taking the appellant's notional annual income as Rs.36,000/- and the loss of earning on account of 70% permanent disability as Rs.25,200/- per annum.

*The application of multiplier of 17 by the Tribunal, which was approved by the High Court will have to be treated as erroneous in view of the judgment in **Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121**. In para 42 of that judgment, the Court has indicated that if the age of the victim of an accident is 24 years, then the appropriate multiplier would be 18. By applying that multiplier, we hold that the compensation payable to the appellant in lieu of the loss of earning would be Rs.4,53,600/-.*

18. The award made by the Tribunal for future medical

*expenses was wholly inadequate. In **Nagappa v. Gurudayal Singh (2003) 2 SCC 274**, this Court considered whether it was permissible to award compensation in installments or recurring compensation to meet the future medical expenses of the victim. After noticing the judgment of **M. Jagannadha Rao, J.** (as he then was) in **P. Satyanarayana v. I. Babu Rajendra Prasad 1988 ACJ 88 (AP)**, the judgment of the Division Bench of the Kerala High Court in **Valiyakathodi Mohd. Koya v. Ayyappankadu Ramamoorthi Mohan 1991 ACJ 140 (Kerala)**, this Court observed:*

“In this view of the matter, in our view, it would be difficult to hold that for future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment, the court has to arrive at a reasonable estimate on the basis of the evidence brought on record. In the present case, it has been pointed out that for replacing the artificial leg every two to three years, the appellant would be required to have some sort of operation and also change the artificial leg. At that time, the estimated expenses for this were Rs 18,000 and the High Court has awarded the said amount. For change of the artificial leg every two or three years no compensation is awarded. Considering this aspect, if Rs one lakh is awarded as an additional compensation, the appellant would be in a position to meet the said expenses from the

interest of the said amount.” After the aforesaid judgment, the cost of living as also the cost of artificial limbs and expenses likely to be incurred for periodical replacement of such limb has substantially increased. Therefore, it will be just and proper to award a sum of Rs.2,00,000/- to the appellant for future treatment. If this amount is deposited in fixed deposit, the interest accruing on it will take care of the cost of artificial limb, fees of the doctor and other ancillary expenses.

19. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the Tribunals and the Courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the Tribunals and the Courts should make a broad guess for the purpose of fixing the amount of compensation. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs.1,50,000/- in lieu of pain, suffering and trauma

caused due to the amputation of leg.

20. The compensation awarded by the Tribunal for the loss of amenities was also meager. It can only be a matter of imagination as to how the appellant will have to live for the rest of life with one artificial leg. The appellant can be expected to live for at least 50 years. During this period he will not be able to live like normal human being and will not be able to enjoy the life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs.1,50,000/- for the loss of amenities and enjoyment of life.”

On the other hand, the learned counsel for the respondent-Insurance Company have vehemently opposed the present appeal.

I have heard learned counsel for the parties and perused the record.

The fact of accident was not denied and there was no cross-examination of the claimant, who had appeared as PW4. The driver of the offending vehicle was facing a trial on the criminal side and the documents pertaining to the criminal case was proved by Sandeep Jain PW2. The compensation was assessed after going through the bills Ex.P1 to P17, which were proved by Vijay Kumar PW1 whereas the bills Ex.P25 & P26 were proved by Dr. Vandna PW3. Dr. Sandeep Gupta appeared as PW5 and proved the disability certificate Ex.P29 showing that the appellant/petitioner has suffered

70% permanent disability on account of amputation of his right leg below the knee. He was awarded a sum of Rs.2 lacs on account of permanent disability and loss of income. He was further awarded Rs.50,000/- on account of pain and suffering and Rs.19,269/- for the amount of bills. In this way, the Tribunal awarded a total sum of Rs.2,69,300/- as compensation.

In the facts of the present case, the fact which is not dispute that the right leg of the appellant was amputated resulting in 70% permanent disability.

In view of the above mentioned judgment, the compensation is re-assessed as under:-

<i>HEAD</i>	<i>COMPENSATION AMOUNT</i>
<i>Salary</i>	<i>Rs.3000 per month</i>
<i>Annual Salary</i>	<i>Rs.36000/-</i>
<i>Salary after adding 50% towards future prospects</i>	<i>Rs.54,000/- (Rs.36,000/- + Rs.18,000/-)</i>
<i>Loss on account of disability</i>	<i>54000X70%disability=Rs.37,800/-</i>
<i>Multiplier of 17</i>	<i>25200X17=6,42,600/-</i>
<i>Future treatment</i>	<i>Rs.2,00,000/-</i>
<i>Pain and sufferings</i>	<i>Rs.50,000/-</i>
<i>Loss of amenities</i>	<i>Rs.1,50,000/-</i>
<i>Medical treatment</i>	<i>Rs.19,269/-</i>
<i>TOTAL COMPENSATION AWARDED:-</i>	<i>Rs.10,61,869/-</i>
<i>ENHANCED AMOUNT OF COMPENSATION</i>	<i>Rs.8,47,669/- - Rs.2,69,300/- = Rs.7,92,569/-</i>

The enhanced amount of compensation of Rs.7,92,569/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment

of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539.***

Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

31.08.2015
Vinay

(RITU BAHRI)
JUDGE