

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

FAO No. 1795 of 2010(O&M)

Date of Decision: August 10 , 2015.

Mahesh Chand

..... APPELLANT (s)

Versus

Raj Kumar and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

**Present: Mr. R.S.Mamli, Advocate
for the appellant.**

**Mr. Neeraj Khanna, 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.

Appellant – Mahesh Chand who was injured in an accident which took place on 01.10.2006 has preferred the present appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as, the 'Tribunal').

There is no dispute in respect to the factum of accident which took place on 01.10.2006 or the liability of the Insurance Company. Learned counsel for the parties had agreed that service of notice upon respondents No.1 and 2 should be dispensed with which was ordered accordingly on 12.08.2014.

Appellant – Mahesh Chand was working as a Technician at Adelta Optec, Yamuna Nagar. His income has been taken to be ₹4,000/- per month by the Tribunal which is accepted by the appellant as there is no documentary evidence on record to prove any higher income. Appellant has been awarded a sum of ₹1,09,000/- as compensation under various heads as described as under:-

Sr.No.	Nature	Amount
1.	Medical expenses	₹57,000/-
2.	Pain and suffering	₹10,000/-
3.	Nutritious diet	₹2,000/-
4.	Transportation expenses	₹2,000/-
5.	Loss of income	₹8,000/-
6.	Permanent disability	₹30,000/-
	Total	₹1,09,000/-

Learned counsel for the appellant submits that the appellant, who has suffered permanent disability to the extent of 14 per cent is entitled to a much higher compensation than awarded by the Tribunal. Amount on account of medical expenses is not challenged.

Learned counsel for respondent – Insurance Company is unable to deny that disability suffered by the appellant is 14 per cent qua the whole body as depicted by the Medical Certificate, Ex.P37. PW5 Dr. D.P.Singla has specifically testified that the disability is permanent in nature and not likely to improve. Disability of 14 per cent is due to shortening of a leg and restricted movement of the hip due to fracture of neck femur with shaft femur.

It is a matter of record that the appellant has suffered injuries on the hip bones, one of his legs was operated upon, implants were inserted and one of his foot was fractured. It can easily be inferred that he would have

remained unable to work for about four months in the given factual matrix. Appellant is entitled to loss of income for four months instead of two months. Compensation on account of special diet is enhanced to ₹8,000/- instead of ₹2,000/- and to ₹20,000/- instead of ₹10,000/- on account of pain and suffering keeping in view the peculiar circumstances of this case. He remained admitted in the hospital for a period of 23 days. Appellant has deposed that he was thrown out of his job pursuant to this accident.

There is merit in the argument raised by learned counsel for the appellant that claimant-appellant is a Technician servicing microscopes among other chores and is not engaged in a desk job therefore, his disability would affect his livelihood. Thus the method of assessment of compensation arrived at by the Tribunal is incorrect as he is prevented/restricted from discharging his activities and functions as earlier. Earning capacity of the appellant would necessarily be effected negatively in such a situation. It has been held by the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765** that Court should be sensitive about the functional disability involved and the nature of occupation, particularly if it involves manual labour.

Loss of earning capacity has to be calculated as held by the Hon'ble Supreme Court in **Syed Sadiq's case** (supra). Age of the appellant, admittedly, being 42 years at the time of accident, multiplier of 14 has to be applied.

Keeping in view the peculiar facts and circumstances, functional disability of the appellant can safely be taken to be 14% as well. Loss of earning capacity is thus calculated as under:-

Income	4000 p.m. i.e., 4000x12 = ₹48,000 p.a.
Loss of 14% on account of permanent disability	48000 x 14/100 = ₹6,720
Multiplier of 14 in view of age (42 years) for loss earning capacity	6,720 x 14 = ₹94,080

The amount of compensation awarded to the appellant is reworked as under:-

Loss of earning capacity	₹94,080/-
Medical expenses	₹57,000/-
Special Diet	₹8,000/-
Transportation expenses	₹2,000/-
Pain and suffering	₹20,000/-
Loss of income for four months	₹16,000/-
Total compensation =	₹1,97,080/-

The amount already awarded to the appellant under various heads shall stand deducted from the amount of compensation reworked as above. Appellant shall be entitled to interest at the rate of 7.5 per cent per annum on the enhanced amount from the date of filing of the petition till realization.

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

August 10 , 2015.
'om'

(LISA GILL)
JUDGE