

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

FAO No. 3586 of 2010 (O&M)

Date of decision: 31.08.2015

Raj Kumar

... Appellant

versus

Narender @ Bholu and others

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Surinder Lamba, Advocate for the petitioner.

Mr. J.P. Sharma, Advocate for respondent No.2.

K.Kannan, J.

Costs as ordered by this Court have been deposited.

This is an appeal for enhancement of claim of the injuries suffered in an motor which took place on 11.11.2007. The claimant had two fractures, one at tibia and another at the fibula of the right leg. There had been open reduction by nailing done. He was said to have been under treatment for nearly 8 months. The Medical Board which has given a certificate observed that the range of movement of the right knee had been reduced by 10% with mal-union of the right tibia. The permanent disability has been assessed @ 15%. The Tribunal has assessed the compensation of Rs. 38,000/- making provision for Rs. 16,000/- as medical expenses borne through bills. It also provided for attendant

charges, special diet and transportation at Rs. 6,000/-, Rs. 2,000/- and Rs. 3,000/- respectively. He was an agriculturist and stated that he has spent about Rs. 75,000/- and the Tribunal provided only for Rs. 16,000/- faced in the bills produced by him. The counsel would argue that since he was the rustic villager he threw al the remaining bills .

I am afraid I may not be able to make any modifications to the medical expenses but I would provide for Rs. 16,000/- as loss of income during the 8 months of his hospitalization and convalescence. I will find the provision for attendant charges, special diet and transportation already made be correctly done. For the inconvenience and loss of amenities which he has sustained on his life with restricted range of movement, I will provide for Rs. 10,000/- and loss of amenities and for the two fractures suffered I will provide for Rs. 15,000/- towards pain and suffering. I will take 15% diability as resulting also in 5% loss of earning capacity and taking an average income as Rs. 3,000/- I will apply a multiplier of 14 and assess the loss of earning capacity as Rs. 25,200/-. I rework the assessment and tabulated as under:

<u>Injury Case</u>	Date of accident 11.11.2007		
Age	42		
Period of hospitalization			
Occupation/ Income	Agriculturist		
SR. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
1	Loss of Income from:		16,000/-

	to:		
2.	Medical Expenses:		
	(i) Medicines	16,000/-	16,000/-
	(ii) Hospital charges		
	(iii) Attendant charges	6,000/-	6,000/-
	(iv) Special diet	2,000/-	2,000/-
	(v) Transportation	3,000/-	3,000/-
3	Pain and suffering		15,000/-
4	Disability	15%	15%
5	Loss of earning capacity		5%
	(i) Income		3,000/-
	(ii) Multiplier		14
	(iii) 5 % of loss of earning capacity		25,200/-
6.	Loss of amenities	10,000/-	10,000/-
7.	Reduction in life expectancy		
8.	Loss of prospect of marriage		
9	Total	38,000/-	93,200/-

The amount in excess over what has been assessed will attract interest @ 9% from the date of the petition till the date of payment. In this case, respondent No.3 Insurance Company has been exonerated on the ground that the driving licence was fake. Even if it was a fake licence it must be only be taken as constituting violation of terms of policy and therefore in terms of the judgment of Supreme Court in New India Assurance Co., Shimla Vs. Kamla and others, 2001 4 SCC 342 explaining the effect of Section 149 (4) Proviso and (5), the liability has

to be borne by the Insurance Company with the right of recovery against the owner and driver. The right of enforcement on the amount awarded shall be available for the claimant against the 3rd respondent-Insurance Company. The Insurance Company will apply for recoveries against the owner and driver in execution proceedings.

The award stands modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

31.08.2015

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