

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

FAO No.308 of 2011 (O&M)

Date of decision : 30.09.2015

Parveen

...Appellant

versus

Vikram & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. T.C.Dhanwal, Advocate
for the appellant.

Mr. Ramender Chauhan, Advocate
for respondent No.1.

Mr. Ajay Vijaraniya, Advocate
for respondent No.2.

Mr. Vinod Gupta, Advocate
for respondent No.3.

RITU BAHRI, J

The appellant/claimant has come up in appeal against the award of the Motor Accidents Claims Tribunal, Bhiwani (hereinafter referred to as “the Tribunal”) dated 10.05.2010, whereby the Tribunal has awarded a compensation of Rs.8,35,328/- on account of injury suffered by the claimant in a road accident which took place on 05.01.2009.

Facts not in dispute are that one Laxman lodged an FIR at Police Station Behrod. He was a driver on vehicle No.HR-47-A-1075. On 05.01.2009 he was going from Kota to Delhi. At 5.00 a.m., he had reached village Gunti. It was a foggy season, therefore, he was driving the vehicle slowly. A vehicle bearing registration No.HR-61-8649

struck Laxman's vehicle from behind and the report was lodged.

The claimant had pleaded that he was conductor in truck No.HR-61-8649 and the impact was so high that he suffered fracture on his back bone. It was pleaded that the accident occurred on account of negligence of respondent No.1. It was pleaded that the claimant was 20 years old and he was getting Rs.3500/- per month besides daily expenses of Rs.1500/-. It was pleaded that the claimant had become permanently disabled and the lower partition of the body below the chest could not work and he had no control over his bowel and was unable to sit or stand or change sides and two people were required to attend to him. It was pleaded that he was unmarried and he was lying in a paralysed condition and he could not move his hand and his treatment was still going on.

Following issues were framed by the Tribunal:-

- “(1) Whether accident took place due to rash and negligent driving of vehicle truck bearing registration No.HR-61-8649 by respondent No.1 Vikram resulting into injuries to claimant Parveen as alleged? OPP.*
- (2) If issue No.1 is proved, whether claimant Parveen is entitled for compensation, if so, to what amount and from whom? OPP.*
- (3) Whether petition is vague, indefinite, not file in accordance with provisions of law and is not maintainable? OPR.*
- (4) Whether petitioner has no locus standi to file the present petition.*
- (5) Whether petition is bad for non-joinder and mis-joinder for necessary parties? OPR.*
- (6) Whether the petition is result of collusion in between petitioner and respondent No.1 and 2? OPR-3.*

(7) *Whether respondent No.1 was not having a valid driving license and the offending vehicle was being driven in violation of terms and conditions of insurance policy at the time of accident? OPR-3.*

(8) *Relief.”*

The Tribunal has returned a finding on issue No.1 in favour of the claimant. The claimant examined himself as PW2 and tendered into evidence his affidavit Ex.P12. He produced the copy of the challan Ex.P2 and FIR Ex.P1 and corroborated the version of the FIR. The accident took place on 05.01.2009 and the FIR was lodged on the next day. In the FIR registration number of the vehicle was mentioned. The FIR was lodged by the driver of the vehicle No.HR-47A-1075. The driver was facing trial and in the police report it was mentioned that it was a foggy day. The truck was being driven by Vikram and struck the trailer which was going ahead. The finding recorded by the Tribunal that the accident took place on account of fault of respondent No.1 does not require any interference in appeal.

On issue No.2, injury suffered by the claimant Parveen has been discussed. As per the MLR, he was admitted in the CMC Hisar where he remained admitted till 17.01.2009. He was admitted to PGI Rohtak for 2/3 days. Copy of the MLR was at Ex.P13. PW1 Dr. Lokesh Kumar appeared from CMH Hospital, Hisar and proved the bed head ticket and treatment chart and the MRI report. He stated that the patient had been under treatment of the neuro surgeon. He proved the discharge card Ex.P2 and MRI report Ex.P3. He also proved the bills Ex.P5 to P11. Dr. S.S.Dhankar, Medical Officer, General Hospital, Bhiwani PW4 stated that they had examined the claimant

who was suffering from burst fracture C5 vertebra with posterior subluxation with spinal cord. He stated that the patient was having quadriplegia with bowel bladder involvement due to cervical spine injury and the disability as 100%. He proved the disability certificate Ex.P22. Dr. Surender Gulia, Senior Resident PGI, Rohtak, proved the discharge certificate Ex.P23, bills mark A 20 to mark A30. The Tribunal has assessed the compensation by assessing the income of the claimant as Rs.3500/- per month as he was a cleaner on a truck besides Rs.1500/- as other expenses. He was hired by the owner and the owner was not examined. Taking the minimum wages, the salary was taken at Rs.3500/- per month. Multiplier of 18 was applied as per judgment of the Hon'ble Supreme Court in the case of **Sarla Verma & ors. Vs. Delhi Transport Corporation & anr., 2009 (3) RCR (Civil) Page 77,** and the compensation was assessed as Rs.7,56,000/-. Medical bills were taken to the tune of Rs.79,328/- and total compensation payable was assessed as Rs.8,35,328/-.

Re-assessed Compensation:

The fact of accident is admitted and proved. A reference can be made to the judgment of Hon'ble the Supreme Court of India in the case of **Syed Sadiq etc. vs. Divisional Manager, United India Ins. Co. 2014(1) RCR (Civil) 765,** where the accident victim was aged 24 years and was vegetable vendor. It was held that a vegetable vendor is reasonably capable of earning Rs.6500/- per month with 50% increment in the future prospect of income. Multiplier of 18 was applied for calculating the amount of compensation.

Reference at this stage can also be made to a judgment of Hon'ble the Supreme Court of India in 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.36,000/- and loss or earning on account of 70% permanent disability came at Rs. 25,200/- per annum and multiplier of 18 was applied. Further Rs. 2 Lacs was 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.”

In a judgment by Hon'ble the Supreme Court of India in the case of **Sanjay Kumar vs. Ashok Kumar and another 2014(1) RCR (Civil) 875**, wherein the claimant who was earning Rs.4500/- per month suffered 70% permanent disability in motor accident, it was held that *'Loss of future prospects' should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment. In that case keeping in mind the young age of victim he was held entitled to 50% of his income as future increase in income.*

In another judgment by Hon'ble the Supreme Court of

India in the case of **Rajan vs. Soly Sebastian and others, 2015(3) RCR (Civil) 962**, wherein the victim was a professional driver, the Tribunal assessed his notional income at Rs.2000/- p.m. *It was held that income was not correctly assessed. Income should have been assessed after taking into consideration the relevant Minimum Wages fixed by Government. Income be taken at Rs.3500/- p.m to work out compensation. Victim though suffered 60% bodily disability, but suffered 100% permanent disability with regard to his earning capacity. After considering 50% enhancement for future prospects, the compensation for permanent disability was calculated at (Rs.3500/-+ Rs. 1750/-)x12x17=Rs. 10,71,000/-.*

In the case of **Kavita vs. Deepak and others, 2012 (4) RCR (Civil) 273**, Victim suffered 100% permanent disability. She lost her capacity for hearing, understanding, speaking and establishing interaction. The victim required an attendant at all times and continued physiotherapy. Victim was 30 years of age earning Rs.2000/- p.m. Multiplier of 17 was applied. She was also awarded Rs.2000 per month as attendant charges for 25 years. Victim was awarded compensation of Rs.34,38,747/-.

In the facts of the present case, the claimant-appellant, who was about 20 years of age at the time of accident was working as a cleaner on a truck and was getting Rs.3500/- per month besides Rs.1500/- as other expenses. His income can be taken as a daily wager at Rs.3900/- per month. Keeping in view that he suffered 100% disability and he would never be able to do the work of labourer

throughout his life, after considering 50% enhancement for future prospects, the compensation under the head '*Loss of future earning on account of permanent disability*' is hereby calculated after applying multiplier of 18 at $Rs.3900+1950 \times 12 \times 18 = Rs.12,63,600/-$. Assuming the claimant's life expectancy to be 55 years, we deem it appropriate to award attendant charges at the rate of **Rs.3000/-** per month. The total compensation payable is hereby reassessed as under:-

HEAD	COMPENSATION AMOUNT
Expenses incurred towards medical treatment	Rs.79,328/-
Loss of future earning on account of permanent disability	Rs.12,63,600/-
Loss of income during treatment between the date of accident 05.01.2009 and the order of the Tribunal 10.05.2010 [$Rs.3900 \times 16 + Rs.650 (3900/30 \times 5)$]	Rs.63,050/-
Special diet	Rs. 40,000/-
Attendant charges (for 35 years)	$Rs. 3000 \times 12 \times 35 = Rs.12,60,000/-$
Transportation	Rs. 20,000/-
Pain and suffering	Rs. 3,00,000/-
Loss of amenities and loss of expectation of life	Rs.3,00,000/-
TOTAL COMPENSATION AWARDED	Rs. 33,25,978/-
ENHANCED AMOUNT OF COMPENSATION	$(Rs.33,25,978/-) - (Rs.8,35,328/-) = Rs.24,90,650/-$

The enhanced amount of compensation of Rs.24,90,650/- shall be payable within a period of two months 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.

30.09.2015

Vinay

(RITU BAHRI)
JUDGE