IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5623 of 2011 (O&M)
Date of Decision: February 04, 2015

Silvaraj

..Appellant(s)

Versus

Balwinder Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes

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

Mr. V. Ramswaroop, Advocate
for respondent no.3.

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ANITA CHAUDHRY, J.

1. This appeal is by the claimant seeking enhancement in the award dated 05.05.2011, passed by the Motor Accident Claims Tribunal, Chandigarh (here-in-after referred to as the Tribunal).

2. Before referring to the submissions made on behalf of the appellant, it is apposite to refer to the relevant facts. The claimant was paddling his cycle and was heading towards village Darua on 10.09.2007. The offending vehicle came and

struck from behind, leading to injuries and amputation of right arm above the elbow. The claimant was a Beldar with CPWD, Sector 17, Chandigarh and was 50 years old. His income was pleaded at Rs.10,000/- per month.

3. The services of the claimant continued with the Department and he was assigned light duty. The Tribunal noted that there was increase in the income and he was getting the usual increments and there was no evidence that he was put on light duty. The Tribunal noted that there was no financial loss and the usual increments were being paid and assessed the functional disability at 25%. The Tribunal noted that if the claimant was engaged in lighter work after retirement, he could earn Rs.3,000/- per month. The loss was assessed applying the multiplier of 5 and held that a sum of Rs.45,000/- was payable on account of disability. The compensation allowed to the claimant was as under:-

Sr. No.	**Head**	**Amount (Rs.)**
1.	Future loss of income due to permanent disability	45000
2.	Transportation charges for going to the hospital for treatment	5000
3.	Compensation for engaging an attendant	10000
4.	Compensation for special die	10000
5.	Pain and suffering	10000
6.	Loss of enjoyment of life	5000
	Total	**85000**

4. The submission on behalf of the appellant was that though there was no loss of income but apart from the

disability effecting the earning capacity, a person who is disabled on account of the injury has to forgo some personal comforts even for normal avocation and has to depend on others and the Tribunal should have awarded compensation taking the income he was earning. It was urged that the income taken for calculating the disability was Rs.3,000/- per month when there was evidence that as a Beldar, his income has been increased to Rs.11,000/- per month. It was urged that the compensation awarded was too meager and needs to be enhanced. It was urged that the loss of earning capacity is distinct head of claim as considered by the Hon'ble Apex Court in Suresh Vs. New India Assurance Co. Ltd. 2012(10) page 516. Reliance was placed upon ***B.Kothandapani V. Tamil Nadu State Transport Corporation Ltd. 2011 STPL (Web) 493 SC, Sant Singh V. Sukhdev Singh and others 2011 STPL (Web) 324 SC, Janki Bai & Ors. V. Sunmala Jalan & Ors. 2010(5) RCR (Civil) 378, Govind Yadav V. New India Insurance Company Ltd. 2011 STPL (Web) 936 SC, Sri Kumaresh V. The Divl. Manager National Insurance Co. Ltd. & Anr. 2011 STPL (Web) 462 SC*** and ***Gurmej Singh Vs. Vijay Kumar & Ors., FAO No.1399 of 2007, decided on 17.12.2010 (P&H)***.

5. The submission on behalf of the respondent was that the Tribunal had rightly noted that the claimant was continuing in service and the same salary was being paid and he was being given the yearly increments and the Tribunal

had applied the multiplier method to calculate the loss. It was urged that the claimant was 52 years old and not 50 as pleaded by the claimants. It was urged that the Tribunal had sufficiently compensated the claimant and the disability assessed by the medical officer was not functional disability and an artificial limb would sufficiently improve his living.

6. The Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar, 2011(1) SCC 343*** had detailed out how the amount is to be awarded in cases of disabilities and the heads under, which compensation should be awarded. It was observed that where a person suffers permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. It was observed that the Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity and it is the functional disability which has to be considered for calculating the compensation.

It would be relevant to reproduce para 10 of the judgment, which reads as under:

> *"Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as*

also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes, the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore, be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future

> *earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."*

7. It has been held by Hon'ble Supreme Court in ***Syed Sadiq etc. V. Divisional Manager, United India Insurance Co., 2014 (1) RCR (Civil) 766*** that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. It has further been observed that while determining the disability of the claimants in motor accidents cases, the Court must be sensitive about the functional disability involved and nature of occupation.

8. In ***New India Assurance Company Limited Vs. Smt. Santosh and others***, FAO No.3432 of 2009, decided on 29.09.2010 it has been held that:-

> *"In cases of injury, it is not merely the financial issues that the Courts look at but it also factors the loss of amenities to life, pain and suffering and several non-pecuniary damages. There is definitely a resultant loss of prospects of promotion and loss that is occasioned by the physical disability that a person carries. In a*

slightly different situation in ***The Management of Sree Lalithambika Enterprises Versus S.Kailasam-1988(1) LLJ 63****, coming under the Workmen's Compensation Act, the contention was that for a person, who continues in service and has not suffered any financial loss, there shall be no compensation since no loss of earning is sustained by such a workman. This case and several other cases have examined this situation through several judgments. We are not dealing in cases of workmen against the Workmen's Compensation Act but I would still apply the same principle as applicable. In* ***V. Jayaraj v. Thanthana Periyar Transport Corporation Ltd. 1989 (2) LLJ 38****,* ***Management of Tamil Nadu Cement Corporation Ltd. v. N. Jayapalm 1994 (I) LLJ 838****,* ***Kerala Minerals and Metals Limited v. Raman Nair 1998 (I) LLJ 993 KER,*** *the Courts have dealt with the situation of continuance of employment of a workman despite the injury and awarded compensation including projected loss of earning capacity.*

(para 19)

20. The Madras High Court posed the question in ***Lalithambika's case*** *(supra) whether an employer could be relieved of his liability to pay compensation by retaining a person in employment and providing for the same wages. It answered that the mere continuance of work does not disentitle a person from claiming compensation. There is also an opinion of the House of Lords that may be relevant to understand this concept.* ***Bale v. William Hunts and Sons Limited 1912 AC 496*** *was the case of a workman, who was blinded in one eye. The defect was not visible and he was to have appearance as two eyed man. He had come to such a*

> *disability status when he had sustained an employment injury in which the defective eye had to be removed with the consequences that he could not get employment though physically he was as well as before. The House of Lords held that the incapacity of work included inability to work or in other words, there is incapacity for work when a man has a physical defect which makes his working un-saleable in any market reasonably accessible to him. Applying the same logic, a person who has suffered an injury may not come by immediate loss if he is retained in the same employment and does not lose his job, but in his own saleability elsewhere as a fresh recruit to a new employer, he may come by a serious handicap. That shall be a justification enough to provide for compensation in such types of cases."*

8. The medical officer had assessed the disability at 85%. It was a case of amputation above the elbow. The claimant was getting a salary of Rs.8,879/- per month. I would not change the percentage of functional disability as assessed by the Tribunal. Though there was no loss of income but he was entitled to compensation under the head of loss of amenities as a consequence of losing his right hand. Though, the claimant is continuing in service, it would be difficult to perform the daily chores. He will have to daily undergo the personal discomfort. Taking the income at Rs.8,879/- per month and functional disability at 25%, the loss of amenity would be Rs.2,219/- per month. The annual loss would come

to Rs.26,637. Taking the age of the appellant to be between 51 – 53, a multiplier of 11 would be applicable and the compensation would come to Rs.2,93,007/-, instead of Rs.45,000/- allowed by the Tribunal. The Tribunal had awarded a separate amount for special diet, transportation, attendant and pain & suffering and I would make no change. The appellant would thus be entitled to an additional amount of Rs.2,48,007/- which would be payable within 2 months failing which the appellant would be entitled to interest @ 6% from the date of filing of the appeal till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 04, 2015
sunil