

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

**FAO No.4339 of 2012 (O&M)
Date of Decision: July 20, 2015**

Mohan Lal @ Bhagat Singh **Appellant**

vs.

Gurdev Singh @ Bittu and others **Respondents**

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Saravpreet Gurna, Advocate for the appellant.

Mr. Surinder Garg, Advocate for respondent Nos.1 and 2.

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

1. Whether Reporters of Local Newspapers 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?

Kuldip Singh J.(Oral)

CM-18897-CII-2012

There is delay of 31 days in filing the present appeal.

For the reasons mentioned in the application supported by an affidavit, delay of 31 days in filing the present appeal is condoned subject to all just exception.

Application stands disposed of.

FAO-4339-2012

This is claimant's appeal for enhancement of compensation against the Award dated 05.12.2011 passed by the Motor Accident Claims Tribunal, Bathinda (in short 'the Tribunal').

In this case, the claimant-appellant Mohan Lal @ Bhagat Singh, aged about 48 years was working as Recovery Officer with

Kim Investment Ltd., Branch Office, Bathinda. It is claimed that he was getting salary of ₹13,000/- per month and having additional income of ₹9,000/- by selling milk. On 21.04.2010, when the claimant-appellant was going on his motorcycle bearing registration No.PB-03S-2059 and when he reached near Rose Garden Chowk, Bathinda at about 9.30 p.m., was hit by one bus bearing registration No.PB-30D-8178 from behind at very high speed belonging to Deep Bus Service. As a result of the accident, the right leg up to knee and right wrist of the claimant were crushed. He also suffered multiple fractures of the leg. He was shifted to Civil Hospital, Bathinda and then shifted to Arora Orthopedic Hospital, Hisar, where his right leg and arm were operated and amputated. He remained admitted there from 22.04.2010 to 30.05.2010. It is stated that he became 100% disabled. In this regard, FIR No.293, 21.04.2010, under Sections 279, 337, 338 and 427 IPC was registered at Police Station Kotwali, Bathinda.

The Tribunal assessed the income of the claimant-appellant from all sources @ ₹15,000/- per month. The Tribunal also noticed that as per disability certificate (Ex.CW2/A), which is duly proved by Dr. Vijay Mittal (CW2), there is 100% disability. However, the Tribunal found the functional disability of the claimant-appellant at 75% and accordingly awarded the compensation under the following heads:

- | | | |
|----|---------------------------|-------------|
| 1. | Medical Expenses | ₹1,70,500/- |
| 2. | Disability 75% @ ₹2,000/- | ₹1,50,000/- |

per percent of disability

3.	Pain and Sufferings	
	i) Admission in hospital	₹1,00,000/-
	w.e.f. 22.04.2010 to 30.05.2010	
	ii) Five surgical operations	₹1,00,000/-
4.	Amputation of right leg and part of right hand	₹1,00,000/-
5.	Transportation Charges	₹24,200/-
6.	Entertainment of guests and canteen charges	₹15,000/-
7.	Attendant charges	₹1,00,000/-
8.	Loss of income for a period of 15 months	₹2,25,000/-
Total		₹9,84,700/-
		(rounded of ₹9,85,000/-)

The claimant-appellant is not satisfied with the compensation awarded by the Tribunal and seeks enhancement.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the claimant-appellant pressed for enhancement of compensation awarded under second head i.e. on account of disability ₹1,50,000/- for 75% functional disability @ ₹2,000/- per percent disability.

Learned counsel for the claimant-appellant has argued that in this case, the disability should be determined as 100%. Accordingly, the loss of income on account of disability should have been assessed as 100%.

Learned counsel for the claimant-appellant has placed reliance upon the authority of “**Sri Laxman @ Laxman Mourya vs Divisional Manager, Oriental Insurance Co. Ltd. & another**” 2012 (1) RCR (Civil) 509 (SC), wherein Hon'ble the Supreme Court in case of a Carpenter, whose income was ₹5,000/- per month observed as under:

“ 18. It is also not in dispute that as a result of accident, the appellant suffered 26% disability of the right lower limb, 25% disability due to urethral injury and 38% disability to the whole body. Although, the percentage of disability of whole body is 38, the evidence produced by the appellant in the form of his own affidavit and the affidavit of PW-2 shows that he will not be able to work as carpenter or do any manual work throughout his life. In other words, even though the disability suffered by the appellant is not 100 per cent, his working capacity has been reduced to zero. However, keeping in view the degree of disability, i.e. 38% we hold that he shall be entitled to compensation of ₹3,32,640/- (38% of ₹5,000/- = ₹1,540/-x12x18) for loss of future earning.”

Therefore, it is evident that actual loss of earning is to be seen for granting compensation for the disability.

In this case, the right hand and right leg of the claimant-appellant were amputated with the result that he will not be able to earn full to the capacity without right leg and right hand. He may do some small job from which he can have small/negligible earning, which can be at minimum 25% of his earlier income of ₹15,000/- per month. Therefore, loss of income is to be taken 75%, which comes to

₹11,250/-. Keeping in view the age of the claimant-appellant i.e. 48 years, the multiplier of 13 is to be applied. Total amount of compensation comes to ₹17,55,000/- (₹11,250/-x12x13). The Tribunal has already awarded compensation to the tune of ₹2,25,000/- for loss of income for 15 months. Under heads 2 and 8, the compensation of ₹3,75,000/- was awarded, which would mean that there will be effective increase to the tune of ₹13,80,000/-. In this way, the compensation under heads 2 and 8 is enhanced by ₹13,80,000/-, which shall be paid within a period of three months with interest @ 7.5% per annum from the date of filing of the claim petition till its realization.

The present appeal is allowed accordingly to the aforesaid extent.

July 20, 2015
sarita

(KULDIP SINGH)
JUDGE