IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6073 of 2012
Date of decision:- 16.09.2015

Muneet Kumar @ Mani ...Appellant

Versus

Naveen Joshi and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vijay Lath, Advocate
for the appellant

Mr. R.K. Bishamboo, Advocate
for respondent No.3

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

C.M. No. 28628-CII of 2012

For the reasons mentioned in the application, delay of 196 days in filing of the present appeal is condoned.

The application stands disposed of accordingly.

FAO No. 6073 of 2012

1. The present appeal has been preferred by the injured-appellant (for short 'the appellant'), against award dated 18.01.2012

passed by the learned Motor Accident Claims Tribunal, Rupnagar (for short, 'the Tribunal') to the tune of Rs.4,37,000/-.

FACTS NOT IN DISPUTE

2. On 25.09.2009, appellant was coming towards his house on his motor cycle being driven by him along with his friend namely Surinder Pathak, who was pillion rider. His father was also coming behind him on his moped. In the meantime, a car Indigo bearing No. PB-071-0112 came from the Ropar side being driven by respondent No. 1 in a rash and negligent manner, hit the motorcycle of the appellant after coming on the wrong side. The driver of the car was trying to overtake the bus going ahead of it. Due to this, appellant along with his friend fell down on the road and received multiple and grievous injuries. His father who was coming behind him arranged the ambulance and took the appellant and his friend to the Civil Hospital, Ropar from where he was referred to PGI, Chandigarh where he remained admitted from 25.09.2009 to 21.10.2010. F.I.R No. 54 dated 26.09.2009 was registered in this regard on the statement of father of the appellant.

3. The learned counsel for the claimant-appellant contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to the enhanced, in view of the judgment of

Hon'ble the Supreme Court of India in a 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 36000/- and loss of 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 1 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 1 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."

4. Learned counsel has further referred to a judgment of Hon'ble the Supreme Court of India in a case of ***Arvind Kumar Mishra vs. New India Assurance Co. Ltd and another, 2010 ACJ 2867*** wherein victim was a brilliant student of Engineering with bright carrier and suffered 70% permanent disability in accident. His right hand was amputated and lost vision of right eye). In para 11 and 12 of the judgment , it has been observed as under:-

"11. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like B.I.T., it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected 8 by Tata as well as Reliance

Industries and was offered pay package of Rs. 3,50,000/- per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000/- per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs. 60,000/- per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis. Since he suffered 70% permanent disability, the future earnings may be discounted by 30% and, accordingly, we estimate upon the facts that the multiplicand should be Rs.42,000/- per annum. The appellant at the time of accident was about 25 years. As per the decision of this Court in Sarla Verma (Smt.) and Ors. v. Delhi Transport Corporation and Anr. the operative multiplier would be 18. The loss of future earnings by multiplying the multiplicand of Rs. 42,000/- by a multiplier of 18 1 (2009) 6 SCC 121 9 comes to Rs. 7,56,000/-. The damages to compensate the appellant towards loss of future earnings, in our considered judgment, must be Rs. 7,56,000/-. The Tribunal awarded him Rs. 1,50,000/- towards treatment including the medical expenses. The same is maintained as it is and, accordingly, the total amount of compensation to which the appellant is entitled is Rs.

9,06,000/- .

12. Before we close, we must notice in all fairness to the learned counsel for the insurer his submission that the appellant is entitled to compensation in accordance with the Second Schedule appended to the 1988 Act only. This submission overlooks the fact that the appellant made his claim under Section 166 of the 1988 Act and not under Section 163A. It is true that in Reshma Kumari & Ors. v. Madan Mohan & Anr., 1 a two-Judge Bench of this Court has referred the question whether multiplier specified in the Second Schedule should be taken to be a guide for calculation of the amount of compensation payable in a case falling under Section 166 to the larger bench and the said question is not yet authoritatively decided. However, in a case such as the present case, we find no justification to await decision of the larger bench on the aforenoticed question as there are already few decisions of this Court taking a view that the 1 (2009) 13 SCC 422 10 Second Schedule has no application to the claim petition made under Section 166 of the 1988 Act."

5. On the other hand, the learned counsel for the respondent-Insurance Company have vehemently opposed the present appeal and referred to judgment of Hon'ble the Supreme Court of India in a case of ***Raj Kumar v. Ajay Kumar and another, 2011 ACJ 1*** to contend that for assessing the compensation in a case of permanent disability, this judgment has to be followed. In para 8 and

15 of the judgment, it has been observed as under:-

"8. 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. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent 7 disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of

compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. – 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. – 2010 (8) SCALE 567).

15. After the insertion of section 163A in the Act (with effect from 14.11.1994), if a claim for compensation is made under that section by an injured alleging disability, and if the quantum of loss of future earning claimed, falls under the second schedule to the Act, the Tribunal may have to apply the following principles laid down in Note (5) of the Second Schedule to the Act to determine compensation :

"5. Disability in non-fatal accidents :

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents : - Loss of income, if any, for actual period of disablement not exceeding fifty two weeks. PLUS either of the following :-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923."

6. I have heard learned counsel for the parties and perused the record.

7. In para 13 of Raj Kumar's case (supra), it has been observed as under:-

"13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

8. Thus, after calculating the percentage of permanent disability, as expressed by Doctor, it has to be seen whether the disability is with

regard to whole body or some portion of the body. When the disability certificate states that the injured has suffered permanent disability of 45% of the lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

COMPENSATION ASSESSED BY MACT

9. The Tribunal awarded a total sum of Rs.4,73,000/- i.e Rs.1,15,000/- on account of medical bills, Rs.50,000 on account of pain and suffering, Rs.10,000 on account of special diet, Rs.5000/- towards transportation, Rs.5000/- towards attendant and Rs.1,52,000/- towards permanent disability and Rs. 1,00,000/- lacs towards future prospects.

RE-ASSESSED COMPENSATION

10. 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

11. In the facts of the present case, the fact which is not disputed that the appellant suffered permanent disability of 76% as his left arm, right arm, right leg was fractured and his left hand was badly damaged, his whole body has been disfigured. He was a young boy of 21 years of age at the time of alleged accident and a student of mechanical engineering. The income of the appellant can be assessed in view of P.S.E.B circular wherein the salary of Assistant Engineer was given as Rs.7750/14500 with initial start of 8550/-+ allowances. His income can be taken at Rs.10000/- per month, keeping in view the fact that the accident had taken place in the year 2009.

12. In view of the above mentioned judgment, the compensation is re-assessed as under:-

HEAD	*COMPENSATION AMOUNT*
Salary	*Rs.10000 per month*
Annual Salary	*Rs.1,20,000/-*
Future Prospect	*1,20,000 + 50%=Rs1,80,000/-*
Disability 76%	*Rs.180000 X 76%=Rs.1,36,800/-*
Multiplier of 18	*136800X18=24,62,400/-*
Future treatment	*Rs.2,00,000/-*
Pain and sufferings	*Rs.1,50,000/-*
Loss of amenities	*Rs.1,50,000/-*
Medical treatment	*Rs.1,52,000/-*
TOTAL COMPENSATION AWARDED:-	*Rs.31,14,400/-*
ENHANCED AMOUNT OF COMPENSATION	*31,14,400-4,37,000=Rs.26,77,400/- rounded off to Rs.26,77,000/-*

13. The enhanced amount of compensation of Rs.26,77,000/- shall be payable within a period of forty five days 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.

13. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

September 16, 2015 (***RITU BAHRI***)

G Arora ***JUDGE***