

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 5008 of 2013(O&M)

Date of Decision: September 17 , 2015.

Satbir Singh

..... APPELLANT (s)

Versus

Ishwar Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sandeep Goyat, Advocate
for the appellant.

None for respondents No.1 and 2.

Ms. Madhu Sharma, Advocate
for respondent No.3.

1. Whether reporters of local papers 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?

LISA GILL, J.

Injured – Satbir Singh has preferred this appeal seeking enhancement of compensation awarded to him by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as, the 'Tribunal') vide award dated 15.05.2013 on account of injuries suffered by him in a motor vehicular accident which took place on 04.07.2011.

Facts as revealed in the claim petition are that, claimant-appellant was returning to his village Patodi on his motorcycle bearing registration No. HR-48-7407 on 04.07.2011 at about 02.30 p.m. When he reached the drain of village Mirkan, a Dumper bearing registration No. HR-39A-8111 driven by respondent No.1 – Ishwar Singh in a rash and negligent manner, came from Mirkan side and struck against the motorcycle of the claimant from front side. Appellant-claimant alongwith his motorcycle were rammed under its wheels and stuck into the tractor bearing registration No. HR-20Q-9384 coming from Hisar side. This accident was witnessed by one Bansi son of Baru Ram, resident of village Dabra. Appellant received grievous injuries on his body and his right arm upto shoulder was amputated. He was shifted to Jindal Hospital, Hisar thereafter, to CMC Hospital, Hisar. For further treatment, he was shifted to Medanta Medicity Hospital, Gurgaon where he remained admitted from 05.07.2011 till 19.07.2011 as indoor patient and was still under treatment as an outdoor patient. FIR No. 520 dated 04.07.2011 was registered in respect to the said accident at Police Station Sadar, Hisar.

Claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the appellant. Same was contested by the respondents and the following issues were framed by the Tribunal:-

- “1. Whether the accident in question took place on account of rash and negligent driving of respondent No.1 while driving Dumper bearing registration No. HR-39A-8111 resulting in injuries to the petitioner? OPP
2. If issue No.1 is proved, whether the petitioner is entitled to claim compensation? If so, how much and from whom? OPR
3. Whether insured/owner of the vehicle has violated the terms

and conditions of the insurance policy, if so to what effect?

OPR3

4. Relief.”

Learned Tribunal on appreciation of the evidence on record concluded that the accident in question had taken place due to the rash and negligent driving of the offending Dumper by respondent No.1 – Ishwar Singh and the claimant suffered the injuries in the said accident. Said finding has attained finality.

Learned Tribunal assessed the monthly income of the injured as ₹10,000/- per month. His functional disability was assessed at 20% by holding that since he was owning a big chunk of land jointly with his brothers, it could not be said that he was doing manual work by tilling the same himself. Multiplier of 9 was applied keeping in view the age of the claimant to be 56 years at the time of accident and compensation on account of future income was assessed at ₹2,16,000/-. Total compensation of ₹12,88,368/- was awarded to the claimant as detailed below:-

Expenses incurred on treatment	:	₹8,42,368-00
Compensation on account of hospitalization	:	₹40,000-00
Compensation on account of pain and suffering	:	₹40,000-00
Compensation on account of loss of income	:	₹50,000-00
Compensation on account of loss permanent disability	:	₹1,00,000-00
Compensation on account of loss of future income	:	₹2,16,000-00
Total	:	₹12,88,368-00

Learned counsel for the appellant vehemently contends that the right upper limb of the appellant has been amputated as reflected by the medical evidence specifically Ex.P17, the Disability Certificate, which records the claimant to be suffering from 90% permanent physical disability qua the limb. However, his functional disability is much more as it is clear that he would not be able to do any work in the fields having lost his right upper limb. It is also contended that a meagre amount has been awarded on account of pain and suffering and no amount has been given towards transportation and special diet. He thus prays for enhancement of the compensation awarded by the Tribunal vide impugned award.

Learned counsel for respondent No.3 – Insurance Company, however, submits that 20 acres of land would remain with the claimant and there is nothing on record to show that he was tilling the land himself. There is no ground for assessing the functional disability higher than the one assessed by the Tribunal. It is submitted that there is no scope for any further enhancement in this case.

I have heard learned counsel for the parties and gone through the record.

It is submitted that claimant-appellant has indeed lost his right upper limb. Amputation is at the level of the right shoulder joint. PW3 Dr. M.K.Sheoran, Ortho Surgeon, Government Hospital, Bhiwani who had examined the injured alongwith Dr. R.S.Poonia and Dr. K.K.Basotia on 12.10.2011 has deposed that a person can not drive a vehicle nor can he do any agricultural work. He can however carry on some routine chores with difficulty.

He can not do any manual labour.

Evidence on record reveals the land in question to be joint with the brothers of the appellant. There is indeed no evidence on record to prove that the appellant was cultivating the land himself and had not given the same on lease etc. Therefore, the Tribunal has rightly assessed his monthly income to be ₹10,000/- being the loss of managerial assets. Land in question continues to vest with the claimant.

However, keeping in view the judgment of the Hon'ble Supreme Court in Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765 and the evidence on record, functional disability of the appellant is assessed at 40%. Said assessment is arrived at for the reason that the claimant is an agriculturist wherein ownership of the land would continue to vest in him. He is entitled to compensation on account of loss of future increment to the extent of 15% as he was 56 years old at the time of accident in terms of Syed Sadiq's case (supra). He is thus entitled to compensation of ₹4,96,800/- $[(10,000 \times 40\%) + (40\% \times 15\% \times 10,000) \times 12 \times 9]$ on account of loss of future income instead of ₹2,16,000/- as has been done by the Tribunal.

Claimant is also entitled to a sum of ₹50,000/- on account of pain and suffering instead of ₹40,000/-. In respect to compensation on account of special diet, attendant charges, loss of income of family members who remained present and miscellaneous charges, learned Tribunal has awarded a consolidated sum of ₹40,000/- mentioned as "Hospitalization charges". Said amount is enhanced to ₹50,000/-. Amount of compensation granted on other heads is

maintained. Appellant-claimant is, thus, entitled to a total compensation of ₹15,89,168/- instead of ₹12,88,368/- as detailed below:-

<i>Sr.No.</i>	<i>Heads of claim</i>	<i>Amount</i>
1.	Loss of future income	₹4,96,800/-
2.	Loss of income	₹50,000/-
3.	Expenses incurred on treatment	₹8,42,368/-
4.	Pain and suffering	₹50,000/-
5.	Permanent disability	₹1,00,000/-
6.	'Hospitalization' including special diet, transportation and miscellaneous charges	₹50,000/-
	Grand Total =	₹15,89,168/-

Amount already awarded by the Tribunal to the claimant under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, this appeal is disposed of.

September 17 , 2015.
'om'

(LISA GILL)
JUDGE