

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

**FAO No. 6448 of 2013 (O&M)
Date of decision: 04.11.2015**

Joginder Pal

... Appellant

versus

Ajit Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajeev Dev Sharma, Advocate for the appellant.
Mr. Lalit Garg, Advocate for the Insurance Company.
Mr. Abhishek Singh, Advocate for
Mr. Tarun Vir Singh Lehal, Advocate for respondent No.2.

K.Kannan, J.

The appeal is by the claimants seeking for enhancement of compensation for injury suffered in a motor accident that resulted in an amputation of his right arm above elbow. He was said to be a government servant in regular employment and 40 years of age at the time of accident. He was hospitalized for a month and had borne Rs. 3,40,600/- as expenses. The court provided Rs. 6,000/- as attendant charges and provided Rs. 60,000/- towards disability which was assessed at 85%.

In my view, the assessment is grossly low and it does not factor all the heads of compensation that are bound to be reckoned. I have seen through the disability certificate and it records the fact that he had an amputation of the right middle hand. The amputation is a schedule injury under the Employees Compensation Act which shall be the guidance for the determination of the loss of earning capacity even under the Motor Vehicles Act. The amputation through the shoulder joint is 90% loss of earning capacity while the amputation below the shoulder with stump less than 20.32 cm from the tip of acromion is

80%. the assessment at 85% is not supportable and I will take the disability as 80% with like percentage of loss of earning capacity as well. The counsel for the respondent would argue that the disability at 80% for an arm must be taken as 40-45% for the whole body. The argument is fallacious and runs counter to the manner of assessment of disability provided under the Act which shall be the guidance for assessment of loss of earning capacity under the Motor Vehicles Act as well. Even the judgment of the Supreme Court in **Raj Kumar Vs. Ajay Kumar, 2011 (1) SCC 343**, that requires the Court to determine disability for the whole body does not advocate scaling down the assessment of earning capacity in case of schedule injuries. I have seen the income of the claimant to be Rs. 1, 46, 274/- annually and the loss of earning capacity has to be applied to the earning to 80%. Learned counsel appearing on behalf of the insurer would contend that he continues in employment and therefore he has not suffered any loss of income. This argument is also wrong and against the established principles of law on the subject.

The scales of compensation provided under the Employees Compensation Act of 1923 followed guidelines from the International Labour Organization that required all the State parties to legislate through domestic law a compensation regime that will accord with justice to employees. On a fair assessment of what is likely to be the loss of earning capacity for various types of injuries, amputation is recognized as eroding a serious component of such earning capacity, apart from the loss of amenities that they would occasion. The mere continuation in employment for a person who is in service cannot mean that the Tribunal shall not assess the loss under the said head. If that is the logic to be applied then the very purpose of welfare legislation such as the Motor Vehicles Act or the Employees Compensation Act could be rendered nugatory. Even the enactment such as Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1996, protects a person who suffered some employment injury from being terminated from service. A physical disability to a person who had 100% loss of earning capacity by a complete visual impairment may not lose employment by virtue of the above enactment but to deny to his compensation if he is continued to be kept in employment under the provisions of 1994 Act as a disability arising in the course of employment will mean denial of assessment provided under the Employees Compensation Act. This issue has come up for consideration and this Court has come up in National Insurance Company Limited Vs. Rajbir Singh and others, 2011 (2) PLR 98, that continuing in employment inspite of disability cannot be a fetter to be discredited for the plaintiff to complain of loss of earning capacity. I therefore reject the argument of the insurer that by virtue of the claimant continuing in employment on the same salary, he will lose his right to claim damages for loss of earning capacity. I proceed, therefore, to assess 80% as a capacity for the income which he was earning at the time of the accident. I tabulate the various heads of compensation provide also for Rs. 75,000/- for pain and suffering and another Rs. 75,000/- for loss of amenities.

<u>Injury Case</u>	Date of accident 05.04.2009		
40			
Period of hospitalization	1 month		
Occupation/ Income	Govt. Employee/ 1, 46, 274		
SR. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
1	Loss of Income from: to:		30,000/-
2.	Medical Expenses:		
	(i) Medicines	3,40,600/-	3,40,600/-
	(ii)Hospital charges		
	(iii)Attendant charges	6,000/-	6,000/-
	(iv)Special diet		5,000/-

	(v)Transportation		5,000/-
3	Pain and suffering		75,000/-
4	Disability	85%	80%
5	Loss of earning capacity		80%
	(i)Income		1, 46, 274
	(ii)Multiplier		15
	(iii)5 % of loss of earning capacity		17,55,288/-
6.	Loss of amenities	60,000/-	75,000/-
7.	Reduction in life expectancy		
8.	Loss of prospect of marriage		
9	Total	4, 06,000/-	24,07,162/-

The total compensation shall be Rs. 24,07,162/-. The award in excess of what is already assessed will attract interest @ 9% from the date of the petition till the date of the payment.

The liability shall be in the same manner as determined by the Tribunal. The Insurance Company shall make the payment to the claimant and shall secure a right of recovery against the owner and driver for the alleged breach of terms of policy of the driver not having a valid driving licence at the time of the accident.

The award is modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

04.11.2015
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