

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

**FAO No.5296 of 2015 (O&M)
Date of Decision: September 16, 2015.**

Shri Ram General Insurance Company Ltd.

.....APPELLANT(s).

VERSUS

Simranjit Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal against the award dated 12.03.2015 passed by Motor Accident Claims Tribunal, Kurukshetra (later referred to as the Tribunal), whereby compensation of ₹7,45,000/- was awarded to the claimant Simranjit Singh for the injuries received by him in the accident with canter bearing registration No.UP-15-AT-0548 (later referred to be as the offending vehicle).

The case of the claimant, in brief, is that on 30.04.2012 he was going from Kurukshetra to his village Rohti in car bearing registration No.HR-41C-6868, when his car was hit by the offending vehicle which was being driven by respondent No.1Ikramudin in a rash and negligent manner.

The compensation allowed to the claimant is tabulated as follows:-

“1) For medical expenses:	Rs.1,25,000/-
2) For expenses of attendant:	Rs.25,000/-
3) For future medical expenses:	Rs.50,000/-.
4) For transportation charges:	Rs.10,000/-.
5) For special diet:	Rs.10, 000/-
6) For pain and suffering:	Rs.25,000/-
7) For loss of amenities of life:	Rs.1,00,000/-
8) For future loss of income due to functional disability:	Rs.4,00,000/-

Total: - Rs.7,45,000 (Rs.Seven lacs forty five thousand only)”

Learned counsel for the appellant has argued that the Tribunal has wrongly allowed compensation of ₹4 lacs towards future loss of income due to functional disability despite the fact that there was no evidence on record in this regard. He has argued that claimant had suffered 30% permanent disability and there was no evidence that this disability, in any manner, has resulted in functional disability for the claimant. While referring to the observations in case of ***Ram Kiran Goyal Vs. Sub Divisional Engineer, Mechanical and others 2008(2) PLR 471***, he has argued that as per the Division Bench of this Court, a compensation of ₹2,000/- for every one per cent of disability could be allowed.

The claimant in this case was agriculturist. After the accident, he was taken to L.N.J.P. Hospital, Kurukshetra from where he was referred to PGI, Chandigarh. The claimant got himself admitted in Apna Hospital, Kurukshetra for a period of about one month. Dr. Vikas Goyal PW1 has stated that the claimant remained admitted in the hospital from 30.04.2012 to

30.05.2012. The claimant had suffered following fractures:-

- (1) fracture of right humerus bone;
- (2) multiple rib fractures;
- (3) fracture of right femur bone;
- (4) fracture of both bones right tibia.

The claimant was operated for all the limb fractures and plating was done.

The claimant was examined by a Medical Board comprising of three doctors. His disability was assessed by the Board as 61% as mentioned in the disability certificate (Ex.P1), which reads as follows:-

- “(i) due to moderate restriction of movements at right elbow joint with hyper extension right elbow with muscle wasting right arm with binding plate 15 per cent;
- (ii) severe restriction of movements at right knee joint with muscle loss right leg with restriction of movements at right ankle joint 30 per cent;
- (iii) mild restriction of movements at right hip joint with muscle wasting right thigh 8 per cent;
- (iv) shortening of right lower limb by 1 and a half inch 8%.”

Dr. Bimla Gauri (PW2), who was member of the Medical Board which assessed disability suffered by claimant, appeared as PW2 and stated that 30% disability was permanent in nature and rest may improve with the passage of time and with physiotherapy and after removal of implants. The Tribunal has taken into account the above disability while calculating compensation as ₹4 lacs. The observations of the Tribunal as contained in para 32 to 34 to this effect are reproduced as follows:-

“32. In the present case, petitioner Simranjit Singh

suffered total disability 61 per cent which was due to moderate restriction of movements at right elbow joint with hyper extension right elbow with muscle wasting right arm with binding plate 15 per cent, severe restriction of movements at right knee joint with muscle loss right leg with restriction of movements at right ankle joint 30 per cent; mild restriction of movements at right hip joint with muscle wasting right thigh 8 per cent; shortening of right lower limb by 1 and a half inch 8%. The disability certificate is Ex.P1. Dr.Bimla Gauri (PW2) stated that 30% disability is permanent in nature and rest may improve with the passage of time and with physiotherapy and after removal of implants.

33. Petitioner Simranjit Singh stated that he was an agriculturist and was earning Rs.20,000/- per month. The copy of jamabandi for the year 2004-05 Mark-C shows that Simranjit Singh owned some agricultural land but there is no evidence that he was earning Rs.20,000/- per month. Petitioner Simranjit Singh suffered fracture humerus right side with fracture femure i.e. supracondylar right side with intercondylar with fracture both bones right leg and became a disabled person. The petitioner has become a disabled from earning any kind of livelihood. He could not effectively carry on the activities and functions, which he was earlier carrying on, and he is 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.

34. Thus, in view of law laid down above due to permanent disability, his working capability would decrease extensively and he has to live as a handicap person in rest of the life. His age has been pleaded to be

47 years. Thus, keeping in view, the future loss of income due to functional disability is assessed at Rs.4,00,000/-.”

This fact was proved on record that the claimant was an agriculturist, though no definite evidence could be produced on record about his income. Even if, he is taken to be a labourer, restrictions of right elbow, right knee, right ankle, right hip joint and shortening of right lower limb by one and half inch, have vastly impaired the earning capacity of the claimant, which cannot be limited to the extent of 30%. Though the Tribunal has not mathematically calculated the loss of future income due to disability but keeping in view the facts and circumstances of this case, the amount of ₹4 lacs allowed in this regard cannot be termed as excessive. Even if, it be believed that the claimant, who is an agriculturist, was earning ₹10,000/- per month, the disability he has suffered due to restriction of movement of his elbow, knee, ankle, hip etc. and shortening of right lower limb has certainly impaired his functional ability to the tune of not less than 30%. About the remaining 31%, the doctor was not sure that it will improve but was hopeful that this may improve with passage of time, physiotherapy and removal of implants. Even by taking the loss of income suffered by the claimant around ₹3,000/- per month and keeping in view his age, by applying the multiplier of 13, the amount of compensation towards loss of future income due to functional disability works out to be more than ₹4 lacs.

In the case of *Ram Kiran Goyal (supra)* referred by learned counsel for the appellant, the Division Bench of this Court has not relied on the disability certificate and there was no evidence about the loss of earning capacity, as such, the observations in that case are not applicable to the facts

and circumstances of this case.

No other point has been argued.

In view of my above discussion, the compensation allowed by the Tribunal calls for no interference being just and appropriate.

This appeal has no merits. Dismissed.

September 16, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE