

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2916 of 1999(O&M)

Date of decision: 5.2.2016

Braham Parkash

.....Appellant(s)

Versus

Gurdial Singh and others

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

* * *

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

Mr. R.S. Athwal, Advocate for respondents No.1 to 3.

Ms. Madhu Sharma, Advocate for respondent No.4.

Darshan Singh, J.

1. The present appeal has been preferred against the award dated 16.1.1999 passed by the learned Motor Accident Claims Tribunal, Jhajjar, vide which the appellant-claimant Braham Parkash has been awarded a compensation of ₹ 85,200/- on account of the injuries suffered by him in this motor vehicular accident which took place on 30.1.1996.

2. The present appeal has been preferred only for enhancement of compensation.

3. Learned counsel for the claimant contended that the claimant was an agriculturist and was earning ₹ 4,000/- per month. Due to the injuries received in this accident, he has suffered 45% permanent disability and has become unfit to carry on the agricultural work. The learned Tribunal has awarded only ₹ 45,000/- towards permanent disability. He further contended that very less

amount has been awarded towards pain and suffering. No amount has been awarded towards loss of income. Thus, he contended that the compensation computed by the learned tribunal is inadequate.

4. On the other hand, learned counsel for respondent No.4- Oriental Insurance Company contended that due amount of compensation has been awarded by the learned Tribunal towards disability, pain and suffering, conveyance charges and other misc. expenses. She contended that the claimant was an agriculturist. So, there was no question of loss of income.

5. I have duly considered the aforesaid contentions.

6. As per the case of the claimant, he was an agriculturist and was earning ₹ 4,000/- per month. However, the claimant has not produced on record any revenue document to show as to whether he was owner in possession of any agricultural land, if so, how much. However, the claimant was a young man of 24 years of age at the time of the accident. So, even by working as a labourer, he could have easily earned ₹ 3,000/- per month in the year 1996 when the accident took place. So, the income of the claimant shall be taken to be ₹ 3,000/-.

7. PW-9 Dr. Ajay Goel has proved the disability certificate Ex.P-14, as per which the claimant has suffered 45% permanent disability. The Hon'ble Apex Court in case **Raj Kumar versus Ajay Kumar and others 2011 (2) R.C.R (Civil) 101** has laid down that loss of future earning is to be assessed on the basis of the permanent functional disability. The entire percentage of the physical

disability itself cannot be taken into consideration. The Court has to consider as to the effect and impact of such permanent disability on the earning capacity of the victim. The percentage of economic loss arising from the permanent disability will be different from the percentage of the physical permanent disability. So, only the functional disability of the victim effecting his earning capacity is to be taken into consideration to determine the compensation on account of the permanent disability. In **Raj Kumar's case** (supra) also victim has suffered 45% disability. The learned Apex Court has assessed the permanent functional disability as 25% and loss of future earning capacity as 20%. So, in the instant case also, as per the aforesaid ratio of law, the loss of earning capacity of the claimant shall be taken to be 20%. The monthly loss of income comes to ₹ 600/-. Annual loss of income comes to ₹ 7200/-. The age of the claimant was 24 years, so, the multiplier of 18 shall be applicable. The total amount of compensation under this head comes to ₹ 1,29,600/-. So, the compensation under this head is enhanced from ₹ 45,000/- to ₹ 1,29,600/-.

8. The claimant has suffered severe injuries which resulted into 45% permanent disability. He has suffered fracture shaft femur left side and was also operated upon. So, the compensation towards pain and suffering awarded by the learned Tribunal is highly inadequate. The same is enhanced to ₹ 12,500/-

9. Due to the injuries suffered by the claimant in the accident, he may not have been carry on his profession at least for a

period of two months. So, he will be entitled to a sum of ₹ 6,000/- towards loss of income. Now the detail of the compensation determined by this Court comes as under:

1.	For permanent physical disability which is 45%	₹ 1,29,500/-
2.	Medical expenses	₹ 28,200/-
3.	For pain and sufferings	₹ 12,500/-
4.	Conveyance charges	₹ 6,000/-
5.	Other miscellaneous expenses	₹ 4,000/-
6.	Loss of income	₹ 6,000/-
Total		<u>₹ 1,86,200/-</u>

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to ₹ 1,86,200/- from ₹ 85,000 awarded by the learned Tribunal. The claimant shall be entitled to interest @ 6% per annum on the enhanced amount from the date of the institution of the claim petition till the realization. The liability to pay the compensation and mode of disbursement shall be as per the award of the learned Tribunal.

February 05, 2016
ps

(DARSHAN SINGH)
JUDGE