

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

**FAO No.2982 of 2007 (O&M)
Date of decision: 06.01.2016**

Sunil

....Appellant

Versus

Satish and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.N. Pillania, Advocate,
for the appellant.

None for respondent No.1.

Mr. Satpal Dhamija, Advocate,
for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') vide award dated 05.02.2007, on account of injuries received by him in a motor vehicular accident which took place on 09.06.2004.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 09.06.2004, claimant-appellant along with his cousin-Ramesh (since deceased) were going from village Taloda to Pillukhera in a Tata Sumo bearing registration No.HR-03-B-8496, which was being driven by Ramesh. At about 1.30/2.00 a.m. when they were returning, all of sudden, a cow bull came in front of Tata Sumo.

Ramesh turned his vehicle in order to save the cow bull, but he lost control

over it, as a result of which, Tata Sumo hit against a *kikkar* and eucalyptus trees. Due to this accident, driver-Ramesh died at the spot. Claimant-appellant received multiple injuries. He was taken to General Hospital, Jind, from where he was referred to P.G.I., Rohtak. He remained admitted in that hospital up to 16.06.2004. Thereafter, he remained admitted in Jain Dharamarth Hospital, Gohana Road, Jind, for about 2½ months. Since his condition was deteriorating, he was taken to General Hospital, Jind, where he remained admitted from 21.09.2004 to 05.10.2004. He was operated upon on 25.10.2004 when his left leg was amputated. Due to this accident, he has suffered permanent disability. With regard to the accident, DDR No.14 dated 09.06.2004 was recorded at Police Station, Sadar Jind. It was further pleaded that the claimant-appellant was still getting treatment from the Hospital. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that claimant-appellant had received injuries in a road accident arising out of use of Tata Sumo bearing registration No. HR-03-B-8496 and thus, returned the finding on issue No.1 in favour of the claimant. Since it was a claim petition under Section 163-A of the Act, the Tribunal had proceeded to assess the compensation as per Second Schedule of this Section. Dr. M.L. Kochar (PW-1) had proved the disability certificate of claimant-appellant as Ex.PA and deposed that he was suffering with 65% permanent disability due to amputation of left leg. The income of the claimant had been assessed as Rs.3000/- per month as that of a casual labourer. As per Entry No.5 of Second Schedule, the claimant was held

entitled to compensation for loss of income for a period not exceeding 52 weeks. Accordingly, a sum of Rs.39,000/- was given on account of loss of income. Ultimately, the claim petition was accepted by the Tribunal and compensation was awarded as under:-

1.	Pain and suffering	-	Rs.5000/-
2.	Medical expenses	-	Rs.7840/-
3.	Loss of income	-	Rs.39,000/-
4.	Loss of income due to permanent disability	-	Rs.3,97,800/-
	Total	-	<u>Rs.4,49,640/-</u>

To make round figure, the claimant was found entitled to a total compensation of Rs.4,50,000/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved.

The Tribunal has assessed compensation with respect to permanent disability strictly in accordance with the formula prescribed in Second Schedule of Section 163-A of M.V. Act. Reference, at this stage, can be made to the judgment passed by a Co-ordinate Bench of this Court in **Mohit Garg and another Vs. Afrojan and others**, 2014 (4) PLR 160, wherein an argument was raised while making reference to the judgment of the Hon'ble Supreme Court in **Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited**, 2013 ACJ 2445, that for assessing compensation in respect of permanent disability in a claim

petition filed under Section 163-A of the Act, a deviation should be made and structured formula need not be applied for determination of compensation for permanent disability suffered by a child. In that case, the appeal filed by the appellant was dismissed by observing that a departure from legislative mandate could not be made and the Court is bound by the bare provisions laying down the process of calculation of compensation. A deviation from the structured formula is not permissible.

At this stage, reference can be made to a decision of the Hon'ble Supreme Court in **R.K. Malik & another Vs. Kiran Pal & others,** 2009 (5) SCC (Civil) 265. In this case, while affirming grant of compensation under the structured formula in terms of Section 163-A of the Act, the Hon'ble Supreme Court had granted Rs.75,000/- towards non-pecuniary damages, which includes pain and sufferings, loss of amenity and enjoyment of life etc. While upholding the judgment of Delhi High Court, the Hon'ble Supreme Court has observed that enhanced compensation in the above said category, did not suffer from any infirmity.

In the present case, even though the compensation has been rightly assessed, but keeping in view the decision of the Hon'ble Supreme Court in **R.K. Malik's** case (supra), the compensation is being reassessed as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Pain and suffering, special diet, transportation etc.	Rs.75,000/-
(ii)	Medical expenses	Rs.7840/-
(iii)	Loss of income	Rs.39,000/-
(iv)	Loss of income due to permanent disability	Rs.3,97,800/-

(v)	TOTAL COMPENSATION AWARDED	Rs.5,19,640/-
(vi)	Enhanced amount of compensation	Rs.5,19,640 – 4,50,000 = Rs.69,640/-

The enhanced amount of compensation of **Rs.69,640/-** shall be payable within a period of two months 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 the 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.

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

(RITU BAHRI)
JUDGE

06.01.2016
ajp