IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.600 of 2006(O&M)

Date of decision:25.7.2016

Bhim Singh ....Appellant

VERSUS

Mahender Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Priya Yadav, Advocate for the appellant.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Karminder Singh, Advocate for respondent No.4.

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REKHA MITTAL, J.

Bhim Singh- the injured victim is in appeal seeking enhancement of compensation in respect of injuries sustained by him in a motor vehicular accident dated 10.05.2003 due to rash and negligent driving of Bus No.HR-66-0672 of Haryana Roadways, Narnaul Depot, Narnaul.

The appellant examined Dr. Kapil Pratihar (PW-1), Dr. Rajesh Batra (PW-2), Dr. A.K. Saini (PW-3), Dr. Parmeshwar Singh (PW-4), Constable Giriraj (PW-5), Niranjan Lal Duty Inspector (PW-6), Vinod Kumar Saini (PW-7), Pardeep Singh (PW-9) besides his own statement as PW-8. A large number of documents detailed in para 7 of the award of the Motor Accident Claims Tribunal, Rewari (for brevity 'the Tribunal') were exhibited.

The learned Tribunal in view of discussion on issue No.4 pertaining to quantum of compensation payable to the claimant has held in para 26 that the claimant shall be entitled to Rs.2,59,000/- as follows:-

1. Treatment and special diet	Rs.8,000/-
2. Pain and suffering	Rs.10,000/-
3. Disability	Rs.2,16,000/-
4. For artificial limb	Rs.25,000/-

Counsel for the appellant has submitted that the compensation awarded by the learned Tribunal is a peanut when examined in the light of evidence on record and various precedents laying down guidelines for grant of compensation in injury cases. It is further argued that compensation awarded under aforesaid 4 heads requires substantial increase besides entitlement of the appellant to get compensation under additional heads. In support of her contention, she has referred to judgments of Hon'ble the Supreme Court Sanjay Kumar Vs. Ashok Kumar and another, 2014(1) RCR (Civil) 875 and Dinesh Singh Vs. Bajaj Allianz General Insurance Co. Ltd., 2014(3) RCR (Civil) 123.

Counsel(s) for the respondents, on the contrary, have supported the award passed by the Tribunal.

I have heard counsel for the parties, perused the paper-book particularly the award passed by the Tribunal.

Before adverting to the submissions made by counsel for the parties, it is appropriate to note that the legislation has cast an onerous obligation upon the Tribunal to assess just and reasonable compensation in the light of facts and circumstances obtaining in a case. In my endeavour to arrive at a just compensation, I have examined various judgments on the issue including the ones relied upon by counsel for the appellant. It is appropriate to recapitulate the detailed guidelines laid down by Hon'ble the Apex Court in Raj Kumar Vs. Ajay Kumar and others, 2011 (2) RCR (Civil) 101. The relevant paragraphs are extracted hereinbelow:-

> "6. The heads under which compensation is awarded in personal injury cases are the following:
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> Pecuniary damages (Special damages)
>
> (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.
>
> (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
>
> (a) Loss of earning during the period of treatment;
>
> (b) Loss of future earnings on account of permanent disability.
>
> (iii) Future medical expenses.
>
> Non-pecuniary damages (General damages)
>
> (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
>
> (v) Loss of amenities (and/or loss of prospects of marriage).
>
> (vi) Loss of expectation of life (shortening of normal longevity).
>
> In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.
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> 7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses Item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of nonpecuniary damages Items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses

some difficulty is the assessment of the loss of future earnings on account of permanent disability Item (ii)(a)."

In Sanjay Kumar's case (supra), the victim was an embroider (a skilled worker) and he lost his one leg in a motor accident. Hon'ble the Supreme Court accepted income of the deceased at Rs.4500/- per month, allowed benefit of increase as future prospects to the extent of 50% and assessed loss of earning capacity at 70% due to permanent disability in order to calculate future loss of income. Compensation to the tune of Rs.1,50,000/- was awarded for pain and suffering and a sum of Rs.1,00,000/- for loss of amenities of life. The victim was held entitled to compensation to the tune of Rs.14,59,100/- against compensation of Rs.4,83,472/- awarded by the Tribunal.

In Dinesh Singh's case (supra), the victim suffered 60% permanent disability due to amputation of his one leg. The Supreme Court after taking into consideration 60% permanent disability worked out loss of future earnings while adopting a multiplier method after assessing income of the victim (B.E. Engineering) worked as a Quality Engineer in a private company at Rs.12,840/- per month. He was awarded an amount of Rs.1,20,000/- for pain and agony and a sum of Rs.3,50,000/- for loss of amenities.

In Jakir Hussein Vs. Sabir and others, 2015(2) RCR (Civil) 141, decided on 18.02.2015, victim suffered permanent disability of 50% as his right hand was completely crushed and deformed in motor accident. He was working as a driver and the Court held that permanent disability is to be treated 100% since he will never be able to work as a driver again. Plea of the Insurance Company that the victim could take up any other alternative employment was held to be no justification to avoid their vicarious liability. The Court allowed compensation of Rs.1,50,000/- each for pain and suffering and loss of amenities of life.

In V. Mekala Vs. M. Malathi and another, 2014(2) RCR (Civil) 880, the Apex Court allowed benefit of increase in income for future prospects to assess loss of earnings in the case of a victim who suffered 70% permanent disability due to fracture of bones of both the legs. Notional income of the victim was assessed at Rs.10,000/- per month. He was awarded an amount of Rs.2,00,000/- each for loss of enjoyment of life and marriage prospects.

In Syed Sadiq and others Vs. Divisional Manager, United India Insurance Co., 2014(1) RCR (Civil) 765, the victim was 24 years old and a vegetable vendor. He suffered disability to the extent of 60% due to amputation of one of his legs. Hon'ble the Supreme Court assessed loss of earning capacity to the tune of 85% and allowed benefit of future prospects for the purpose of calculating loss of income.

In Sanjay Verma Vs. Haryana Roadways, 2014(1) RCR (Civil) 914, the victim was allowed benefit of increase in income for future prospects to the extent of 50% for assessing loss of income by adopting multiplier method.

Similarly, in Rekha Jain and another Vs. National Insurance Co. Ltd., 2013(4) RCR (Civil) 31, Rajan Vs. Soly Sebastian and others, 2015(3) RCR (Civil) 962, the Apex Court allowed benefit of increase in income for future prospects to assess loss of income by adopting multiplier method.

Hon'ble the Supreme Court in R.D. Hattangadi Vs. M/s Pest Control (India) Pvt. Ltd., AIR 1995 (SC) 755, has laid down in para 9 reproduced hereinbelow for ready reference:-

> "9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

Now reverting to the case at hand, the Tribunal has awarded an amount of Rs.2,16,000/- in respect of disability/loss of income by applying multiplier method. The Tribunal has refused to rely upon the evidence that the victim was an employee of M/s Varsha Detective and Security (P) Ltd. at a salary of Rs.6700/- per month. Income of the deceased was assessed by taking into consideration wage of an unskilled worker i.e. Rs.2400/- per month. After taking into consideration disability to the extent of 80%, the Tribunal assessed loss of capacity to earn to the extent of 50% and after applying multiplier of 15, loss of income has been assessed namely Rs.1200 x 12 x 15 = Rs.2,16,000/-.

A plain reading of the findings of the Tribunal does not indicate as to the basis for assessing loss of earning capacity to the extent of 50%. In order to decide as to how loss of earning capacity is to be assessed in a case where the victim has suffered permanent disability, we have to fall back upon guidelines/principles laid down in Raj Kumar's case (supra). Hon'ble the Apex Court has said, what requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of percentage of the income, it has to be quantified in terms of money to arrive at the future loss of earnings (by applying the standard multiplier method) used to determine loss of dependency. In para 10 of the judgment, it has been held quoted thus:-

> "10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was 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……"

In the instant case, Dr. A.K. Saini, Medical Officer, Civil Hospital, Rewari (PW-3), was examined to prove disability certificate (Ex.PW3/A). He has deposed that disability of Bhim Singh was assessed to the tune of 80% on account of amputation through lower 1/3rd of right thigh. Neither the Tribunal nor counsel representing the respondents before the Court below tried to seek his opinion as to what would be the functional disability as a result of 80% disability due to amputation of right limb much less to know what activities the appellant can carry despite permanent disability. This apart, in its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of disability caused but the aforesaid elements have to be viewed with objective standards.

This brings the Court to analyze the present case in the light of discussion hereinbefore. As per plea of the appellant, prior to the accident, he was working with M/s Varsha Detective and Security Pvt. Ltd. as a Field Officer at a salary of Rs.6700/- per month and was retrenched from service due to amputation of his right limb. To substantiate his plea, Pardeep Singh, Senior Executive Operation from the said security agency was examined as PW-9. The witness marked salary-sheet Ex.PA, copy of attendance register Ex.PB and certificate of salary Ex.PC. In his cross examination, he has deposed that he has brought salary record of only one month namely May 2003 in which the victim met with accident on 19.05.2003. No document with regard to his appointment by the said agency much less evidencing payment of salary at Rs.6700/- per month was produced. The documents brought on record by Pardeep Singh cannot be taken sufficient to accept plea of the appellant that either he was working as a Field Officer with M/s Varsha Detective and Security Pvt. Ltd. or was getting salary of Rs.6700/- per month. I would hasten to add that in claim for compensation, the claimants generally have the tendency to inflate the figures qua loss of income. Under these circumstances, the learned Tribunal has rightly assessed his income on the basis of wage available to an unskilled worker in the year 2003. However, the Tribunal has not allowed benefit of increase for future prospects. As the victim was less than 30 years of age, he is entitled to future prospects to the extent of 50%. The Tribunal has adopted a multiplier of 15 but as the victim was in the age bracket of 26 – 30 years, admissible multiplier would be 17.

The victim suffered amputation of his right leg above knee. The disability certificate also makes reference to injury on his right hand. The income of the injured has been assessed on the basis of wage of an unskilled worker. When the facts and circumstances of the present case are examined in the light of principles laid down in para 10 in Raj Kumar's case (supra) extracted hereinbefore, in my considered opinion, ends of justice would be served if compensation for loss of income is assessed by taking loss of earning capacity to the extent of 60%. In this manner, compensation payable to the appellant for loss of future income/disability comes to Rs.4,40,640/- (Rs.3600/- x 12 x 17 x 60/100).

With regard to loss of income during period of treatment, the victim remained admitted in the hospital w.e.f 19.05.2003 to 03.06.2003. The appellant has deposed that he remained on the bed for a period of more than 2 months. The victim suffered amputation of his right leg to the extent of lower $1/3^{rd}$ of right limb. The appellant is awarded an amount of Rs.10,000/- for loss of income for a period of four months.

The Tribunal has awarded an amount of Rs.8,000/- for treatment and special diet. In view of nature of injuries sustained, the amount is enhanced to Rs.20,000/-. The compensation for pain and suffering is enhanced from Rs.10,000/- to Rs.1,00,000/-. The appellant is awarded an amount of Rs.1,50,000/- for loss of amenities of life and an amount of Rs.20,000/- for services of an attendant and another amount of Rs.10,000/- for expenses on transportation etc. An amount of Rs.25,000/- for artificial limb awarded by the Tribunal is affirmed.

In view of the above, total compensation payable to the appellant comes to Rs.7,75,640/-. The enhanced compensation is Rs.5,16,640/- (Rs.7,75,640/- - Rs.2,59,000/-) . The appellant shall be entitled to interest at the rate of 7.5% per annum on the compensation assessed by the Tribunal as well as on enhanced compensation from the date of filing of petition till realization. The enhanced compensation shall be deposited in Fixed Deposit Receipts in such a manner that the appellant shall be entitled to withdraw Rs.1,00,000/- each year.

Before parting with this judgment, I would like to highlight for guidance of the Tribunals dealing with compensation cases that Hon'ble the Apex Court in Raj Kumar's case (supra) has recorded its concern as to what the Tribunal is expected to do in the direction of assessing just compensation while dealing with personal injury cases. A relevant extract from paras 11 and 12 of the judgment is quoted hereinbelow, to remind the Tribunals of their onerous and pious obligation:-

> "11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to `hold an enquiry into the claim' for determining the `just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the `just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for

example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

12. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give `ready to use' disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily giving liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the Doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or Discharge Certificate will not be proof of the extent of disability stated therein unless the Doctor who treated the claimant or who medically examined and assessed the extent of disability of claimant, is tendered for cross- examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local Hospitals/Medical Colleges) and refer the claimant to such Medical Board for assessment of the disability."

While dealing with appeals for enhancement of compensation in injury cases, many a times, it has been noticed that the Tribunals are either insensitive or ignorant of their obligation as to how they should play an active role to ascertain the true facts and correct position in the case so that they can assess just compensation. Failure of the Tribunal at the grass-root level to act as per the judgment of Hon'ble the Apex Court either results in delay of proceedings at the appellate stage due to seeking additional evidence or remitting the matter to the Tribunal for making fresh assessment. It is high time that the Tribunals are reminded of their role to be played while assessing compensation particularly when dealing with personal injury cases.

Copy of this judgment be circulated to all the District & Sessions Judges in the States of Punjab, Haryana and U.T. Chandigarh for necessary compliance.

JULY 25, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no