

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

FAO No.63 of 2006

Date of decision : 29.08.2016

Gulzar Singh

.....Appellant

Versus

Karam Singh alias Karma and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Arvind Bansal, Advocate for
Mr. Rakesh Nagpal, Advocate for appellant.

Mr. Vinod Bhardwaj, Advocate for respondents No.1 to 3.

Mr. Vinod Chaudhari, Advocate for respondent No.4-
Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant Gulzar Singh against the award dated 31.10.2005 passed by learned Motor Accidents Claims Tribunal, Kaithal (hereinafter called the "Tribunal"), vide which he has been awarded compensation to the tune of ₹2,78,000/- on account of the injuries suffered by him in the motor vehicular accident which took place on 14.09.2002.

2. The present appeal has been preferred by the appellant-claimant for the enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and gone through

the paper-book meticulously.

4. Learned counsel for the appellant-claimant contended that the claimant has suffered 48% permanent disability as a result of injuries received in this accident but the learned Tribunal has awarded only ₹96,000/- as compensation on account of the disability, which is highly inadequate. He further contended that no amount has been awarded to the claimant towards loss of income. He remained confined to bed for more than six months.

5. On the other hand, learned counsel for the respondents contended that the learned Tribunal has assessed adequate and just compensation under all the heads. They further contended that whole of the percentage of the disability cannot be taken into consideration. Only the functional disability which actually affects the future earning capacity can be considered. So, the compensation on account of disability has been rightly calculated. There was no proof regarding income of the claimant. So, there can be no loss of income.

6. I have duly considered the aforesaid contentions.

7. As per the disability certificate brought on record, appellant-claimant Gulzar Singh has suffered 48% disability. Even if he is considered to be casual worker his income can safely be taken to be ₹3000/- per month *i.e.* ₹36,000/- per annum . There is no dispute with the proposition of law that the entire percentage of disability cannot be taken into consideration to determine the loss of future earning on account of permanent disability. The Hon'ble Supreme Court in case ***Raj Kumar Vs. Ajay Kumar and another***

2011 ACJ 1, has laid down that loss of future earning cannot be assessed on the basis of the entire percentage of the permanent disability but that has to be assessed on the basis of percentage of functional disability *i.e.* effect or impact of such permanent disability on his earning capacity. In that case the claimant has suffered 45% permanent disability but the Hon'ble Apex Court has considered the permanent functional disability to the extent of 25% and loss of future earning capacity as 20%. In view of the aforesaid ratio of law laid down by Hon'ble Apex Court, though the appellant-claimant has suffered 48% disability but only 25% of his disability shall be taken to be his functional disability having impact on his future earning capacity. The suitable multiplier has to be applied in order to compute the compensation. As per the statement of PW-4 Dr. Ashish Gupta and as per Bed Head Ticket Ex.P5/3 the age of the appellant-claimant was 20 years. So, the multiplier of 18 shall be applicable. Thus, the amount of compensation on account of loss of future earning capacity due to permanent disability comes to ₹1,80,000/- (36,000 X 25 X 20 / 100). So, the compensation under this head is enhanced to ₹1,80,000/- from ₹96,000/-

8. The claimant has also suffered serious injuries in this accident. He might have not been able to resume his profession at least for a period of four months. So, he will be further entitled to a sum of ₹12,000/- on account of loss of income.

9. Thus, the compensation payable to appellant-claimant is worked out as under:-

Sr. No.	Heads of compensation	Amount of compensation in rupees
1.	Medical bills	1,44,000/-
2.	Future loss of earning capacity due to permanent disability	1,80,000/-
3.	Attendant charges	4000/-
4.	Transportation charges	10,000/-
5.	Pain and suffering	20,000/-
6.	Loss of income	12,000/-
Total		3,70,000/-

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellant-claimant is enhanced to ₹3,70,000/- from ₹2,78,000/- as awarded by the Tribunal. The appellant-claimant shall also be entitled to the interest on the enhanced amount at the rate as assessed by the learned Tribunal from the date of filing the claim petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

29.08.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No