

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4342 of 2008
Decided on: 11.08.2016

Dayal Singh through his LRs
.....Appellant

Versus

Ramesh Kumar and others
.....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Akshay Jain, Advocate
for the appellant.

Ms. Sonal Dutta, Advocate
for Mr. Vikas Mohan Gupta, Advocate
for respondent No.3.

REKHA MITTAL, J.

Dayal Singh, the injured/victim is in appeal seeking enhancement of compensation in respect of injuries sustained by him in a motor vehicular accident that occurred on 22.03.2006.

The learned Tribunal assessed compensation to the tune of Rs.1,64,125/- under the following heads:-

Sr. No.	Heads	Amount
1.	Compensation towards disability	Rs.1,10,000/-
2.	Compensation on account of treatment, etc.	Rs.39,125/-
3.	Compensation on account of pain and sufferings	Rs.10,000/-
4.	Special diet, etc.	Rs.5,000/-
TOTAL		Rs.1,64,125/-

Counsel for the appellant has submitted that as per the assessment made by the Medical Board, the appellant suffered disability to the extent of 55% on account of fused ankle joint with a shortening of right lower limb and amputation of right ring finger PIP joint. It is further argued that the injured was an agriculturist and in

view of disability suffered by him, loss of future income/compensation for disability would be more than Rs.1,10,000/- assessed by the Tribunal. It is further submitted that compensation awarded for pain and suffering and special diet is liable to be enhanced besides allowing compensation for loss of amenities of life and loss of income during the period of treatment.

Counsel for the insurance company has submitted that there is no clear, cogent and convincing evidence available on record to prove the extent of functional disability much less percentage of loss of earning capacity due to alleged disability to the extent of 55%. It is further argued that there is no documentary evidence with regard to landholding of the victim and thus, a self-serving statement with regard to his earning Rs.8,000/- per month is not sufficient to assess loss of future income.

I have heard counsel for the parties and perused the paperbook particularly the award passed by the learned Tribunal.

Dr. Gaurav Bishnoi – PW3, one of the members of the Medical Board appeared in the witness-box and proved disability certificate Ex.P-1. It certifies that disability caused to the appellant was assessed to the extent of 55% on account of fused ankle joint with shortening of right lower limb and amputation of right ring finger PIP joint. There is no medical evidence with regard to extent of functional disability, if any, due to the disability assessed to the extent of 55%. The disability certificate is also silent with regard to the extent of shortening of right lower limb. In the year 2006, the wage available to an unskilled worker fixed by the State of Haryana was to the tune of Rs.2,500/- per

month. In absence of clear and cogent evidence on record with regard to income of the victim, the same at best can be assessed by taking into consideration wage of an unskilled worker. Keeping in view the facts and circumstances of the present case, if loss of earning capacity of victim is assessed @ Rs.1,000/- per month the loss of future income would not be more than Rs.1,10,000/- assessed for disability by the learned Tribunal. In this view of the matter, I do not find any reason to interfere in the findings of the learned Tribunal with regard to loss owing to disability.

The victim remained admitted in the hospital for little more than one month. He suffered disability to the extent of 55% due to shortening of right lower limb and amputation of right ring finger. The claimant is allowed an amount of **Rs.10,000/-** towards loss of income during the period of treatment and for a period of three months' thereafter. He is awarded an amount of **Rs.50,000/-** towards pain and suffering and loss of amenities of life. The compensation for special diet is enhanced to **Rs.10,000/-** in place of Rs.5,000/-. In this manner, the claimant is entitled to **Rs.55,000/-** more in addition to the amount awarded by the Tribunal, payable with interest @ 7.5% per annum from the date of institution of the petition till realization.

Disposed of accordingly.

11.08.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No