

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

FAO No.1423 of 2009

Date of decision : 31.05.2016

Hazi Mohammad

.....Appellant

Versus

Major Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Ashok Jindal, Advocate for appellant.

Mr. Jatinder Singla, Advocate for respondent No.1.

Ms. Vandana Malhotra, Advocate and
Mr. Vinod Gupta, Advocate
for respondent No.2-Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant against the award dated 15.11.2008, passed by the learned Motor Accidents Claims Tribunal, Bathinda (hereinafter called the 'Tribunal') vide which the appellant-claimant has been awarded a sum of Rs.5,16,000/- as compensation on account of injuries suffered by him in the motor vehicular accident, which took place on 21.02.2007.

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

3. Learned counsel for the appellant-claimant contended that claimant-injured Hazi Mohammad was 32 years of age. He was earning Rs.10,000/- per month. He has suffered 70% permanent disability but the learned Tribunal has awarded Rs.1,40,000/- in lump sum. He further contended that learned Tribunal has awarded total Rs.40,000/- on account of pain and suffering and transportation charges, charges of attendant, etc., which is on lower side. The claimant has suffered number of injuries. Thus, he contended that the compensation awarded by the learned Tribunal is highly inadequate.

4. On the other hand, learned counsel for the respondent-Insurance Company contended that the learned Tribunal has taken into consideration all the heads to compute the compensation and the compensation awarded is just and appropriate.

5. I have duly considered the aforesaid contentions.

6. The appellant-claimant has received head injury, injury on right hand, fracture on the femur and mid shaft, left knee effusion. The disability certificate Ex.CW3/A shows that he has suffered 70% permanent disability. The learned Tribunal has awarded a sum of Rs.1,40,000/- as compensation on account of the permanent disability in lump sum *i.e.* Rs.2000/- for one percent of the disability. That is not the correct way to assess the compensation on account of the disability suffered by the victim. As per the case of the claimant, he was earning Rs.10,000/- per month, but no cogent evidence has been brought on record with respect to the profession and income of the claimant. However, the claimant was a young

man of 32 years of age at the time of the accident. He was hale and hearty, so he must be doing something to earn the livelihood. Thus, the income of the claimant can be safely taken to be Rs.3500/- per month *i.e.* Rs.42,000/- per annum. As per the disability certificate Ex.CW3/A, he has suffered 70% disability. The Hon'ble Supreme Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1***, has laid down that future loss of earning cannot be assessed on the basis of 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 the instant case, in view of the injuries suffered by claimant *i.e.* the head injury, injury on the right hand, fracture on right femur and mid shaft and left knee effusion, 50% of the disability can be considered to be having impact on the future income of the claimant. In view of the age of the claimant, multiplier of 16 shall be applicable. The compensation on account of permanent disability comes to Rs.3,36,000/-.

7. The learned Tribunal has awarded a total sum of Rs.40,000/- on account of physical-mental pain and suffering, transportation charges, charges of attendant, etc. The learned Tribunal has not awarded any compensation for special diet. So, the claimant shall be entitled to Rs.55,000/- towards pain and suffering, transportation charges, charges of attendant and special diet. Thus, the compensation payable to appellant-

claimant is worked out as under:-

Sr. No.	Heads of compensation	Amount of compensation in rupees
1.	Medicine and treatment charges	3,22,827/-
2.	Disability	3,36,000/-
3.	Loss of income	13,200/-
4.	Pain and suffering, transportation charges, charges of attendant and special diet, etc.	55,000/-
Total		7,27,027/-

8. 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 Rs.7,27,027/- from Rs.5,16,027/- as awarded by the Tribunal. The appellant-claimant shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

31.05.2016
sunil yadav

(DARSHAN SINGH)
JUDGE