IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: 10.05.2016.

FAO No.2950 of 2010

Rajinder ....Appellant.

VERSUS

Parbhu Dayal and others ....Respondents.

WITH

FAO No.2993 of 2010

Anguri Devi and another ....Appellants.

VERSUS

Parbhu Dayal and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. S.K. Verma, Advocate for the appellants.

Respondents No.1 and 2 (in FAO No.2950-2010) exparte vide order dated 16.12.2010.

Mr. Rahul Pathania, Advocate for
Mr. R.C. Kapoor, Advocate
for respondent No.3 (in FAO No.2950 of 2010).

Mr. R.N. Singal, Advocate
for respondent No.3 (in FAO No.2993 of 2010).

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SNEH PRASHAR, J.

The above captioned two first appeals had arisen from an award dated 18.09.2009 passed by learned Motor Accident Claims Tribunal, Hisar (for short, “the Tribunal”) in MACT Petition Nos.136 and

137 of 2008 by virtue of which claimant-appellant Rajinder was awarded compensation for having suffered injuries and claimants-appellants Anguri Devi and Hari Singh were awarded compensation on account of death of their son Mukesh in a motor vehicular accident that took place on 25.12.2006. Both the appeals shall stand disposed of by this common judgment.

The submissions made by learned counsel for the parties have been heard and record perused.

FAO-2950-2010

Learned counsel for the appellant argued that the appellant sustained multiple grievous injuries including fracture of left thigh and left leg. He remained hospitalized w.e.f. 25.12.2006 to 13.01.2007 at Jindal Hospital, Hisar and was operated upon and spent Rs.90,000/- on his treatment. However, learned Tribunal awarded only a sum of Rs.43,000/- on account of medical expenses. Due to the injuries sustained in the accident, he has become permanently disabled to the extent of 63%, but learned Tribunal awarded only Rs.1,02,000/- under this head. The appellant was running a Kiryana shop and was also an agriculturist and used to earn Rs.10,000/- per month but learned Tribunal wrongly assessed his income as Rs.3000/- and awarded only Rs.12,000/- towards loss of income for four months which is inadequate. The amount of Rs.8000/- awarded under the heads of transportation, special diet and attendant charges and the amount of Rs.15,000/- awarded on account of pain and suffering is also on the lower side.

By way of his affidavit, appellant-Rajinder, who stepped into the witness box as PW2, testified that he suffered serious and multiple injuries on various parts of the body during the accident. His statement was corroborated by PW4 Dr. Amit Bhutani, Surgeon, Jindal Hospital, Hisar, who deposed that on 25.12.2006 Rajender was admitted in his hospital with injury in his left thigh and left leg and was operated upon. Proving the bills Ex.P3 to Ex.P69, countersigned by him, he stated that his hospital charged Rs.7565/-. He added in his cross-examination that the appellant remained under treatment till 13.01.2007 and thereafter visited his hospital as an OPD patient. The other medicine bills tendered in evidence are Mark-A to Mark-H amounting to Rs.3196/-. The total amount of the bills i.e. Rs.43,000/- was awarded by learned Tribunal towards treatment expenses and that appears adequate.

A sum of Rs.8000/- was allowed towards conveyance charges, special diet and special attendant. The appellant remained hospitalized for a period of 20 days. During the said period since he had suffered grievous injuries in his left thigh and leg, it is obvious that he required an attendant. No evidence was led to prove that the appellant had engaged an attendant on hire basis. Even if his family members were attending on him, it is obvious that he must have spent on their transportation and boarding-lodging. He also must have spent on his own transportation when he was brought to the hospital and after discharge when he went home and thereafter during visits to the hospital for follow up treatment. He also required nutritious diet. Accordingly, the compensation is enhanced to

Rs.30,000/- on all the three counts i.e. transportation, special diet and attendant. This amount will be inclusive of the amount of Rs.8000/- already allowed to him.

The appellant deposed that he was running a Kiryana shop in the Crusher Market, Khanak and was also an agriculturist and used to earn Rs.10,000/- per month. No evidence worth in its name was produced by him to substantiate his contention. Neither he could prove that he was running a shop nor that he owned any agricultural land. Learned Tribunal assessed his notional income as Rs.3000/- per month which appears to be appropriate.

As per the disability certificate Ex.P1 proved by PW3 Dr. T.S. Bagri, Medical Officer, General Hospital, Bhiwani, being member of the Board of Doctors which examined the appellant on 23.01.2009, the appellant was found disabled upto 63% on account of 'more than 25 months old case of united fracture left femur and left both bone legs (implant inside) with loss of range of moments of left hip (10%), left knee (20%), left ankle (100%) with muscle wasting left thigh, leg and foot with superficial complication with partial loss of sensation left foot, ankle region with local pain off and on exertion with pain unable to walk on slope, stand on affected leg, squatting of sitting cross leg'. The statement of the doctor indicates that the disability was with regard to the left lower limb. Learned Tribunal assessing the income of the appellant as Rs.3000/- and loss of future earning capacity to the extent of Rs.500/- per month applied the multiplier of '17' to the annual loss of income and awarded Rs.1,02,000/-. Learned Tribunal may have adopted the method of multiplier for assessing loss of future earning capacity, but the amount awarded appears to be inadequate.

Following the law laid down in ***Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101,*** since the disability of 63% of the appellant relates to left lower limb, his permanent functional disability is taken as 35% which will amount to loss of future earning capacity to the tune of Rs.12,600/- per annum (1050 x 35% x 12). The appellant was 28 years aged when he met with the accident. Applying the multiplier of '17' the amount comes to Rs.2,14,200/-. Accordingly, the amount of Rs.1,02,000/- awarded by learned Tribunal on account of disability is enhanced to Rs.2,14,200/-.

The appellant remained hospitalized for 20 days and had to undergo surgery. The injuries have resulted in rendering him disabled. As such, the amount of Rs.15,000/- awarded on account of pain and suffering is enhanced to Rs.30,000/-. As regards, loss in income during the period of treatment, he has already been awarded Rs.12,000/-. In addition to the same, he is further awarded Rs.30,000/- for loss of enjoyment of amenities of life.

In the above premise, the appellant-Rajinder is held entitled to enhanced compensation of Rs.1,79,200/-.

Accordingly, the appeal filed by appellant-Rajinder is partly allowed and the award dated 18.09.2009 passed by learned Tribunal is modified. The enhanced compensation shall be paid to the appellant within 45 days from the date of receipt of certified copy of this judgment failing which the appellant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

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Learned counsel for the appellants argued that the deceased used to do agricultural work and was a professional driver and was earning Rs.10,000/- per month, but learned Tribunal wrongly assessed his income as Rs.3000/- per month only. The appellants spent Rs.50,000/- on treatment of the deceased, however learned Tribunal awarded only Rs.12,000/- under this head. Further, while calculating the loss of dependency, learned Tribunal wrongly deducted half of the income of the deceased towards his personal living expenses and added no amount to the income computing future prospects. The amount of Rs.5000/- awarded as funeral expenses is on the lower side. Also no amount was awarded to the appellants for loss of love and affection.

No substantive and reliable evidence was produced by the appellants to prove the occupation and income of the deceased. There is no document, worth in its name, to prove that he owned or had taken on lease some agricultural land or was employed as professional driver. In absence of required evidence, learned Tribunal rightly assessed the income of the deceased as Rs.3000/- per month considering him to be a casual labourer and that calls for no intervention.

Perusal of the award shows that no amount was added to the income of the deceased computing future prospects. Following the ratio of ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170*** since the age of the deceased was 20 years when he died in the accident, there had to be an addition of 50% to the actual income of the deceased on account of future prospects, which learned Tribunal failed to allow. So far as the deduction from the monthly income of the deceased towards his personal and living expenses is concerned, in view of the law laid down by Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77,*** the father of the deceased was not his dependent and only the mother appellant No.1-Anguri Devi was the dependent and therefore, deduction of 50% from the monthly income of the deceased towards his personal and living expenses is appropriate. The age of the deceased being 20 years at the time of accident, the multiplier of '18' was rightly applied by learned Tribunal. Accordingly, the compensation payable to appellant No.1-Anguri Devi for loss of dependency is calculated as under:-

1.	Monthly income of the deceased (in Rupees)		Rs.3000/-
2.	Actual age of the deceased		20 years
3.	Increase in future income as per Rajesh and others' case (supra)		Rs.1500/-
4.	Annual dependency		1/2 of Rs.4500 x 12 = Rs.27,000/-
5.	Multiplier		18
6.	Total		Rs.4,86,000/-

In addition to the amount of Rs.4,86,000/- calculated towards dependency, the amount of Rs.5,000/- awarded towards funeral expenses is enhanced to Rs.25,000/-. A further amount of Rs.50,000/- is awarded to appellant No.1 Anguri Devi for loss of love and affection. The amount of Rs.12,000/- awarded towards treatment expenses and Rs.5000/- awarded for loss of estate is just and appropriate. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal is partly allowed and the award dated 18.09.2009 passed by learned Tribunal is modified. The enhanced compensation of Rs.2,32,000/- shall be paid to appellant No.1-Anguri Devi within 45 days from the date of receipt of certified copy of this judgment failing which she shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of this order till realization.

(SNEH PRASHAR)
JUDGE

10.05.2016.
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