

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

FAO No.3363 of 2010

Date of decision : 23.09.2016

Narender Kumar Saini

.....Appellant

Versus

Joginder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Perdhuman Yadav, Advocate for appellant.

Mr. Gopal Sharma, Advocate for respondents No.1 & 2.

Mr. subhash Goyal, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 29.08.2009, passed by the learned Motor Accidents Claims Tribunal, Rewari (hereinafter called the "Tribunal"), vide which the appellant-claimant has been awarded compensation to the tune of Rs.7,50,000/- on account of the injuries suffered by him in this motor vehicular accident, which took place on 26.11.2006.

2. The present appeal has been preferred for enhancement of the amount of compensation by the appellant-claimant.
3. I have heard learned counsel for the parties and have gone through the record of the case carefully.

4. Learned counsel for the appellant-claimant contended that the learned Tribunal has not awarded the just compensation in view of the grievous and serious injuries suffered by the appellant which has resulted into 70% permanent disability. He contended that the deceased was a qualified homeopathic doctor. Now he has become disabled to carry out his profession as a Medical Practitioner. He contended that learned Tribunal has just awarded Rs.1,40,000/- on account of the permanent disability suffered by him. No amount has been awarded to him for the loss of amenities and enjoyment of life. No amount was awarded towards special diet, transportation and attendant charges. Very less amount has been awarded on account of pain and suffering and loss of income.

5. On the other hand, learned counsel for the respondents contended that the learned Tribunal has properly assessed the amount of compensation under all the heads and just amount of compensation has been awarded. They also contended that the appellant-claimant has not produced any documentary evidence to show that he was working as a Medical Practitioner and was earning Rs.8000/- per month.

6. I have duly considered the aforesaid contentions.

7. As per the case of the appellant-claimant, he was B.E.M.S. doctor and was a Medical Practitioner by profession and was earning Rs.8000/- per month. He has brought on record his academic certificates Ex.PW12/1, Ex.PW12/2 and registration certificate as Electrohomeopathic Practitioner Ex.P12/3. He further deposed that due to the injuries suffered in the accident, he has become disabled for his entire life and is unable to

walk. He is also not able to follow his daily pursuits of life and will remain dependent upon medicines throughout his life.

8. As per the statement of PW-6 Dr. A.K. Saini, Orthopedician, General Hospital, Rewari, the appellant-claimant has suffered 70% permanent disability on account of marked stiffness of right elbow with mild restriction of left elbow with partial loss of associated activities with restriction of movement of right hip, right knee, left knee with marked loss of stability and pain. He has proved the disability certificate Ex.PW6/A. In the cross- examination, he denied the suggestion that the disability will disappear with the passage of time with physiotherapy. So, the appellant-claimant has suffered 70% permanent disability as a result of injuries received in this accident.

9. The learned Tribunal has awarded Rs.1,40,000/- in lump sum on account of the disability suffered by the appellant-claimant, which is not a proper way to assess the compensation for loss of future earnings on account of permanent disability. The learned Tribunal should have assessed the income of the appellant-claimant, then to take into consideration the functional disability and by applying the multiplier, the compensation under this head should have been assessed.

10. The appellant-claimant has placed on file his academic certificates to show that he has acquired the degree of B.E.M.S. and was registered as a Electrohomeopathic Practitioner but the claimant has not produced any documentary evidence to show that he was actually practicing as a Medical Practitioner and was earning Rs.8000/- per month. But keeping

in view the fact that he was a qualified person, his income can safely be taken to be Rs.5000/- per month *i.e.* Rs.60,000/- per annum.

11. As per the disability certificate Ex.PW6/A the appellant-claimant has suffered 70% disability on account of marked stiffness of right elbow with mild restriction of left elbow with partial loss of associated activities with restriction of movement of right hip, right knee, left knee with marked loss of stability and pain. In the cross-examination PW-6 Dr. A.K. Saini, who has proved the disability certificate has stated that the disability pertains to all the four limbs of the body. There is no dispute with the proposition of law that entire percentage of permanent disability cannot be taken into consideration to determine the future loss of earning. Only the functional disability, which could have direct impact on the earning capacity has to be considered. In the instant case, the appellant has stiffness of right elbow with mild restriction of the left elbow with partial loss of associate activities. He has suffered restriction of movement of right hip, right knee and left knee. He also had loss of stability and pain. The aforesaid disability suffered by him will certainly have serious impact on the earning capacity of the appellant-claimant as he will not be able to sit for a long to work as a Medical Practitioner. He will also have difficulty in moving and checking the patients. So, 50% of his disability shall be taken to be the functional disability having impact on his future earning capacity. In his affidavit Ex.PW12/A, appellant-claimant has mentioned his age to be 38 years. This affidavit has been filed on 19.11.2008. Thus, on the date of accident he was more than 36 years of age. So, multiplier of 15 shall be applicable. Thus, the

compensation on account of future loss of earning comes to Rs.4,50,000/- (60,000 x 50 x 15 /100).

12. The appellant-claimant has suffered disability pertaining to all the four limbs of the body. He has stiffness of the right elbow, mild restriction of left elbow, restriction of movement of right hip, right knee and left knee. He had loss of stability and pain. PW-8 Dr. Rakesh Mahajan, Senior Consultant Ortho Surgeon, Kolmet Hospital Pusa Road, Delhi has categorically stated that the appellant-claimant will not be able to walk unaided. He has to take help of walker for his mobility. Thus, the injuries suffered by the appellant-claimant will seriously affect enjoyment and amenities of life. He will be entitled to Rs.1,50,000/- on account of loss of enjoyment of amenities of life.

13. The learned Tribunal has awarded Rs.18,000/- towards loss of income. This Court has assessed the income of the claimant to be Rs.5000/- per month, so he will be entitled to Rs.30,000/- as loss of income during the period he remained under treatment. The learned Tribunal has awarded only Rs.15,000/- towards pain and suffering. In view of the serious injuries suffered by him, this amount is enhanced to Rs.40,000/-. The learned Tribunal has not awarded any compensation to the claimant towards special diet, transportation and attendant charges. He will be entitled to Rs.30,000/- under these head.

14. In this way, the compensation payable to the claimant can be summed up as under :-

Sr. No.	Heads of compensation	Amount of compensation (in rupees)
1.	Medicines expenses	5,29,925 (as awarded by the Tribunal)
2.	Loss of future earnings on account of permanent disability	4,50,000
3.	Loss of wages/earnings of six months	30,000
4.	Pain and suffering	40,000
5.	Loss of amenities and enjoyment of life	1,50,000
6.	Special diet, transportation and attendant charges	30,000
Total		12,29,925

15. In this way, the appellant-claimant shall be entitled to a total some of Rs.12,29 ,925/-.

16. 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.12,29,925/- from Rs.7,50,000/- as awarded by the Tribunal. The appellant-claimant shall also be entitled to interest on the enhanced amount of compensation at the rate as awarded 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.

23.09.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No