

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

FAO No.3705 of 2010

Date of Decision: 10.02.2016.

Guljar Singh

....Appellant.

VERSUS

B.D. Nandi and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. J.S. Cooner, Advocate for the appellant.

Mr. Shivoy Dhir, Advocate
for respondent-Union of India.

SNEH PRASHAR, J.

This appeal was filed by appellant-claimant Guljar Singh assailing the award dated 11.02.2010 passed by Motor Accident Claims Tribunal, Panchkula (for short, “the tribunal”) dismissing the MACT Case No.100 of 2008 filed by him under Section 163-A of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”).

The relevant facts are as under:-

On 30.08.2007, the claimant was travelling as pillion rider on the motorcycle being driven by one Gaurav and was hit by Truck bearing registration No.05D-16-22484 (hereinafter referred to as “the offending

truck”). As a result of accident, the claimant as well as Gaurav fell on the road and sustained injuries. A report vide D.D.R. No.11 dated 31.08.2007 was lodged with the police in respect of the accident.

A petition invoking the provisions of Section 163-A of the Act of 1988 claiming compensation for the injuries suffered by him was filed by the appellant-claimant. He submitted that he suffered fracture in both thighs and his right foot got crushed. From the site of accident, he was taken to Civil Hospital Kalka from where he was shifted to P.G.I., Chandigarh for treatment. He was operated upon and he spent Rs.1 lac on his treatment, special diet and medical expenses. He was working as a plumber and was earning Rs.3000/- per month but as he sustained injuries he suffered loss in income. During evidence, the claimant examined PW2 Dr. D.K. Pathak, S.M.O. who proved the disability certificate Ex.P2 according to which the Board of Doctors, of which PW2 was a member, assessed the disability suffered by the claimant as 20%.

Finding a short way of disposal of the petition, learned tribunal although held under Issue No.1 that the offending truck, which was an Army vehicle, was involved in the accident and resolved the said issue in favour of the claimant, yet dismissed the petition holding that it is not a case of amputation of any part of the body or of any injury mentioned in Schedule-I of the Workmen's Compensation Act, 1923 (for short, “the Act of 1923”) and therefore, no compensation under Section 163-A of the Act of 1988 can be awarded to the claimant.

Feeling aggrieved with the award dated 11.02.2010, the

appellant-claimant preferred the instant appeal.

The submissions made by Mr. J.S. Cooner, learned counsel representing the appellant and Mr. Shivoy Dhir, learned counsel representing respondent-Union of India have been heard.

Learned counsel for the appellant argued that Section 163-A of the Act of 1988 is a special provision for payment of compensation on structured formula basis. It provides that the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation as indicated in the Second Schedule to the legal heirs or the victim as the case may be. From the disability certificate Ex.P2 proved by PW2 Dr. D.K. Pathak, it stands established that the claimant had suffered permanent disablement due to the injuries sustained by him during the accident. Therefore, the finding of the tribunal that the claimant was not entitled to compensation is illegal and erroneous. To support his argument, learned counsel relied upon *New India Assurance Company Ltd. vs. Remya, 2012(1) R.C.R. (Civil) 651.*

Indeed, there is force in the argument of learned counsel for the claimant. Section 163-A of the Act of 1988 creates a different, distinct, separate and absolute statutory liability imposed on an authorized insurer or the owner of the motor vehicle to pay compensation to the legal heirs of the deceased or the victim who suffered injuries during the accident arisen out of use of that motor vehicle. Negligence is irrelevant in a claim under Section 163-A. Analyzing the ocular and documentary evidence available

on record, the finding of learned tribunal under Issue No.1 was that the accident during which the claimant sustained injuries had arisen out of use of the offending truck (Army vehicle). The said finding has not been challenged by the respondents by filing a separate appeal or cross objections.

Further, admittedly as per the disability certificate Ex.P2 proved by Dr. D.K. Pathak the claimant had become disabled to the extent of 20% due to the injuries sustained by him. Section 163-A(1) of the Act of 1988 refers to permanent disablement. Explanation to Section 163-A postulates that the expression “permanent disability” in sub section (1) of Section 163-A shall have the same meaning and extent as in the Act of 1923. Interpreting the said expression, it was held in Remya's case (supra) as under:-

“The body of S.163-A(1) refers only to “permanent disablement”; whereas the explanation refers to “permanent disability” for the purpose of the sub-section shall have the same meaning and extent as in the Workmen's Compensation Act. Evidently it appears that there is some confusion and inelegance. When the body of S.163-A only speaks of “*permanent disablement*”, we fail to understand how and why “*permanent disability*” must be defined in the Explanation. Moreover, the Workmen's Compensation Act, 1923 (the Employees' Compensation Act now) does not define permanent disability at all. It also speaks only of partial disablement and total disablement. It therefore is easy to assume that though the explanation refers to “permanent disability” what is really intended to be explained is “permanent disablement” used

earlier in S.163-A(1) that it is intended to carry the meaning of the work partial and total “disablement” defined in S.2(g) and 2(1) of the Workmen's Compensation Act.

It is thus evident that the explanation really explains the expression “permanent disablement”. It is vital to note that Explanation which we have already extracted earlier stipulates that permanent disability shall have the same meaning and extent as in the Workmen's Compensation Act. Not only the meaning, the extent is also to be ascertained as stipulated under the Workmen's Compensation Act.

That takes us to the Workmen's Compensation Act. S.2(g) and S.2(1) define “partial disablement” and “total disablement”. We get a clear concept of permanent disability from there. The definition is linked to reduction in earning capacity.”

It was further held as under:-

“It is true that S.163-A of the M.V. Act does not specifically employ the expression “percentage of loss of earning capacity”. But the concept of permanent partial or total disablement under the Workmen's Compensation Act is inextricably intertwined with the concept of loss of earning capacity. To us, it appears that this is exactly what the Explanation to S.163-A of the M.V. Act means and conveys when it says that permanent disability will have to be assigned the same meaning and extent as in the Workmen's Compensation Act.”

Thus, it is patently clear that the manner of assessing the compensation for an injury that provides for assessment of disability as per Schedule-I of the Act of 1923 is not to be understood in the terms that if an

injury is not prescribed in Schedule-I of the Act of 1923 then the loss of earning capacity itself cannot be assessed. There is a host of injuries that do not come within Schedule-I but shall still require the assessment of disability correlated to the extent of loss of earning capacity. Accordingly, I conclude that the reasoning given by learned tribunal for dismissing the petition was erroneous.

Perusal of the evidence led by the claimant during trial of his claim petition shows that he suffered fracture of thigh bone, his left foot was crushed and he was operated upon in P.G.I., Chandigarh. He suffered permanent disability to the extent of 20%, therefore, the functional disability qua whole body can be taken as 15%. He testified that he was a plumber by occupation and used to earn Rs.3000/- per month. Any form of disability in the leg of a manual worker like him is bound to have an impact on his earning skill. The loss of earning capacity being 15%, the fact that the income of the claimant was Rs.3000/- per month, the loss of earning capacity will come to Rs.450/- per month. A suitable multiplier has to be applied to the monthly income as per the age of the claimant. The claimant stated his age as 40 years when he stepped into the witness box. Accordingly, the compensation under this head shall be $\text{Rs.}450 \times 12 \times 16 = \text{Rs.}86,400/-$.

In addition to the above amount, a further amount of Rs.5000/- is allowed for the pain and suffering as per the statutory mandate. An amount of Rs.15,000/- substantiated by the bills/ vouchers tendered in evidence by the claimant is allowed towards expenditure on treatment. The

claimant is entitled to interest on the awarded amount at the rate of 7.5% per annum from the date of filing the petition till realization.

Respondent No.1 being the driver and respondent No.2 being the owner of the offending truck are held jointly and severally liable for payment of the compensation amount.

Accordingly, the claim petition filed by the claimant before the tribunal as well as the appeal filed before this Court are allowed.

(SNEH PRASHAR)
JUDGE

10.02.2016.
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