

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 461 of 2010

Date of Decision : 09.11.2016

Anil

....Appellant

Versus

Shamsher Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Kulvir Nrwal, Advocate
for the appellant.

Mr. Subhash Goyal, Advocate
for respondent no. 3.

Surinder Gupta, J.

This is appeal by Anil Kumar-claimant seeking enhancement of compensation awarded to him by Motor Accident Claims Tribunal, Rohtak (later referred to as 'the Tribunal') on his petition under Section 163-A of the Motor Vehicles Act (later referred to as 'the Act') for injuries suffered by him in accident on 23.03.2007 with *Neel Gaye* (cow) while driving Sawraj Mazda bearing registration no. HR-55-6044.

2. The Tribunal allowed compensation of ₹1,50,000/- to claimant, which was computed as follows:-

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	For 45% disability	₹90000
(ii)	Medical bills and treatment	₹60000
<i>Total</i>		₹150000

3. Learned counsel for the appellant has argued that claimant was a driver by profession. The disability suffered by him has rendered him ineligible to do the job of driver, as such, has resulted in 100% functional

disability. The amount of compensation of ₹90,000/- awarded by the Tribunal towards disability is quite meagre. He has further argued that the Tribunal did not allow any compensation towards pain and suffering, loss of income during treatment, attendant charges, nutritious diet and future medical expenses to claimant. The compensation prescribed in Second Schedule attached with Section 163-A of the Motor Vehicles Act was provided in the year 1994 and with the escalation of price and increase in price index, the amount mentioned therein have been rendered insufficient and the Apex Court and even this Court held in catena of judgments that Courts are not bound to provide compensation only on the scale as mentioned in the Second Schedule to Section 163-A of the Act.

4. Learned counsel for respondent no. 3 has argued that the accident took place on 23.03.2007. Keeping in view the price index prevailing at that time, the Tribunal has rightly allowed compensation for disability. The Tribunal allowed compensation of ₹60,000/- towards medical bills and treatment, while as per Second Schedule to Section 163-A of the Act, claimant is entitled to compensation only of ₹15,000/- on this score. He has further argued that the disability under Section 163-A of the Act is to be taken as per provisions of the Workmen's Compensation Act, 1923 (later referred to as 'Act of 1923'). In this case there was no amputation, as such, there is no permanent disability. Even if the version of claimant be admitted that he has suffered disability and is unable to perform the duty of driver, there are also other vocations, which he can adopt to earn his livelihood.

5. Claimant has claimed compensation under Section 163-A of the Act. In order to prove his disability certificate, claimant has examined

Dr. Raj Singh, Assistant Professor, PGIMS, Rohtak as PW-1, who has stated about the disability of claimant as follows:-

“That patient Anil son of Hoshiyar Singh 28 years male resident of village Dhamar, District Rohtak was examined by the board and is of the opinion that he suffered from fracture both bone leg left with OM left tibia with stiffness left ankle. He has permanent disability to the extent of 45% on account of Osteomyelitis left tibia with expose bone with non-union left tibia with 3 inches shortening with OA left ankle with stiffness with discharging sinus with deep scar marks with difficulty in weight bearing and painful left leg. Ex. P-1 is the original disability certificate. The disability pertains to the injury suffered by the patient vide CR No. 585776.”

6. Claimant while appearing as PW-4 has stated that his age was 25 years at the time of accident and he was working as driver on a truck. He was also doing work of agriculture and dairy farming and was earning ₹3300/- per month. Injuries suffered by him have crippled him and he can now move with crutches throughout his remaining life and cannot perform driving of any class of vehicle in future.

7. The Tribunal while allowing compensation for the disability has relied on the observation of this Court in case of **Piara Singh and others vs. Satpal Kumar and others, 2007 (2) P.L.R. (P&H) 143** and allowed compensation @ ₹2000/- for one percent of disability. The compensation allowed in ***Piara Singh's case (supra)*** was specific to the facts and circumstances of that case. Second Schedule to Section 163-A of the Act provide the manner in which compensation for permanent disability

is to be allowed. The same is contained in Clause 5 of the Schedule, which reads as follows:-

“5. Disability in non-fatal accidents:-

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents :-

Loss of income, if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following:-

- (a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or
- (b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen’s Compensation Act, 1923.”

8. Claimant was driver and was also having agricultural income. The accidental injuries have resulted in shortening of his leg by 3 inches, stiffness of leg, ankle etc. It is apparent that he has been rendered incapable of driving a vehicle but he has not been totally disabled from doing any job to earn his livelihood. He can move with help of crutches and can also do other jobs including Government jobs for which he has not been rendered

ineligible. However, physical functional disability of claimant can be assessed as 50%. Schedule I of the Act of 1923 gives list of injuries deemed to result in permanent partial disablement. However, most of the injuries mentioned in this Schedule relate to amputation. Second Schedule to Section 163-A of the Act provides that injuries deemed to result in permanent total or partial disablement and for percentage of loss of earning capacity shall be as per Schedule I under the Act of 1923. Explanation given under Section 163-A of the Act state that permanent disability as described in Section 163-A(i) shall have the same meaning and extent as in the Workmen's Compensation Act, 1923. Section 2(g) Workmen's Compensation Act, 1923 defines permanent disablement as follows:-

“(g)Where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement;”

9. It is clear from the above definition of permanent disablement that it defines such disablement as permanent disablement which reduces earning capacity of the victim. It clarifies that injury specified in Part II of Schedule I under the Workmen's Compensation Act, 1923 shall be deemed to be resulting in permanent partial disablement. It is clear from perusal of the above definition that if a medical board or doctor on medical examination of the injured have prescribed his permanent disability regarding any body organ, the same cannot be ignored under Section 163-A of the Act. It nowhere debars to consider the disablement, if suffered by the victim of an accident otherwise than by way of amputation.

10. Learned counsel for the respondent has not cited any law which prescribed that permanent disablement is only in the event of amputation of a body organ and not otherwise. The argument of learned counsel for the respondent, as such, is rejected being without any force.

11. Claimant has claimed his monthly income as ₹3300/-. Keeping in view that he was a driver his statement can be relied upon even in the absence of any documentary evidence. As per Second Schedule to Section 163-A of the Act, compensation which can be awarded to claimant for the disability suffered by him is computed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Monthly income of claimant	₹3300
(ii)	Disability	50%
(iii)	Multiplier applicable as per age of claimant	17
(iv)	Compensation towards disability	(₹3300x1/2x12x17)= ₹336600

12. The maximum medical expenses provided under the Schedule is ₹15,000/-. However, keeping in view that this schedule was introduced in the year 1994 and at the time of accident in the year 2007 prices of medicines and medical treatment have become very costly, claimant is allowed compensation of ₹30,000/- on this score. For the pain and suffering, he is allowed compensation of ₹10,000/-. In view of my above discussion, compensation to which claimant is entitled, is reassessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Compensation towards disability	₹336600
(ii)	Medical expenses and treatment	₹30000

(iii)	Towards pain and suffering	₹10000
<i>Total</i>		₹376000

13. As a sequel of my discussion above, this appeal is accepted and compensation allowed to claimant is enhanced from ₹1,50,000/- to ₹3,76,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization.

November 09, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No