

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

FAO No.2691 of 2011

Date of decision : 07.12.2016

Jahaj Khan

.....Appellant

Versus

Sakir and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashish Gupta, Advocate for appellant.

Mr. T. K. Joshi, Advocate for respondent No.2-
Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant against the award dated 08.12.2010 passed by the learned Motor Accidents Claims Tribunal, Nuh (hereinafter called the “Tribunal”) in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”), whereby the appellant-claimant has been awarded compensation to the tune of ₹1,00,000/- on account of the injuries suffered by him in the motor vehicular accident which took place on 30.05.2009.

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

3. Notice of the present appeal was issued to respondent No.1 the owner-cum-driver of three-wheeler HR-28G-0650. He was duly served

for 27.09.2016, but nobody appeared on his behalf.

4. I have heard learned counsel for the parties and have gone through the paper-book carefully.

5. Learned counsel for the appellant contended that inadequate amount of compensation has been awarded to the appellant-claimant. He has suffered 40% disability on account of the injuries received in this accident. Full medical expenses have also not been awarded. The compensation awarded under the other conventional heads is also inadequate.

6. On the other hand, learned counsel for the respondent-Insurance Company contended that the learned Tribunal has awarded just amount of compensation by taking into consideration all the relevant heads.

7. I have duly considered the aforesaid contentions.

8. The learned Tribunal has awarded ₹80,000 as compensation to the appellant-claimant on account of 40% permanent disability suffered by him. He has been further awarded a sum of ₹20,000/- on account of the medical expenses, special diet and loss of income *etc.* Certainly, the computation of compensation by the learned Tribunal is not proper.

9. From the statement of PW-2 Dr. S. K. Batta and medical certificate Ex.P3 it comes out that the claimant has suffered 40% disability on account of the case of right of humerus with humerus shaft nailing operation was done with limitation of shoulder movement. The learned Tribunal has awarded a sum of ₹80,000/- in lump sum for the disability suffered by him. As per the version of the claimant, he was doing labour

work and was also selling milk and was earning ₹3900/- per month. The income of the claimant-injured can safely be taken to be ₹3900/- per month *i.e.* ₹46,800/- per annum. The claimant has suffered 40% of the disability. The Hon'ble Supreme Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1***, has laid down that loss of future 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. Thus, in the present case 30% of the disability of the claimant shall be taken to be the functional disability. The age of the claimant was 65 years. The multiplier of 07 shall be applicable. So, the amount of compensation for permanent disability comes to ₹98,280/- (46,800 x 30 x 7 / 100).

10. The learned Tribunal has awarded only ₹20,000/- for all the remaining heads. On account of the injuries suffered by the claimant, he might not have been able to resume his work at least for a period of two and half month. So, he will be entitled to a sum of ₹9750/- on account of loss of income. The appellant-claimant has suffered fracture and has also undergone the surgery and even the nailing was done, so he must have at least spent ₹15,000/- on the medicines and implants. He has to remain hospitalised for his treatment and might have required the services of the attendant. He will be further entitled to a sum of ₹4000/- for attendant charges, ₹3000/- for transportation charges and ₹4000/- for the special diet.

11. The appellant-claimant has suffered the serious injuries in

this accident. He also underwent surgery, so he will be entitled to ₹15,000/- on account of pain and suffering. In this way, the total amount of compensation comes to ₹1,49,030/-, to make it a round figure we can take it as ₹1,49,000/-

12. 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 ₹1,49,000/- from ₹1,00,000/- 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.

07.12.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No