

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

**FAO No.6389 of 2010 (O&M)**

**Date of decision : 30.09.2016**

**Heera Lal**

.....Appellant

*Versus*

**Harbel Singh alias Rela Singh and others**

...Respondents

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. B.S. Mittal, Advocate for appellant.

Mr. Gopal Mittal, Advocate for  
respondent No.3-Insurance Company.

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**DARSHAN SINGH, J.**

The present appeal has been preferred against the award dated 06.05.2010 passed by the learned Motor Accidents Claims Tribunal, Sirsa (hereinafter called the “Tribunal”), vide which appellant-claimant Heera Lal has been awarded compensation to the tune of Rs.3,52,500/- as compensation on account of the injuries suffered by him in the motor vehicular accident which took place on 19.05.2008.

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

3. I have heard learned counsel for the parties and have gone through the record of the case meticulously.

4. Learned counsel for the appellant-claimant contended that the claimant in this case has suffered 35% permanent disability. He was an

agriculturist by profession and was earning Rs.20,000/- per month, but the learned Tribunal has awarded only a lump sum amount of Rs.1,05,000/- on account of the disability suffered by the claimant. The said amount of compensation awarded by the learned Tribunal is highly inadequate.

5. He further contended that in the additional evidence adduced by the petitioner the bills Ex.P-149, P-152 to P-209 have been brought on record with respect to the treatment and purchase of medicines. The total of these bills comes to Rs.1,96,601/-. He contended that this amount is also required to be added to the treatment and medical expenses.

6. He further contended that the appellant-claimant also had the urinary problem due to the injuries. The plate and rod were also inserted to cure the fracture in left leg and left knee, which are required to be removed, but the learned Tribunal has not awarded any compensation for the future treatment. He further contended that the claimant has also suffered the loss of income during treatment. Less amount has been awarded under this head. Thus, he pleaded that the just compensation has not been awarded to the claimant.

7. On the other hand, Mr. Gopal Mittal, Advocate, learned counsel for the respondent-Insurance Company contended that the appellant-claimant has been awarded sufficient amount of compensation by the learned Tribunal under all the relevant heads. There is no medical evidence on record to show that the claimant requires any further treatment. There is also no evidence on record to establish the profession and income of the claimant.

8. I have duly considered the aforesaid contentions.

9. It is pertinent to mention that during the pendency of present appeal, the application moved by the appellant-claimant for additional evidence was allowed by this Court vide order dated 29.05.2014 and the direction was given to the Tribunal to record the additional evidence. The report has been received from the learned Tribunal after recording the additional evidence. Appellant-claimant has examined PW-4 Rajeev Dave, Assistant, Medical Record Department Santokba Durlabhji Memorial Hospital-cum-Medical Research Institute, Jaipur. He has proved the final bill Ex.P-149, the treatment record Ex.P-150 and prescription slip Ex.P-151. He deposed that claimant remained admitted in their hospital from 26.07.2010 to 10.08.2010 and the hospital charged a sum of Rs.48,529/-. The patient has himself purchased the medicines and implants etc. as prescribed by the doctors. The appellant-claimant also stepped into the witness box in the additional evidence and tendered in evidence the bills/receipts Ex.P-152 to P-209 and Mark-A to Mark-G. Thus, in the additional evidence the appellant-claimant has brought on record the further documents in order to prove the further amount spent by him on his treatment and purchase of medicines, to which he will certainly be entitled in addition to the treatment and medicine charges already awarded to him. The total of the bills Ex.P-149, Ex.P-152 to P-209 comes to Rs.1,96,601/- and to make it a round figure, we can take it as Rs.1,97,000/-. So, the appellant-claimant is entitled to a sum of Rs.3,39,430/- [Rs.1,42,430/- (already granted by the Tribunal) + Rs.1,97,000/- (awarded by this Court)].

10. Ex.P-1 is the disability certificate, which shows that appellant-claimant Heera Lal has suffered 35% permanent disability. The said disability certificate has been proved by PW-3 Dr. Pawan Kumar Medical Officer General Hospital, Sirsa the Member of the Medical Board. He has deposed that the claimant has suffered the disability on account of fracture femur compound left side, fracture both bones left leg and fracture both bones leg right. In the cross-examination, he admitted that the disability suffered by the claimant was qua particular limbs and not qua the whole body. Thus, the appellant-claimant has suffered total 35% disability qua particular limbs. 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. In that case the claimant has suffered 45% permanent disability but the Hon'ble Apex Court has considered the permanent functional disability to the extent of 25% and loss of future earning capacity as 20%. In view of the aforesaid ratio of law laid down by Hon'ble Apex Court, though the appellant-claimant has suffered 35% disability, but only 20% of his disability shall be taken to be his functional disability having impact on his future earning capacity.

11. As per the case of the appellant-claimant, he was an agriculturist and was earning Rs.20,000/- per month. Learned counsel for the appellant could not point out any documentary evidence available on

record to show that the claimant was either owner or in possession of any agricultural land. So, the claimant has failed to establish that he was an agriculturist and was earning Rs.20,000/- per month. However, as the claimant was hale and hearty person and was about 45 years of age at the time of the accident, it is not expected that he would have remained idle. So, even by working as a labourer, he could have easily earned Rs.4000/- per month. So, the income of the claimant shall be taken to be Rs.4000/- per month *i.e.* Rs.48,000/- per annum. The compensation on account of loss of future earning capacity due to the permanent disability suffered by the claimant comes to Rs.1,34,400/- ( $48,000 \times 20 \times 14 / 100$ ). So, the compensation payable to the claimant under this head is enhanced from Rs.1,05,000/- to Rs.1,34,400/-.

12. There is no medical evidence on record to show that the appellant-claimant has suffered any urinary disease due to the injuries suffered by him and he required any future treatment. So, he will not be entitled to any compensation for future treatment. The claimant has also been awarded Rs.10,000/- for loss of income during the period of treatment. In this way he has been awarded compensation for loss of income for two and half month, which is quite sufficient and does not call for any enhancement.

13. Thus, keeping in view my aforesaid discussion the present appeal is hereby partly allowed and the amount of compensation payable to the appellant-claimant is hereby enhanced to Rs.5,78,830/- from Rs.3,52,500/- as awarded by the Tribunal. The appellant-claimant shall be

entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount of compensation shall also remain same as determined by the learned Tribunal in the main award.

**30.09.2016**

*sunil yadav*

**( DARSHAN SINGH )  
JUDGE**

**Whether speaking/reasoned : Yes / No**

**Whether reportable : Yes / No**