IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 82 of 2010 (O&M)
Date of Decision : 21.10.2016

Vijay Kumar ....Appellant

Versus

Mohan Lal and others ....Respondents

2 FAO No. 83 of 2010 (O&M)

Harish Kumar ....Appellant

Versus

Mohan Lal and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gopal Mittal, Advocate
for appellants in both the appeals.

Mr. Rajneesh Malhotra, Advocate
for respondent no. 3-Insurance Company.
In both the appeals.

Surinder Gupta, J.

Above-captioned appeals have been taken up together for disposal by this common judgment as these arise out of the same award dated 13.08.2009 passed by Motor Accident Claimants Tribunal, Hisar (later referred to as 'the Tribunal').

2. In FAO No. 82 of 2010, claimant-Vijay Kumar suffered injuries resulting in 100% disability as per disability certificate (Ex. P-80) in a motor vehicle accident with truck bearing registration no. HR-61-1712 (later referred to as 'the offending vehicle'). His both legs were amputated above knee and the Tribunal allowed compensation of ₹5,63,433/-, which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Compensation on account of loss of income	₹9000
(ii)	Compensation on account of disability	₹160000
(iii)	Compensation on account of purchase of medicines	₹134433
(iv)	Compensation on account of purchase of artificial limbs including future maintenance	₹200000
(v)	Compensation on account of pain and suffering	₹10000
(vi)	Compensation on account of loss of future income	₹50000
Total		**₹563433**

3. In FAO No. 83 of 2010, claimant-Harish Kumar suffered injuries resulting in 9% disability as per disability certificate (Ex. P-81) in motor vehicle accident with the offending vehicle. The Tribunal allowed compensation of ₹48,678/-, which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Compensation on account of loss of income	₹2000
(ii)	Compensation on account of disability	₹18000
(iii)	Compensation on account of purchase of medicines	₹23678
(iv)	Compensation on account of pain and suffering	₹5000
Total		**₹48678**

4. Not satisfied, both the claimants have filed appeals seeking enhancement of compensation.

5. As the only issue involved in these appeals is claim by claimants seeking enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

6. Firstly, I take FAO No. 82 of 2010. Learned counsel for the appellant has argued that the Tribunal while awarding compensation has not taken into account the fact that both the legs of claimant were amputated and instead of taking his disability as 100%, it was taken as 80%. Injuries and

disability have incapacitated claimant from doing any job and to earn his livelihood. These injuries have resulted in loss of amenities and avenues in life. He was an income tax assessee and has proved his income on file. Instead of computing loss of income as per income tax return, the Tribunal allowed compensation for disability @ ₹2000/- per percent, which is quite meagre. No compensation was allowed towards services of attendant he requires throughout his life, nutritious diet, loss of amenities of life, future medical care and expenses on artificial limbs, which require replacement after a span of 2-3 years. While referring to proceedings before Lok Adalat, he has argued that even before Lok Adalat, a proposal was made for enhancement of compensation by ₹22 lacs over and above the compensation already awarded but that could not fructify as Insurance Company insisted upon grant of compensation to the extent of ₹11 lacs including the sum already awarded.

7. Learned counsel for respondent no. 3-Insurance Company has argued that no doubt both the legs of claimant-Vijay Kumar were amputated but this has not resulted in 100% disability as with the help of artificial limbs he can attend to his duties and look after his textile business. The Tribunal has rightly assessed compensation as per price index prevailing in the year 2006 and the compensation awarded is just and reasonable. Insurance Company had given an offer for enhancement of compensation to ₹11 lacs in order to have an amicable settlement but the offer was not accepted by claimant, as such, proceedings before Lok Adalat cannot be referred while deciding this appeal on merits.

8. Claimant while appearing as PW-5 has stated that he was energetic businessman prior to the accident and was running cloth business under the name and style of Vijay Textile in a Shop in New Cloth Market,

Hisar. He was an income tax assessee. Due to injuries and 100% disability he was forced to close his wholesale cloth business and is unable to perform his daily routine of life and activities.

9. Dr. Munish Soni, who treated Vijay Kumar appeared as PW-1 and stated about his injuries as follows:-

> *"On 10.04.2006, patient Vijay Kumar son of Sh. Sai Dita 30 years male resident of Patel Nagar, Hisar was admitted in my hospital with multiple injuries as mentioned in MLR Ex. P-1 which bears my signatures. The patient was operated upon. Both the legs of the patient Vijay were badly crushed. Amputation of both the legs above the knee was done on 10/11.04.2006. The patient remained admitted in my hospital upto 28.05.2006. The discharge card is Ex. P-2 which bears my signatures. Patient had been coming up for follow up and for further treatment for about three months. I have charged ₹63,700/- from the patient which include hospital bill/my fee and other expenses except medicines. The bill in this regard is Ex. P-3. Ex. P-4 to Ex. P-58 are medicines bills. The medicines mentioned in those bills were prescribed by me and those bills bears my signatures. Bills Ex. P-59 to Ex. P-69 (objected to on the ground of mode of proof, objection kept pending and shall be decided at the time of final decision) and the same in relation of purchase of blood which was given to Vijay Kumar during his treatment by me. The cost of artificial limb including fixation charges from a specialist doctor would be ₹2,00,000/-. Those artificial limbs require replacement after 2 to 3 years because they worn out."*

10. Dr. A.L. Bajaj, Medical Officer, General Hospital, Hisar appeared as PW-2 and has proved disability certificate of Vijay Kumar (Ex. P-80), which prescribes his permanent disability as 100% on account of above knee amputation of lower limbs.

11. Claimant was a young man of 34 years and has suffered 100% disability. The Tribunal has assessed functional disability as 80% and awarded compensation @ 2000/- per percent, which is on lower side. In case of ***Raj Kumar* vs. *Ajay Kumar and another*, 2011 (1) SCC 343**, Apex Court while dealing with grant of compensation for disability observed as follows:-

> *"13. We may now summarise the principles discussed above:-*
>
> *(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
>
> *(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*
>
> *(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to*

be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

14. *The assessment of loss of future earnings is explained below with reference to the following illustrations:*

Illustration `A': The injured, a workman, was aged 30 years and earning ₹3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

a)	*Annual income before the accident*	*₹36,000/-*
b)	*Loss of future earning per annum (15% of the prior annual income)*	*₹5400/-*
c)	*Multiplier applicable with reference to age*	*17*
d)	*Loss of future earnings (5400 x 17)*	*₹91,800/-*

Illustration `B': The injured was a driver aged 30 years, earning ₹3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a *pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:*

a)	*Annual income prior to the accident*	*₹36,000/-*
b)	*Loss of future earning per annum (75% of the prior annual income)*	*₹27000/-.*
c)	*Multiplier applicable with reference to age*	*17*
d)	*Loss of future earnings (27000 x 17)*	*₹4,59,000/-*

Illustration `C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows:

a)	*Minimum annual income he would have got if had been employed as an Engineer*	*₹60,000/-*
b)	*Loss of future earning per annum (70% of the expected annual income)*	*₹42000/-*
c)	*Multiplier applicable (25 years)*	*18*
d)	*Loss of future earnings : (42000 x 18)*	*₹ 7,56,000/-*

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actual taken from the decision in Arvind Kumar Mishra (supra)]."

12. In this case both the legs of claimant were amputated. Dr. Munish Soni has stated that he can be provided artificial limbs and has given the cost of artificial limb as varying from ₹5000/- to ₹2 lacs depending on

quality. He has further stated that artificial limbs require replacement after two or three years and has advised Vijay Kumar to purchase artificial limb. He has also examined PW-6 Phool Chand, whose company International Inc. which manufactures artificial limbs, provided artificial limb to claimant which cost him ₹1,68,000/-. He also purchased two elbow crutch amounting to ₹750/- and a suspension belt worth ₹6500/- vide bill (Ex. P-116). He has stated that for fixing of artificial limbs, claimant came to Vimhans Hospital, New Delhi where he has visited regularly for eight days.

13. From the above evidence, it is proved that claimant with the help of artificial limb is now in a position to walk and to attend to his daily routines, business and other activities. Keeping in view above circumstances, the functional disability of claimant has rightly been taken by the Tribunal as 80%. However, while computing amount of compensation on account of disability, the Tribunal has erred by allowing compensation @ ₹2000/- per percent. As per observations of Apex Court in ***Raj Kumar's case (supra)***, compensation to which claimant is entitled works out to be ₹8,32,000/- (₹65000x80/100x16). To this income 50% addition is made towards future prospects as per observations of Apex Court in case of ***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54*** and ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447*** and amount of compensation comes out to ₹1248000/, which include compensation towards loss of future income.

14. Claimant had spent about ₹2,00,000/- while getting affixed artificial limb and has to spend on this throughout his life. There is no evidence that every time he has to go for same exercise of taking measurement etc., as such, amount of compensation awarded by the Tribunal on this score is enhanced from ₹2 lacs to ₹3,50,000/-. Claimant remained

admitted in Soni Hospital, Hisar from the date of accident till 28.05.2006 i.e. for about 48 days and even thereafter, because of amputation he remained on bed. Amount of compensation awarded by the Tribunal on account of pain and suffering as ₹10,000/- is on lower side and is enhanced to ₹1 lac. The Tribunal has not awarded any compensation towards loss of amenities of life, attendant charges, nutritious diet, transportation charges and future medical care, which is computed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Loss of amenities of life	₹100000
(ii)	Attendant charges	₹100000
(iii)	Nutritious diet	₹25000
(iv)	Transportation charges	₹25000
(v)	Future medical care	₹50000
	Total	**₹300000**

15. In view of my above discussion, total amount of compensation to which claimant-Vijay Kumar is entitled, is reassessed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Towards 80% permanent disability and loss of future income	₹1248000
(ii)	Towards purchase of artificial limb and future maintenance	₹350000
(iii)	Towards pain and suffering	₹100000
(iv)	Towards loss of amenities of life	₹100000
(v)	Towards attendant charges	₹100000
(vi)	Towards nutritious diet	₹25000
(vii)	Towards transportation charges	₹25000
(viii)	Towards future medical care	₹50000
	Total	**₹1998000**

FAO NO. 83 of 2010

16. In this appeal, appellant-Harish Kumar seeks enhancement of compensation under following heads:-

(i) Attendant charges
(ii) Nutritious diet
(iii) Transportation charges
(iv) Loss of income

17. Learned counsel for the appellant has argued that claimant had suffered fracture injuries and remained on bed for a long period of 3-4 months but the Tribunal allowed compensation on the ground of loss of income as ₹2000/- only, which is on lower side. No compensation was allowed towards attendant charges, nutritious diet and transportation expenses.

18. Learned counsel for respondent no. 3-Insurance Company has argued that amount of compensation allowed by the Tribunal is just and reasonable keeping in view price index prevailing at the time of accident and calls for no further enhancement.

19. Claimant has suffered fracture ankle and fracture of humorous and remained admitted in Soni Hospital from 10.04.2006 to 18.04.2006. Thereafter, he kept on visiting hospital as O.P.D. patient. Dr. Munish Soni, who treated Vijay Kumar (appellant in FAO No. 82 of 2010) and claimant-Harish Kumar while appearing as PW-1 has stated about treatment of claimant-Harish Kumar as follows:-

> *"On the same day I medico legally examined Harish Kumar son of Ram Lal resident of Patel Nagar, Hisar and found injuries mentioned in MLR Ex. P-70 on his person. The injured was operated upon for fracture ankle and fracture of humorous on 10.04.2006 and 14.04.2006. Patient was admitted on 10.04.2006 to 18.04.2006. The discharge card is Ex. P-71. Lateron patient came to my hospital as OPD patient for two to*

three months. I have charged ₹16100/- from the patient as my fee."

20. From the testimony of Dr. Munish Soni, it is apparent that claimant had suffered fracture ankle and fracture of humorous, which usually takes four to six weeks to reunite and during this period one has to remain on bed. Claimant was in his thirties at the time of accident. The Tribunal assessed monthly income of claimant as ₹3600/- per month. Keeping in view nature of injuries, he is entitled for compensation equivalent to three months income on account of loss of income, which is computed as ₹11,800/-. During the period when he remained admitted in hospital he required services of attendant and also to take nutritious diet. He had been going to hospital even after discharge and thereby spent on transportation. Claimant is allowed compensation of ₹5000/- for attendant charges, ₹5000/- towards nutritious diet and ₹4200/- towards transportation, thereby enhancing amount of compensation awarded to him by ₹26000/- over and above the compensation awarded to him by the Tribunal.

21. As a sequel of my above discussion, both the appeals are accepted. Award of the Tribunal is modified and compensation allowed to claimant-Vijay Kumar (FAO No. 82 of 2010) is enhanced from ₹5,63,433/- to ₹19,98,000/- and for fracture injuries suffered by claimant-Harish Kumar (FAO No. 83 of 2010) from ₹48,768/- to ₹74,678/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization.

October 21, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No