

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

**FAO No.1445 of 2012
Date of decision : 12.02.2016**

Pawan Kumar Sharma

.....Appellant

Versus

Rajesh Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Ms. Minakshi Poswal, Advocate for
Mr. R.S. Mamli, Advocate for appellant.

Mr. V.M. Gupta, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 14.11.2011, passed by the learned Motor Accidents Claims Tribunal, Yamunanagar at Jagadhari (hereinafter called the 'Tribunal'), vide which appellant-claimant Pawan Kumar has been awarded the compensation to the tune of Rs.1,31,163/-, as a result of petition filed by him under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') and on account of the injuries suffered by him in the motor vehicular accident, which took place on 15.12.2009.

2. The present appeal has been filed for enhancement of the compensation.

3. I have heard Ms. Minakshi Poswal, Advocate for Mr. R.S. Mamli, Advocate, learned counsel for the appellant, Mr. V. M. Gupta, Advocate for learned counsel for respondent No.3 and gone through the paper-book carefully.

4. Learned counsel for the appellant-claimant contended that the appellant has suffered 30% permanent disability due to fracture femur right with fracture left side tibia but no compensation has been awarded by the learned Tribunal on account of the permanent disability suffered by the appellant.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that deceased was working as a cleaner on the truck. He had not suffered any functional disability, so he was not entitled for any amount of compensation under this head.

6. I have duly considered the aforesaid contentions.

7. Claimant has examined PW4 Dr. Sindhu, who was the Member of the Board, which was constituted to assess the permanent disability. He deposed that the Board assessed the disability of the claimant to the extent of 30% per annum in nature on account of operated case of right side femur fracture with left side tibia fracture (non-union) by-lateral restricted knee movement and discharged from left leg. The patient was not able to stand on his affected limbs. Muscle power of right side quadriceps muscle 3/5. He has proved the disability certificate

Ex.PW4/A. Thus, on account of the injuries suffered in this accident, appellant-claimant Pawan Kumar Sharma has suffered 30% permanent disability.

8. Learned Tribunal in para No.31 of the impugned award has categorically mentioned that the claimant is entitled to be compensated on account of the permanent disability, but surprisingly no compensation to the appellant-claimant has been awarded by the learned Tribunal on account of the permanent disability, which is a serious omission in the impugned award.

9. As already mentioned, appellant-claimant has suffered 30% permanent disability on account of injuries received in this accident. In case ***Raj Kumar Vs. Ajay Kumar and another 2011(2) RCR (Civil) 101***, the Hon'ble Apex Court has laid down that the future loss of earnings cannot be assessed on the basis of the percentage of the permanent disability but on the basis of the percentage of functional disability *i.e.* the effect and impact of such permanent disability on the earning capacity of the victim. The percentage of economic loss *i.e.* percentage of loss of earning capacity arising from permanent disability will be different from percentage of permanent disability. So, 30% permanent disability suffered by the appellant qua whole body cannot be taken into consideration to ascertain the loss of future earnings. In my opinion, the functional disability affecting the earning capacity of the claimant can be taken to be 15%. The appellant-claimant was earning Rs.3200/- per month *i.e.* Rs.38,400/- per annum. The age of the claimant

at the time of the accident was 38 years. So, the multiplier of 15 shall be applicable. So, the amount of compensation on account of permanent disability effecting the future earning capacity of the claimant comes to Rs.86,400/- ($38,400 \times 15 \times 15/100$). So, the appellant-claimant shall be entitled to a sum of Rs.86,400/- on account of permanent disability suffered by him. Thus, the total amount of compensation comes to Rs.2,17,563/-.

10. Thus, keeping in view my aforesaid discussion, the appeal is partly allowed. The award of compensation to appellant-claimant Pawan Kumar Sharma is enhanced to Rs.2,17,563/- from Rs.1,31,163/-, as awarded by the learned Tribunal. The appellants-claimants shall be entitled to interest @ 7.5% per annum on the enhanced amount from the date of filing the petition till realisation. The mode of disbursement of the awarded amount and the liability shall remain as determined by the learned Tribunal.

12.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**