

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**FAO No.2396 of 2012 (O&M).
Date of Decision: 10.03.2016.**

Kulbir

....Appellant.

VERSUS

Joginder @ Kalu and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. K.S. Dhanora, Advocate for the appellant.

Mr. R.K. Bashamboo, Advocate for respondent No.3.

SNEH PRASHAR, J.

This appeal was filed by appellant-claimant Kulbir seeking enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Hisar (for short, “the Tribunal”) vide the award dated 07.01.2012 passed in MACT Petition No.16 of 2010, filed by him on account of injuries sustained in a vehicular accident on 11.05.2010.

The submissions made by Mr. K.S. Dhanora, learned counsel for the appellant and Mr. R.K. Bashamboo, learned counsel for respondent No.3-insurance company have been heard and record perused.

Attributing the cause of accident during which Canter TATA-909 bearing registration No.HR-67-4501 (hereinafter referred to as the

“Canter”) was hit by a truck bearing registration No.HR-69B-0855 (hereinafter referred to as the “offending truck”) to rash and negligent driving of the said truck by Joginder @ Kalu (respondent No.1), the appellant had filed a petition invoking the provisions of Section 166 of the Motor Vehicle Act, 1988 (for short, “the Act of 1988”) claiming compensation due to the injuries sustained by him during the accident.

Learned counsel for the appellant argued that due to the multiple serious and grievous injuries sustained by the appellant, he became permanently disabled. PW4 Dr. Satish Kumar Verma, Medical Officer, General Hospital, Jind proved the disability certificate Ex.P51 wherein the appellant was shown to be permanently disabled to the extent of 20%. The appellant was earning Rs.6,000/- per month prior to the accident and the disability suffered by him directly effected his earning capacity. However, learned Tribunal awarded only Rs.40,000/- under this head. As proved by PW1 Dr. Tarun Sapra, who treated the appellant at Sapra Hospital, Sector-15, Hisar, the appellant was operated upon four times and he remained hospitalized at the first instance w.e.f. 12.05.2010 to 31.05.2010 and the second time w.e.f. 08.07.2010 to 11.07.2010. Thereafter, for atleast six months the appellant remained on follow up treatment and suffered loss of income for the entire period. The amount of Rs.10,000/- awarded by learned Tribunal on account of loss of income is extremely low. No amount was awarded to compensate the expenditure on transportation, attendant and special diet etc.

On the other hand, learned counsel for the respondent-

insurance company submitted that the compensation awarded by learned Tribunal covers all pecuniary and non pecuniary counts on which the appellant had suffered loss due to the injuries sustained by him.

Considering the appellant as a casual labourer, learned Tribunal assessed his monthly income as Rs.5,000/-. According to the disability certificate Ex.P51, the permanent physical impairment qua whole body suffered by the appellant was assessed as 20%. It was mentioned that the left lower limb had become short by one inch. Since the appellant was a casual labourer there remains no doubt that the disability suffered by him would adversely effect his earning capacity. In view of the law laid down in **Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101** the functional disability qua whole body of the appellant is taken as 10% which will amount to loss of earning capacity to the tune of Rs.500/- per month i.e. Rs.6,000/- per annum. The appellant was 23 years old when he met with the accident. Applying the multiplier of '18' the amount comes to Rs.1,08,000/-. Accordingly, the amount of Rs.40,000/- awarded by learned Tribunal for the disability suffered by the appellant is enhanced to Rs.1,08,000/-.

It was testified by PW1 Dr. Tarun Sapra that the appellant was operated upon four times. He had suffered severe chest injury and fracture of multiple long bones. His hospitalization at the first instance was of 19 days and at the second time for 3 days when he was admitted for rehabilitation. The total expenditure of treatment medicines etc. proved through bills by the appellant was allowed by learned Tribunal. However, the gravity of injuries indicates that the appellant may not have been able to

resume his daily routine for at least six months. As such, the amount of Rs.10,000/- awarded by learned Tribunal on account of loss of income is enhanced to Rs.30,000/-. Needless to say that during the period of hospitalization the appellant required a full time attendant. Even if his family members were attending on him, it is obvious that he must have spent a good amount on their transportation and boarding-lodging. He also must have spent on his own transportation and special diet etc. On all these counts, a further amount of Rs.20,000/- is allowed. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 07.01.2012 passed by the Tribunal is modified. The appellant-claimant is held entitled to enhanced compensation of Rs.1,08,000/- in addition to the amount of Rs.3,05,810/- already awarded by learned Tribunal. The enhanced amount of compensation shall be deposited by respondent No.3- insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

10.03.2016.
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