

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

(1)

FAO No.2549 of 2012 (O&M)

Date of decision : 17.03.2016

Janeshwar Parshad

.....Appellant

Versus

Paramjit Singh and others

...Respondents

(2)

FAO No.2919 of 2012 (O&M)

Date of decision : 17.03.2016

Gurdass

.....Appellant

Versus

Paramjit Singh 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: Mr. K.S. Dhanora, Advocate for appellant
in both the appeals.

Ms. Monika Jangra, Advocate for
Mr. Saurabh Bhardwaj, Advocate for respondent No.2
in both the appeals.

Mr. D.K. Parjapati, Advocate for
Mr. R.S. Madan, Advocate for respondent No.3
in both the appeals.

Respondent No.1 proceeded against *ex parte*
in both the appeals.

DARSHAN SINGH, J.

CM-11037-CII-2012

There is delay of 211 days in filing the present appeal. The appellant has filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 211 days in filing the present appeal is hereby condoned.

MAIN APPEALS

This judgment of mine shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 20.04.2011, passed by the learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter called the 'Tribunal'), vide which Janeshwar Parshad, the appellant of FAO No.2549 of 2012 has been awarded the compensation to the tune of Rs.81,500/- and Gurdass, the appellant of FAO No.2919 of 2012 has been awarded compensation to the tune of Rs.1,50,472.42 on account of the injuries suffered by them in the motor vehicular accident, which took place on 19.09.2009.

2. Both these appeals have been filed by the appellants-claimants for enhancement of the amount of compensation.

3. Learned counsel for the appellants contended that appellant-claimant Janeshwar Parshad has suffered permanent disability to the extent of 33%. He was working as a mechanic. The learned

Tribunal has just awarded Rs.66,000/- on account of the permanent disability, which is highly inadequate. Similarly, appellant-claimant Gurdass has suffered 27% disability and he has been awarded Rs.54,000/- on account of the permanent disability, which is also highly inadequate. The learned Tribunal has not computed the amount of compensation by applying the multiplier keeping in view the loss of future income of the appellants as a result of disability. Thus, he contended that just compensation has not been awarded to the appellants.

4. On the other hand, learned counsel for the respondents contended that the learned Tribunal has taken into consideration all the heads for computation of the compensation. Thereafter, sufficient compensation has been awarded towards the disability suffered by them. There was no cogent evidence to establish the income of appellant-claimant Janeshwar Parshad. It was also not proved that he was working as a mechanic. Thus, he contended that there is no illegality in the impugned award.

5. I have duly considered the aforesaid contentions.

6. Firstly, I take up the case of appellant-claimant Janeshwar Parshad. As per the case of appellant-claimant Janeshwar Parshad, he was working as a mechanic and was earning Rs.6000/- per month but he has not been able to establish this plea. The learned Tribunal has taken the income of the claimant to be Rs.3600/-.

7. The appellant-claimant has examined Dr. Bimala Gauri as PW2. She has proved the disability certificate Ex.P1. As per that

disability certificate, appellant-claimant Janeshwar Parshad has suffered the disability to the extent of 33%. The Hon'ble Apex Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1***, held that the entire percentage of the disability cannot be taken into consideration to determine the future loss of income. Only the functional disability, which has impact on the earning capacity of the victim, can be taken into consideration. The disability suffered by claimant Janeshwar Parshad is only qua a particular limb. Thus, the functional disability adversely affecting the future income of appellant-claimant Janeshwar Parshad is taken to be 20%.

8. The learned Tribunal has taken the income of claimant Janeshwar Parshad to be Rs.3600/- per month, which is very less. Even a casual labourer could be earned Rs.4000/- per month in those days. So, the income of appellant Janeshwar Parshad shall be taken to be Rs.4000/- per month i.e. Rs.48,000/- per annum. He has suffered 20% functional disability. So, the amount of compensation on account of loss of future income due to disability comes to Rs.67200/- [48000 x 20 (functional disability) x 7 (multiplier) /100]. The compensation awarded to claimant Janeshwar Parshad under other heads is also very meager. Only Rs.5000/- has been awarded towards pain and suffering. He has suffered fracture tibia right leg and has also underwent operation. So, the amount on account of pain and suffering is enhanced to Rs.12,000/- from Rs.5000/-. The appellant has been awarded only Rs.2000/- towards transportation, service of attendant and special diet. This amount is enhanced to

Rs.9000/-.

9. The learned Tribunal has awarded only Rs.1500/- towards treatment expenses. No doubt, appellant has not brought on record the bills regarding purchase of medicines. It is a fact of common knowledge that for such a grievous injury, when the appellant has suffered the fracture and underwent operation, he must have spent sufficient amount on purchase of medicines. So, the compensation on account of treatment and medical expenses is enhanced to Rs.10,000/- from Rs.1500/-. The total amount of compensation payable to appellant Janeshwar Parshad is worked out as under:-

Sr. No.	Heads	Amount of compensation
1.	Medical expenses	10,000/-
2.	Pain & suffering	12,000/-
3.	Transportation, services of attendant and special diet	9000/-
4.	Loss of future income on account of disability	67,200/-
5.	Loss of income during treatment	10,000/-
Total		1,08,200/-

10. So, the amount of compensation to appellant Janeshwar Parshad is enhanced to Rs.1,08,000/- from Rs.81,500/-.

11. Now I take up the case of appellant-claimant Gurdass. He was 15 years of age at the time of the accident and was a student and was not having any income. He has suffered 27% of disability as per the disability certificate Ex.P2. The learned Tribunal has awarded just Rs.54,000/- as compensation on account of disability suffered by him.

12. As per appellant-claimant Gurdass, he was only a student and was not having any income, so we have to take his notional income

to work out the compensation payable to the claimant on account of the permanent disability. In view of the age of appellant-claimant Gurdass, his notional income is taken to be Rs.30,000/- per annum.

13. The appellant-claimant has examined Dr. Bimala Gauri as PW5. She has proved the disability certificate Ex.P2. As per that disability certificate, appellant-claimant Gurdass has suffered the disability to the extent of 27%. In view of the law laid down by Hon'ble Apex Court in case ***Raj Kumar Vs. Ajay Kumar and another*** (supra), the functional disability adversely affecting the future income of appellant-claimant Gurdass is taken to be 15%. So, the amount of compensation on account of loss of future income due to disability comes to Rs.67,500/- $[30,000 \times 15 \text{ (functional disability)} \times 15 \text{ (multiplier)}/100]$. So, appellant-claimant Gurdass shall be entitled to a sum of Rs.67,500/- on account of the permanent disability instead of Rs.54,000/- awarded by the learned Tribunal. In this way, the compensation awarded to appellant Gurdass is required to be enhanced by Rs.13500/-. In this manner the total amount of compensation comes to Rs.1,63,972.42 (1,50,472.42+ 13,500).

14. Thus, keeping in view my aforesaid discussion, both the present appeals are hereby partly allowed. The amount of compensation payable to appellant Janeshwar Parshad is enhanced to Rs.1,08,000/- from Rs.81,500/- as awarded by the learned Tribunal. The amount of compensation payable to appellant Gurdass is enhanced to Rs.1,63,972.42 from Rs.1,50,472.42 as awarded by the learned Tribunal. The claimants shall be entitled to interest on the enhanced amount from

the date of filing the petition till realisation at the rate, as awarded by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

17.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**