IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.2627 of 2012 (O&M)
Date of decision : 04.05.2016

Kewal Krishan

......Appellants

Versus

Angrej 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. J.S. Thind, Advocate for appellant.

Mr. Survir Dewan, Advocate for respondent No.3.

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DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant against the award dated 04.11.2011 passed by the learned Motor Accidents Claims Tribunal, Sirsa (hereinafter called the 'Tribunal') vide which the appellant-claimant has been awarded a sum of Rs.4,09,723/- as compensation on account of injuries suffered by him in the motor vehicular accident, which took place on 20.09.2009.

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

3. Learned counsel for the appellant contended that the

appellant-claimant Kewal Krishan has suffered serious injuries in this accident. He suffered 50% permanent disability. The learned Tribunal has awarded only Rs.1,00,000/- in lump sum on account of the permanent disability. The learned Tribunal has not computed the compensation on account of the permanent disability taking into consideration the income of the appellant-claimant and by applying the multiplier. The appellant-climant was an income tax payee. Even the copy of his income returns have been brought on record. He further contended that no amount has been awarded by the learned Tribunal towards attendant charges, transportation and special diet. Thus, he contended that less amount has been awarded as compensation to the appellant-claimant.

4. On the other hand, learned counsel for the respondent-Insurance Company contended that the income of the claimant was not established. He further contended that whole of the disability cannot be taken into consideration as only that percentage of disability can be taken into consideration which had impact on the earning capacity of the injured. The learned Tribunal has rightly awarded the compensation on account of the disability suffered by the claimant. Thus, he contended that just compensation has been awarded by the learned Tribunal.

5. I have duly considered the aforesaid contentions.

6. Learned counsel for the appellant-claimant has sought enhancement on the grounds that less amount has been awarded on account of permanent disability, no amount has been awarded towards

attendant charges, transportation and special diet. From the statement of PW1 Dr. Pawan Kumar, Medical Officer, who was the member of the Handicap Board, it comes out that appellant Kewal Krishan has suffered 50% disability on account of cervical spine injury with fracture C-1 and C-2 and got compression. This witness has proved the disability certificate Ex.PA (PW1/A).

7. There is no dispute with the proposition of law that the entire percentage of the disability cannot be taken into consideration to compute the compensation on account of loss of earning capacity as a result of permanent disability. The Hon'ble Supreme Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1,*** has laid down that future loss of 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 the instant case 30% of the disability suffered by the claimant shall be taken into consideration to be the functional disability effecting his future earning capacity of the claimant.

8. Appellant-claimant Kewal Krishan has brought on record the copies of his income tax returns. Ex.P49 is the copy of income tax return for the year 2006-07, wherein his income has been shown

Rs.1,50,944/- per annum. Ex.P50 is the copy of the income tax return for the year 2007-08. In this return, his income has been shown to be Rs.1,25,570/-. Thus, Rs.1,25,570/- shall be taken to be the annual income of the claimant. The appellant-claimant was 49 years of age. So, the multiplier of 13 shall be applicable. The compensation on account of loss of earning capacity due to permanent disability comes to Rs.4,89,723 (1,25,570 x 30 x 13 / 100). The appellant-claimant shall also be entitled to Rs.5000/- on account of attendant charges, Rs.5000/- on account of transportation expenses and Rs.5000/- on account of special diet. As the claimant has been awarded Rs.4,89,723/- on account of loss of future earning due to permanent disability the claimant shall not be entitled to Rs. One Lac awarded by the learned Tribunal towards pecuniary loss. In place of that he will be entitled to Rs.40,000/- toward loss of income during treatment period for four months. He will be further entitled to Rs.50,000/- on account of loss of amenities and enjoyment of life due to serious injuries to spine and fracture of mandible. Learned Tribunal has awarded Rs.20,000/-on account of pain and sufferings, but in view of the nature of injuries, period of hospitalization and surgeries under went by the claimant this amount is enhanced to Rs.30,000/-.

9. With the aforesaid increase, the amount of compensation payable to the appellant-claimant will be as under:-

Sr. No.	**Compensation heads**	**Amount awarded by the Tribunal in rupees**	**Amount enhanced by this Court in rupees**
1.	Medical bills	1,89,723	1,89,723 (no change)

2.	Permanent disability	1,00,000	4,89,723
3.	Loss of income	-	40,000
4.	Loss of amenities and enjoyment of life	-	50,000
5.	Pain & suffering	20,000	30,000
6.	Attendant charges	-	5000
7.	Transportation charges	-	5000
8.	Special diet	-	5000
	Total	**4,09,723**	**8,14,446**

10. In this manner, there will be a total increase of Rs.4,04,723/- over and above the compensation awarded by the learned Tribunal.

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellant-claimant is enhanced to Rs.8,14,446/- from Rs.4,09,723/- 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 shall remain as determined by the learned Tribunal in the main award.

04.05.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**