

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

FAO No.6583 of 2012

Date of decision : 17.11.2016

Mahavir

.....Appellant

Versus

Ashok Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Arvind Kumar Yadav, Advocate for appellant.

Mr. Arjun Singh Yadav, Advocate for respondents No.1 & 2.

None for respondent No.3-Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred by by the appellant-claimant against the award dated 31.08.2012, passed by learned Motor Accidents Claims Tribunal, Rewari (hereinafter called the “Tribunal”) vide which the appellant-claimant has been awarded compensation to the tune of Rs.1,14,330/- on account of the injuries suffered by him in the motor vehicular accident, which took place on 20.04.2010.

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

3. I have heard learned counsel for the parties and have gone through the record of the case carefully.

4. Initiating the arguments, learned counsel for the appellant-

claimant contended that the learned Tribunal has awarded only Rs.90,000/- as compensation on account of the permanent disability of 60%. Less amount of compensation has been awarded on account of pain and suffering and other conventional heads. Thus, he contended that just amount of compensation has not been awarded.

5. On the other hand, learned counsel for the respondents contended that the learned Tribunal has assessed adequate and just compensation under all the heads. He further contended that whole of the percentage of the disability cannot be taken into consideration. Only the functional disability which actually affects the future earning capacity can be considered. So, the compensation on account of disability has been rightly calculated. There was no proof regarding income of the claimant. So, there can be no loss of income.

6. As per the case of the claimant he was an agriculturist and was earning Rs.8000/- per month, but the appellant has not brought on record any documentary evidence to show that he owns or possesses any agricultural land. Thus, he has failed to establish that he was an agriculturist by profession and was earning Rs.8000/- per month. Anyhow, even appellant-claimant is considered to be a labourer, his monthly income can safely be taken to Rs.4000/- per month *i.e.* Rs.48,000/- per annum.

7. It is established from the medical evidence on record and the statement of PW-3 Dr. Ashok Saini, who was the Member of the Medical Board and proved the disability certificate Ex.PW3/A that the appellant-claimant has suffered 60% permanent disability on account of the

amputation through middle of left leg. The method adopted by the learned Tribunal to award the lump sum amount of compensation for the permanent disability suffered by the claimant is not the correct approach. The compensation on account of permanent disability should have been awarded by taking into consideration the impact of the disability on the future earning capacity of the claimant and by applying the suitable multiplier. The Hon'ble Supreme Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1***, has laid down that loss of future 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, the claimant has suffered total 60% permanent disability. So the 40% of the permanent disability suffered by him shall be considered to be the functional disability having the impact on his future earning capacity. The suitable multiplier has to be applied in order to compute the compensation. In disability certificate Ex.PW3/A the age of the claimant is mentioned as 45 years. Thus, he was 44 years of age at the time of this accident, so the multiplier of 14 shall be applicable. Thus, the amount of compensation on account of loss of future earning capacity due to permanent disability comes to Rs.2,68,800/- (48,000 x 40 x 14 / 100). So, the compensation under this head is enhanced to Rs.2,68,800/- from Rs.90,000/-.

8. The learned Tribunal has awarded only Rs.5000/- on account of pain and suffering. The appellant-claimant has suffered amputation of the leg which is very traumatic, so the compensation on account of pain and suffering is enhanced to Rs.20,000/-.

9. The learned Tribunal has also not awarded any compensation towards loss of amenities and enjoyment of life. As already mentioned, the appellant-claimant has suffered amputation of leg which will certainly affect the amenities and enjoyment of life of the appellant for whole of his life, so he will be entitled to Rs.1,00,000/- under this head. The claimant might not have been able to resume his work at least for two months, so he will be entitled to Rs.8000/- on account of loss of income.

10. In this way, the enhanced amount of compensation payable to the claimant is detailed as under:-

Sr. No.	Heads of compensation	Amount of compensation awarded by the Tribunal (<i>in rupees</i>)	Amount of compensation enhanced by this Court (<i>in rupees</i>)
1.	Medical and treatment expenses	4326	4326 (no change)
2.	Loss of income due to permanently disability	90000	2,68,800
3.	Pain & suffering	5000	20,000
4.	Special diet, attendant charges, loss of income & transportation, etc.	15,000	15,000 (no change)
5.	Loss of amenities and enjoyment of life	-	1,00,000
6.	Loss of income during the period of treatment	-	8000
Total		1,14,326	4,16,126

11. In this way, the appellant-claimant shall be entitled to a total some of Rs.4,16,126/-.

12. 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.4,16,126/- from Rs.1,14,330/- as awarded by the Tribunal. The appellant-claimant shall also be entitled to interest on the enhanced amount of compensation at the rate as awarded by the learned Tribunal from the date of filing the claim petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

17.11.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No