IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.693 of 2012 (O&M).
Date of Decision: 23.02.2016.

Nalin Kumar ....Appellant.

VERSUS

M/s Swastika Metal Udyog and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. H.S. Thiara, Advocate for the appellant.
Mr. R.N. Singal, Advocate for respondent No.3.

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SNEH PRASHAR, J.

Appellant Nalin Kumar has filed this appeal for enhancement of compensation awarded to him vide award dated 01.09.2011 passed by Motor Accident Claims Tribunal, Hoshiarpur (for short, "the Tribunal") in MACT Petition No.91 of 2005.

Appellant was employed as a Constable with police department. On 20.05.2005, when he alongwith Head Constable Raj Kumar, who was a pillion rider, was coming on Scooter bearing registration No.PB-07-H-2904 from Lamba Pind Chowk to police lines, he was hit by Elantra car bearing registration No.PB-08AQ-0071 (hereinafter referred to as "the offending car") which came from the opposite side and was being driven rashly, negligently and in a high speed by Subhash Chander (respondent No.2). He and Raj Kumar fell on the road and suffered multiple injuries.

The claimant-appellant filed a petition invoking the provisions of Section 166 of the Act of 1988 claiming compensation on account of injuries sustained by him on the ground that the accident occurred entirely due to rash and negligent driving of the offending car by respondent Subhash Chander.

The claim petition was contested by the respondents. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal awarded compensation to the tune of Rs.16,58,177/- to the claimant with interest at the rate of 6% per annum w.e.f. 17.11.2008 till the date of payment.

Feeling unsatisfied with the award dated 01.09.2011, the claimant-appellant has preferred the instant appeal.

The submissions made by Mr. H.S. Thiara, learned counsel for the appellant and Mr. R.N. Singal, learned counsel for respondent No.3-insurance company have been heard and record perused.

As noticed by learned Tribunal in Para No.14 of the award, the appellant suffered head injury and other multiple injuries on various parts of the body. AW7 Dr. Harjitnderjit Singh Garg, Surgical Specialist, Civil Hospital, Hoshiarpur proved the disability certificate Ex.AW7/A and stated that he and Dr. Raj Kumar, M.D. (Psychiatry) examined the appellant and found him to be an old case of head injury with history of left craniotomy with left frontal and temporal lobectumy with contralateral hemiperesis with speech abnormality with partial loss of bladder and bowel control (head injury sequelae) and his permanent physical disability was assessed as 80%.

From the statement of AW5 Head Constable Shamsher Singh examined by the appellant, it was proved that the appellant had joined his duties on 24.04.2009. Meaning thereby that despite the disability suffered due to injuries during the accident that took place on 20.05.2005, the appellant continues to be in service.

Learned counsel for the appellant argued that although learned Tribunal awarded full salary to the appellant for the period he remained on medical leave without pay but the amount of Rs.1,00,000/- lac awarded on account of loss of immunities of life due to 80% disability and the amount of Rs.20,000/- awarded on account of pain and suffering was inadequate. Also the compensation awarded under the head of 'disability' i.e. Rs.1,60,000/- is on the lower side. It was also argued that the learned Tribunal awarded interest at the rate of 6% per annum whereas it should have been atleast 9% per annum.

In ***Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101,*** Hon'ble Supreme Court held as under:-

> "*The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a*

> *corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."*

Elaborating the method of ascertaining effect of the permanent disability on the actual earning capacity, Hon'ble Apex Court in Para No.10 of Raj Kumar's case (supra) held as under:-

> "*Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident,*

as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand.

In the case in hand, though the disability suffered by the appellant was assessed as 80% but the fact is that he continues to be in government service and there is nothing on the record to indicate that he suffered either reduction in salary or had been declined financial benefits of increments, promotions etc. For the period during which he remained without pay, learned Tribunal has already allowed him complete salary. In that manner, he has been compensated for loss of earning and as far as loss in earning capacity is concerned, there does not appear to be any till the age of retirement when he continues to be in service.

However, subsequent to retirement the disability suffered by the claimant will certainly effect his future earning capacity in case he decides to take up some avocation to supplement his income from pension etc. The disability of the claimant having been assessed as 75%, his permanent physical or functional disability may be assessed as 50%. As proved in the evidence, the carry home salary of the claimant was Rs.22,629/-. With years put on in service the salary with addition of increments and other financial benefits will certainly increase but on retirement on commutation of pension it will come down to almost half. Accordingly, in addition to the pension assessing the future earning capacity of the claimant as Rs.10,000/- and taking 50% of the same as a loss in future earning capacity the amount comes to Rs.5000/- per month i.e. Rs.60,000/- per annum. Since the claimant will face the said loss in income after retirement i.e. at the age of 58, '9' will be the appropriate multiplier and calculated on that basis the amount comes to Rs.5,40,000/-. The claimant is held entitled to Rs.5,40,000/- in addition to the amount of Rs.1,60,000/- already allowed by learned Tribunal under the head of 'disability'.

In ***Ramesh Chandra v. Randhir Singh and others, 1990(3) SCC 723*** the Hon'ble Supreme Court categorically held that compensation can be payable both for loss of earning as well as disability suffered by the claimant. Needless to say that on account of the disability suffered by the appellant, he would suffer loss of deriving pleasure in the normal activities of daily life and will be unable to pursue his talents, recreational interests, hobbies or avocations.

In ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd., 1995 A.C.J. 366*** where the injured had suffered 100% disability, Hon'ble Supreme Court awarded Rs.1,50,000/- for the pain and suffering undergone by the injured. Following the same and considering the nature of injuries and period of hospitalization of the appellant, Rs.1,50,000/- is allowed to him under the said head.

Compensation for loss of expectation of life aims to compensate the victim for having become disabled in deriving pleasure in the normal activities of daily life, his inability to pursue his talents, recreational interests, hobbies or avocations. Therefore, for loss of amenities of life an amount of Rs.1,00,000/- is awarded to the appellant.

Needless to say that the injuries have shaken the physical structure of the claimant. For the disfigurement suffered by him, a further amount of Rs.1,00,000/- is awarded to the claimant as compensation.

A person not only suffers injuries on account of the accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. For the depression and mental stress in life, a further amount of Rs.50,000/- is awarded to the claimant.

The amount of compensation awarded as above will include the amount of Rs.1,00,000/- allowed to the appellant under the head of 'disability' and 'loss of immunity of life' awarded by learned Tribunal.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 01.09.2011 passed by the learned Tribunal is modified. The appellant-claimant is held entitled to enhanced compensation of Rs.6,80,000/- in addition to the amount of Rs.16,58,177/- awarded by learned Tribunal. The rate of interest awarded by learned Tribunal is enhanced from 6% per annum to 7.5% per annum to which the appellant will be entitled to from the date of filing of claim petition till realization of the compensation amount. 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

23.02.2016.
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