

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

**FAO No.1100 of 2014 (O&M)
Date of decision : 03.03.2016**

Nand Kishore

.....Appellant

Versus

Vikas alias Tinnu 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. R.A. Sheoran, Advocate for appellant.

Mr. Arun Sharma, Advocate for respondent No.3.

DARSHAN SINGH, J.

CM-3634-CII-2014

There is delay of 144 days in filing the present appeal. The appellants have 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 in filing the present appeal stands condoned.

FAO No.1100 of 2014

The present appeal has been preferred by the appellant-claimant against the award dated 15.04.2013, passed by learned Motor Accidents Claims Tribunal, Bhiwani (hereinafter called the 'Tribunal'), vide which the claimant has been awarded compensation to the tune of Rs.2,68,742/- along with interest @ 6% per annum from the date of filing the petition till realisation on account of injuries suffered by him in the motor vehicular accident which took place on 12.04.2011.

2. Learned counsel for the appellant contended that the claimant has suffered 13% disability. He was an agriculturist by profession and was earning Rs.10,000/- per month but only Rs.26,000/- have been awarded on account of the permanent disability which is inadequate.

3. On the other hand, learned counsel for the respondent-Insurance Company contended that just and appropriate amount of compensation has been awarded to the claimant on account of the injuries suffered by him keeping in view the nature of the injuries suffered by him.

4. I have duly considered the aforesaid contentions.

5. As per the case of the claimant he was an agriculturist and was also doing the milk diary. He was earning Rs.30,000/- per month but the claimant has not produced any evidence to establish that he was running any milk diary. If he would have been selling the milk, he must have maintained some accounts with respect to the sale of the milk. It is a fact that generally the bill for the sale of milk is paid by the customers on

completion of a month. So, a person selling the milk has to maintain account in order to realise the money from the customers, but no such record has been produced. So, the claimant was only an agriculturist.

6. It is settled principle of law that in case of agriculturist his income is taken only qua the value of his supervisory services. So, the income of the claimant is taken to be Rs.4000/- per month.

7. As per the disability certificate Ex.P81, the claimant has suffered 12% permanent disability and further 1% residual disability vide certificate Ex.P82. Thus, the claimant has suffered 13% disability as a result of injury received in this accident.

8. In view of the law laid down by ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1***, the entire percentage of disability cannot be taken into consideration. Only the functional disability effecting the earning capacity has to be taken into consideration. So the functional disability of the appellant is taken to be 8%. The annual loss of future income on account of the functional disability comes to Rs.3840/-. As per the age of the claimant, the multiplier of 15 shall be applicable. Thus, the amount of compensation on account of permanent disability comes to Rs.57,600/- (3840 x 15). Thus, the compensation under this head is enhanced from Rs.26,000/- to Rs.57,600/-. With this increase, the total amount of compensation comes to Rs.3,00,342/-.

9. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.3,00,342/- from Rs.2,68,742/- as awarded by the learned Tribunal. The claimant shall be entitled to interest on the enhanced

amount from the date of filing the petition till realization at the rate of interest 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.

03.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**