

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

**FAO No.3154 of 2013
Date of decision : 28.03.2016**

Vibha Singh

.....Appellant

Versus

Shivalik Prashad 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. Sunil Garg, Advocate for appellant.

Mr. Sukhdarshan Singh, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 07.08.2012 passed by learned Motor Accidents Claims Tribunal, Patiala (hereinafter called the 'Tribunal') vide which a sum of Rs.9,67,600/- has been awarded as compensation to the appellant-claimant on account of injuries suffered by her in the motor vehicular accident which took place on 23.08.2010.

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

3. Learned counsel for the appellant contended that the claimant has suffered 50% disability as per the disability certificate Ex.PW6/C. He contended that due to this disability the claimant has suffered from behavioural disturbance. She was doing the tuition work but on account of disability suffered by her, she has become unable to carry on her profession. He contended that learned Tribunal has computed the compensation only taking into consideration 25% disability without assigning any reason. He contended that the compensation should have been computed taking into consideration 50% disability suffered by the appellant-claimant.

4. On the other hand, learned counsel for the respondent-Insurance Company contended that in fact even 50% disability suffered by the claimant is not established. He contended that PW6 Dr. Harpreet Singh admitted in the cross-examination that he cannot say as to how 50% disability has been calculated by the neurologist. He further contended that the entire percentage of the disability cannot be taken into consideration to compute the compensation. Only functional disability is to be considered. Thus, he contended that the compensation awarded by the learned Tribunal is just compensation.

5. I have duly considered the aforesaid contentions.

6. PW5 Dr. Harpreet Singh has proved the disability certificate Ex.PW6/C, which shows that the claimant has suffered 50% permanent disability. But in the cross-examination, he stated that he cannot tell as to how the neurologist has come to the conclusion that

permanent disability is 50%. The claimant has not examined the neurologist who has assessed the permanent disability of the claimant. So, there is no medical evidence on record to establish that the claimant was rendered unable to carry on her profession of doing the tuition work. The claimant has suffered 50% disability as per the disability certificate Ex.PW6/C. 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 the 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%.

7. In view of the aforesaid ratio of law laid down by Hon'ble Apex court, I do not find any illegality committed by the learned Tribunal taking into consideration 25% disability of the claimant as a functional disability having impact on her future earning. Thus, no fault can be found with the amount of compensation computed by the learned Tribunal and awarded in favour of the appellant. No further enhancement of the amount of compensation is called for.

8. Consequently, the present appeal, having no merits, is hereby dismissed.

28.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**