

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

FAO No.1773 of 2014

Date of decision : 16.11.2016

Ram Chander

.....Appellant

Versus

Rajan alias Rinku and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. J. S. Cooner, Advocate for appellant.

Mr. J. S. Khattar, Advocate for
Mr. Deepak Sharma, Advocate for respondent No.1.

Mr. Ram Avtar, Advocate with
Mr. Pardeep Kumar, Advocate
for respondent No.2.

DARSHAN SINGH, J.

The present appeal has been preferred by by the appellant-claimant against the award dated 07.10.2013, passed by learned Motor Accidents Claims Tribunal, Ambala (hereinafter called the “Tribunal”) vide which the appellant-claimant has been awarded compensation to the tune of Rs.54,855/- on account of the injuries suffered by him in the motor vehicular accident, which took place on 23.04.2012.

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 claimant has suffered 10% permanent disability with respect to the fracture both bones of his leg with restriction of movement of the joint. He also suffered 30% ENT disability but the learned Tribunal awarded only Rs.17,500/- for the disability suffered by the claimant which is highly inadequate. He further contended that no amount has been awarded to the claimant towards the special diet, attendant charges and transportation. The amount awarded for the loss of income during treatment is also inadequate. Thus, he contended that just amount of compensation has not been awarded to the appellant-claimant by the learned Tribunal.

5. On the other hand, Mr. Ram Avtar, Advocate, learned counsel for the respondent-Insurance Company contended that there was no impact of disability on the earning capacity of the appellant-claimant. The ENT disability was only temporary in nature. So, the appropriate amount for disability has been awarded by the learned Tribunal. He further contended that the learned Tribunal has also awarded Rs.4200/- for the loss of income which is also quite reasonable and appropriate. Thus, he contended that the award passed by the learned Tribunal does not call for any interference.

6. I have duly considered the aforesaid contentions.

7. As per the statement of PW4 Dr. Vikas Pal and the disability certificate ExP4, the claimant has suffered 10% permanent disability on account of fracture both bone leg proximal part with restriction of

movement joint. He also suffered disability of ENT to the extent of 30%. The claimant has not examined the doctor who has determined the ENT disability to establish that the said disability was permanent in nature, so the learned Tribunal has rightly taken the said disability to be temporary in nature.

8. However, the computation of the compensation for the disability suffered by the claimant is not appropriate. The learned Tribunal was required to determine the extent of permanent disability having impact on the future earning capacity of the claimant. 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 10% permanent disability. He was a labourer by profession, so the 7% 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. The claimant was in the age group of 55 to 60 at the time of the accident, so the multiplier of 9 shall be applicable. The learned Tribunal has rightly determined the income of the claimant to be Rs.4200/- per month

i.e. Rs.50,400/- per annum. Thus, the amount of compensation on account of loss of future earning capacity due to permanent disability comes to Rs.31,752/- ($50,400 \times 7 \times 9 / 100$). So, the compensation under this head is enhanced to Rs.31,752/- from Rs.10,000/-.

9. The claimant has also suffered 30% temporary disability of ENT. He shall be entitled to Rs.30,000/- *i.e.* Rs.1000 per percent of the temporary disability.

10. So, the total amount payable to the claimant on account of disability comes to Rs.61,752/-, to make it a round figure we can take it as Rs.61,750/-.

11. As the claimant has suffered fracture both bones and he was a labourer by profession, so he might not have been able to perform the physical work at least for a period of two months. So, he will be entitled to a sum of Rs.8400/- on account of loss of income. The learned Tribunal has also not awarded any amount of compensation to the claimant on account of special diet, attendant charges and transportation. The claimant shall be entitled to a sum of Rs.10,000/- in lump sum under these heads.

12. 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 expenses	23,155	23,155 (no change)
2.	Permanent & temporary disability	17,500	61,750
3.	Pain & suffering	10,000	10,000 (no change)

4.	Loss of income	4200	8400
5.	Special diet, attendant charges & transportation, etc	-	10,000
Total		54,855	1,13,305

13. In this way, the appellant-claimant shall be entitled to a total sum of Rs.1,13,305/- as compensation.

14. 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.1,13,305/- from Rs.54,855/- 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.

16.11.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No