IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.3850 of 2013 and
XOBJC No.30-CII of 2014.
Date of Decision: 18.02.2016.

United India Insurance Company Ltd. ....Appellant.

VERSUS

Rakesh Kumar and another ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. V.M. Gupta, Advocate for the appellant.

Mr. Vijay Guleria, Advocate
for respondent No.1/claimant-cross objector.

Service of respondent No.2 was dispensed with vide order dated 26.11.2013.

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SNEH PRASHAR, J.

The present appeal was filed by the appellant-insurance company assailing the award dated 19.03.2013 passed by Motor Accident Claims Tribunal, Ludhiana (for short, "the Tribunal") in MACT Petition No.147 of 03.01.2012 by virtue of which claimant Rakesh Kumar (respondent No.1 herein) was awarded compensation on account of injuries sustained by him in a vehicular accident.

The claimant also filed cross objections seeking enhancement of compensation.

The relevant facts which need elaboration are as under:-

On 11.02.2011 Rakesh Kumar-claimant alongwith his wife and daughter was going from Machiwara to Mata Naina Devi by means of motorcycle No.PB-43D-3292. At about 11:30 a.m., when they reached near village Pojewal, one Indica car bearing registration No.PB-08AD-8383 (hereinafter referred to as "the offending car") being driven rashly, negligently and in a high speed, came from the side of Anandpur Sahib and struck into the motorcycle of Rakesh Kumar. As a result of accident, he, his wife and daughter fell on the road and sustained multiple grievous injuries.

The injuries sustained by Rakesh Kumar proved to be serious which resulted in rendering him permanently disabled. He filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") against driver, owner and insurer of the offending car claiming compensation to the tune of Rs.40 lacs. He averred that he is employed as Head Constable with police department and was drawing salary of Rs.20,000/- per month and was aged about 35 years at the time of accident. He also pleaded that an amount of Rs.5 lacs had been spent on his treatment, medical expenses and special diet etc.

The petition was contested by the respondents. Respondent No.1-owner and driver of the offending car alleged that the accident occurred due to rash and negligent driving of the motorcycle by the claimant himself and there was no fault on his part. Respondent No.2 denied the factum of accident and also denied its liability to indemnify the insured on the ground that the driver of the offending car did not possess a valid and effective driving licence on the date of accident.

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.33,73,736/- to the claimant holding the insurance company liable for payment of the said compensation amount.

Feeling aggrieved by the award passed by the Tribunal, the insurance company-appellant has filed the instant appeal and claimant Rakesh Kumar has filed cross objections seeking enhancement of the compensation amount.

The submissions made by Mr. V.M. Gupta, learned counsel for the appellant and Mr. Vijay Guleria, learned counsel for respondent No.1-claimant-cross objector have been heard and record perused.

Learned counsel for the appellant argued that admittedly claimant Rakesh Kumar is employed as Head Constable with police department. No doubt, as per the disability certificate Ex.P75 proved by PW4 Dr. Jaswinder Singh, the claimant suffered permanent disability to the extent of 75% because of spine injury but the fact remains that he still in regular service and is being paid salary and all other financial benefits to which he is entitled to. He did not suffer any loss in income or loss in earning capacity yet taking 75% of the total income towards loss of income and earning capacity learned Tribunal awarded an amount of Rs.28,42,965/- as compensation under the said head. Learned counsel asserted that apparently the compensation awarded is on extremely higher side. Also an amount of Rs.1,66,124/- was awarded towards medical expenses whereas the claimant being in government job had got all his medical bills reimbursed from the department. Hence, learned counsel submitted that the amount awarded as compensation is required to be modified.

On the other hand, learned counsel for the claimant-cross objector submitted that learned Tribunal had taken judicial notice of the fact that at the time of arguments in the claim petition the claimant was brought to the Court on a wheel chair. He was unable to stand or carry out other daily pursuits without the help of an attendant and was to remain confined to bed for whole of his life. PW4 Dr. Jaswinder Singh, who proved the disability certificate Ex.P75 of the claimant, testified that the permanent disability relates to the whole body. Such being the physical condition of the claimant, learned Tribunal rightly assessed loss of income and earning capacity to the extent of 75% of the salary being drawn by the claimant.

The claimant stepped into the witness box as PW7. Deposing through his affidavit Ex.PW7/A he stated that due to the fear of loss of service he had joined back his duties in June, 2012. He also stated that he is going to the office in a taxi alongwith his wife and a wheel chair and is paying Rs.1000/- per day to the taxi owner. During cross-examination, he admitted that he has no receipt taken from owner of the taxi hired by him for taking him to the office. He also stated that he is doing his job in Police Station Machhiwara which is at a distance of about 8/9 kilometers from his house and is performing his duty by sitting on chair. He also admitted that there is no decrease in his salary after the accident and that he is getting annual increase in the salary.

At the time of recording deposition of the claimant, there is no note of the Tribunal regarding his physical condition as was apparent on the face of it.

Indeed, PW4 Dr. Jaswinder Singh proved the disability certificate Ex.P75 and stated that the claimant is a case of paraplegia with span injury and his overall disability is 75% which is permanent and relates to whole body and he also stated that because of the disability the claimant cannot walk or sit without required attendant and will remain dependent on his family members for his daily routine. However, the fact remains that the claimant continues to be in Government service. There has been no reduction in his salary or rank. He is being allowed increments on due date and there is nothing in the evidence to indicate that he will not be given financial benefits related to promotions. Such being the fact, learned Tribunal certainly erred in awarding compensation on account of loss in income and earning capacity to the tune of 75% of the annual salary of the claimant by applying a multiplier of '15' to the same.

Having said the above, it cannot loose sight that the claimant due to spine injury has become disabled to the extent of 75% and is entitled to be compensated for the non pecuniary damages and for loss in earnign capacity in future. 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."

Further elaborating the mode of ascertaining effect of the permanent disability on the actual earning capacity, Hon'ble Apex Court held in Raj Kumar's case (supra) 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.*

Reverting to the case in hand, the facts as observed above are, (i) the claimant continues to be in Government service; (ii) there has been no reduction in his salary or rank; (iii) he is being allowed increments on due date and has not been declined any financial benefit related to promotion. In the said set of facts, it is apparent that there will be no direct effect of the permanent disability on the actual earning capacity of the claimant till the age of retirement. However, subsequent to retirement the disability suffered by him 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.27,456/-. 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.15,000/- and taking 50% of the same as a loss in future earning capacity the amount comes to Rs.7500/- per month i.e. Rs.90,000/- 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.8,10,000/-.

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.1,00,000/- allowed to him by learned Tribunal for the pain and suffering undergone by him is enhanced to Rs.1,50,000/-.

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 lac 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 Rs.1,66,124/- allowed as compensation towards medical treatment; Rs.1.5 lac awarded towards future expenses to be incurred for employing a personal attendant; Rs.1350/- awarded towards artificial limb; Rs.1,13,297/- allowed as compensation to the appellant towards loss in income for the period during which he remained on medical leave without pay or half pay, call for no intervention. In the above premise, the claimant is held entitled to compensation of Rs.16,40,771/-, as indicated above. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the award dated 19.03.2013 passed by the Tribunal is modified, the appeal filed by appellant-insurance company is allowed and the cross objections filed by the claimant are dismissed.

(SNEH PRASHAR)
JUDGE

18.02.2016.
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