

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

FAO No.2458 of 2014(O&M)

New India Assurance Company Limited	... Appellant
Versus	
Parminder Kaur and others	... Respondents

AND

FAO No.8096 of 2014(O&M)

Parminder Kaur	... Appellant
Versus	
Kala and others	... Respondents

Date of Decision: July , 2016

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. R.C.Kapoor, Advocate
for the appellant in FAO No.2458 of 2014 and
for respondent No.3 in FAO No.8096 of 2014.

Mr.Surinder Singh, Advocate for
the injured – claimant (appellant in FAO No.8096 of 2014
and respondent No.1 in FAO No.2458 of 2014)

HARINDER SINGH SIDHU, J.

This judgment shall dispose of two appeals i.e FAO Nos.2458 and 8096 of 2014, as the both have arisen out of the same award.

On 18.01.2009, at about 3.15 P.M., Parminder Kaur was driving her Bajaj Sunny Scooter when she was hit by a car bearing registration No.CH-04-C-7463 in the area of Sector 21A, Chandigarh. As a result of this accident, she suffered grievous injuries and was shifted to General Hospital Sector 16 Chandigarh, from where she was referred to PGI Chandigarh. The matter was also reported to the police and FIR No.13 dated 22.01.2009

under Section 279, 337 IPC was registered against Kala @ Sanjiv in Police Station, Sector 19, Chandigarh.

On filing a claim petition, Parminder Kaur, the injured was awarded compensation as under:

Sr.No.	Head under which amount awarded	Amount
1.	Loss of future income due to permanent disability	Rs. 6,73,920.00
2	Compensation on account of permanent disability	Rs.2,88,000.00
3	Compensation on account of expenses incurred on medical treatment	Rs. 71,349.00
4	Attendant charges	Rs.3,12,000.00
5	Compensation on account of period of admission in hospital	Rs. 11,500.00
6	Compensation towards transportation charges	Rs.10,000.00
7	Compensation on account of pain and suffering	Rs.15,000.00
8.	Compensation on account of nutritious diet	Rs.5,000.00
	Total	Rs.13,86,769.00

FAO No.2458 of 2014 has been filed by the Insurance Company challenging the award on quantum of compensation and FAO No.8096 of 2014 is filed by injured Parminder Kaur for enhancement of compensation.

The negligence aspect in causing the accident as also the liability to pay the compensation are not in dispute.

I have heard Ld.counsel for the claimant-injured and the insurer.

Learned counsel for the claimant-injured has argued that due to the permanent disability suffered in the accident she is unable to work and

constantly needs an attendant. Therefore, she is entitled to compensation for 100% loss of earnings. It is also argued that the Tribunal failed in not granting any enhancement in income towards future prospects.

On behalf of the insurer, it is argued that the Tribunal fell in error while considering the 72% permanent disability of limbs as disability of the whole body and assessing loss of future income at this percentage.

So far as the disability suffered by the claimant is concerned disability certificate Annexure P-2 issued on 26.4.2013 by Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh, states her to be 72 % physically disabled. The relevant part is extracted below:

“1. In the light of the above, his/her overall permanent physical/mental impairment as per guidelines as follows:-

In figures 72%. In words Seventy Two Percent.

2. This condition is not likely to improve.

3. Reassessment of disability is not necessary.”

The aforesaid disability certificate was proved by Dr. Sudesh Pebam, Member, Special Medical Board PGIMER, Chandigarh who appeared as PW4 before the Tribunal and stated that Parminder Kaur was examined by the PGI Medical Board Chandigarh, on 26.04.2013 and she was found permanently physically disabled to the extent of 72% in respect to limbs. She was suffering from fracture of shaft of femur (R). Fracture both bones of both the legs and fracture of both bones of both arms. He further stated that it will be very difficult for the claimant to continue her job (Nursing Job) with these injuries. It was also stated that performing household activities will also be difficult for the claimant and she may

require an Assistant for her normal routine work. Dr.Sudesh Pebam specifically stated that the disability suffered by the claimant is not likely to improve with passage of time. He categorically denied the suggestion that the claimant will recover and be able to attend to her daily needs.

Functional Disability

The Hon'ble Supreme Court has repeatedly stressed that in assessing loss of future income in cases of disability the assessment of compensation under the head of 'loss of future earnings' would depend upon the effect and impact of such permanent disability on the earning capacity of the injured. In most of the cases, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. It would depend upon the nature of the disability and the occupation of the injured.

In **Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343** it was observed as under:

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. 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, the 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.

11. What requires to be assessed by the Tribunal is the effect of the permanent 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 the 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. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Yadava Kumar v. National Insurance Co. Ltd.)”....

The Hon'ble Supreme Court in **Jakir Hussein v. Sabir**, 2015(7)

SCC 252 was dealing with the compensation case of an accident victim, who had been working as driver and had suffered one long injury from the arm upto the wrist. As per the doctor, the disability was 55%, but it was stated that as a result of the injury he would not be able to drive any motor vehicle in future. Considering the fact that the injured was a driver, which was his only means of livelihood, and that as a result of the injuries he would not be able to drive again, the Court held that the loss of earning in his case is liable to be treated as 100%. It was observed:

“15. Further, with respect to the permanent disablement suffered by the appellant, Mr. K. Parameshwar, the learned amicus curiae, has rightly submitted that the appellant was examined by Dr. P.K. Upadhyay in order to prove his medical condition and the percentage of permanent disability. The doctor who has treated him stated that the appellant has one long injury from his arm up to the wrist. Due to this injury, the doctor has stated that the appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the

*pendency of the appeal before the High Court and he was hospitalised for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55% respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact namely that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed. In the case of **Raj Kumar v. Ajay Kumar** (supra), this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability.”*

In Syed Sadiq Etc. v. Divisional Manager, United India Ins.

Co. 2014(4) SCC 735, the Court was considering a case where the claimant was a cleaner of lorries. He had suffered from permanent disability of 69% to lower limb having sustained type -3 compound fracture of right femur, fracture of tibia, fracture of middle shaft of tibia and fibula. The High Court had assessed his functional disability at 13%. Noting that from the material evidence produced on record, the appellant/claimant had suffered from comminuted fracture in the accident as a result of which he would not be able to bend, stretch or rotate his right hand and he would also not be able to lift heavy material which was essential to carry on with his business to earn his livelihood, the Supreme Court held that the High Court erred in