

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

FAO No.1769 of 2016(O&M)

Date of Decision: May 05, 2016

National Insurance Co. Ltd.

...Appellant

Versus

Ayush Aggarwal and others

...Respondents

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

Present: Mr.S.S.Sidhu, Advocate for
the appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

Insurance Company has filed this appeal against the award dated 13.1.2016 passed by the Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal').

On 3.11.2012, respondent No.1 Ayush Agarwal along with his father Dr.Subhash Chander Agarwal was on the way from Bhiwani to Ambala. The petitioner was driving car No.HR-16G-9146, whereas, his father was travelling in his Wagon-R HR-16E-9085. At about 12.30/1.00 p.m., when they reached between village Amreheri and Kandela on Jind-Kaithal road, oil tanker bearing No.HR-61-2085 being driven by Gurdev-respondent No.2 rashly and negligently came from the side of village Nagura and collided with the car of the petitioner, as a result of which he suffered injuries. He was taken to General Hospital, Jind, from where, he was got admitted in Jindal Institute of Medical Sciences, Hisar. Thereafter, he was shifted to Medanta Hospital, Gurgaon on 6.11.2012 and remained admitted there till 23.12.2012. Regarding the accident, FIR No.256 dated 4.11.2012

under Section 279, 337 and 338 IPC was registered in Police Station Sadar Jind against respondent No.2.

The injured-respondent No.1 filed claim petition before the Tribunal. It was stated that at the time of accident, he was 24 years old and a student of final year of M.B.B.S., getting Rs.15,000/- per month as an apprentice doctor. It was also stated that a sum of Rs.38 lacs was incurred on the treatment of the appellant, besides, Rs.50,000/- on transportation and Rs.2 lacs on special diet. Due to injuries sustained in the accident, the claimant has become permanently disabled and he has to engage a special helper to assist him in his daily routine pursuits.

Respondents No.2 and 3 (driver and owner of the offending vehicle) in their written statement controverted the averments made in the claim petition. It was pleaded that the claimant lodged a totally false case in connivance with the police only to grab compensation and that the accident in question took place due to rash and negligent driving of the claimant himself.

Appellant- insurer in its written statement denied the accident and took the plea about the lack of knowledge about the accident and stated that the offending vehicle has been falsely involved in the criminal case. The amount claimed was also pleaded to be inflated, imaginary and without any basis.

After framing the issues and recording the evidence, the Tribunal assessed the monthly income of the claimant as Rs.8000/- per month, wherein, addition of 50% was made towards future prospects considering his age of 24 years and applying the multiplier of 18, loss of income due to

permanent disability was assessed at Rs.12,96,000/-. After assessing medical expenses and other heads, the Tribunal in view of the observations of the Hon'ble Supreme Court in **N.Suresh Vs. Yusuf Shariff & Anr, 2012(6) Law Herald (SC) 4677** awarded the compensation along with interest as under:-

Sr.No.	Head	Amount (in Rs.)
1.	Towards pain and sufferings	1,00,000.00
2.	Towards medical expenses	21,98,426.47
3.	Towards loss of amenities	1,00,000.00
4.	Towards loss of future income	12,96,000.00
5.	Towards future medical expenses	2,00,000.00
Total		38,94,426.47

Learned counsel for the appellant – insurance company has challenged the quantum of compensation on two grounds:-

- (i) that Tribunal fell into error by considering 50% permanent disability qua the lower limbs as 50% functional disability and
- (ii) that it should not have granted 50% increase in income towards future prospects while assessing the loss of income to an injured.

Dr.S.S.Dhankar, Orthopaedic Surgeon appeared in the witness box as PW4 and deposed that on 24.1.2014, he along with other members of the Board assessed the permanent disability of the claimant as 50% on account of fracture shaft of femur right with implant in situ with ankylosis right hip joint with loss of movement and muscle wasting. This witness also stated that for treatment of hip joint, the claimant might need operation in future. Physiotherapist Chiranji Lal (PW5) deposed that he visited the home of the claimant for physiotherapy from January, 2013 to May, 2013.

The claimant was a final year student of MBBS and due to fracture shaft of femur right with implant in situ with ankylosis right hip joint with loss of movement and muscle wasting, he will be greatly hindered in the pursuit of his professional career. Successful pursuit of the medical profession requires great agility and stamina. It cannot be doubted that restriction of movements adversely affects the profession of a doctor and considering this fact, no fault can be found in treating 50% permanent disability of lower limbs as 50% functional disability.

So far as the issue of increase of 50% in the income of the injured for assessment of loss of earnings is concerned, the Hon'ble Supreme Court in **Sanjay Kumar vs. Ashok Kumar and another, CIVIL APPEAL NO.896 OF 2014 decided on January 24, 2014**, while dealing with the appeal of claimant – injured awarded him increase in income towards future prospects. It was observed:-

“9. ‘Loss of future prospects’ should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment in income. As per the case of [Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.](#), keeping in mind the young age of the appellant, he is entitled to 50% of his income as future increase in income (4,500/- + 2250/- = 6750/-). We will apply a multiplier of 18 as taken by the High Court in the impugned judgment and as per Sarla Verma’s case (supra). The appellant’s permanent disability and loss of earning capacity was assessed at 70% and we will not interfere with that. Hence, the total amount of compensation due to loss of earning capacity along with future prospects in income will come to 10,20,600/- [6,750 x 70/100 x 12 x 18].”

In view of above, the Tribunal was justified in granting 50% increase in the income of the injured/claimant and assess the loss of income accordingly.

No other point was raised.

Appeal dismissed.

May 05, 2016

**(HARINDER SINGH SIDHU)
JUDGE**

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