IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.4507 of 2014.
Date of Decision: 04.03.2016.

Uday Ram ....Appellant.

VERSUS

Kuldeep Singh and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ishan Cooner, Advocate for the appellant.

None for respondent No.1.

Mr. S.S. Dinarpur, Advocate for respondent No.2.

Mr. Rahul Pathania, Advocate for respondent No.3.

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SNEH PRASHAR, J.

This appeal was filed by appellant-claimant Uday Ram seeking enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Ambala (for short, "the Tribunal") vide the award dated 17.02.2014 passed in MACP No.155 of 2013, filed by him on account of injuries sustained by him in a motor vehicular accident on 29.05.2012.

The submissions made by Mr. Ishan Cooner, learned counsel for the appellant, Mr. S.S. Dinarpur, learned counsel for respondent No.2 and Mr. Rahul Pathania, learned counsel for respondent No.3-insurance

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company have been heard and record perused.

Attributing the cause of accident during which claimant Uday Ram and Baij Nath were hit by an Indica Car bearing registration No.HR-70-6118 (hereinafter referred to as the "offending car"), to rash and negligent driving of the said car by Kuldeep Singh (respondent No.1), the appellant had filed a petition invoking the provisions of Section 166 of the Motor Vehicle Act, 1988 (for short, "the Act of 1988") claiming compensation due to the injuries sustained by him during the accident.

Learned counsel for the appellant argued that due to the multiple serious and grievous injuries sustained by the appellant, he became permanently disabled. PW3 Dr. Vijay Kumar deposed that he alongwith other members of Medical Board examined injured Uday Ram and found fracture of both femur bones and he is disabled to the extent of 15% due to partial stiffness at both hip joint and at left knee joint. Learned counsel contended that the appellant was earning Rs.6,000/- per month prior to the accident and the disability suffered by him directly affected his earning capacity. However, learned Tribunal wrongly assessing his income as Rs.4000/- per month awarded only Rs.1,15,000/- under this head. The amount of Rs.5,000/- towards expenditure on transportation and special diet and Rs.5,000/- awarded on account of pain and suffering are extremely less. No amount was awarded to compensate for the expenditure on attendant and the interest allowed is also on the lower side.

On the other hand, learned counsel for the respondent-insurance company submitted that the compensation awarded by learned

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Tribunal covers all pecuniary and non pecuniary counts on which the appellant had suffered loss due to the injuries sustained by him.

Considering the appellant as a casual labourer, learned Tribunal assessed his monthly income as Rs.4,000/- which needs no change as the appellant had failed to prove his avocation and monthly income. According to the disability certificate Ex.P2, the permanent physical impairment suffered by the appellant was assessed as 15%. Since the appellant was a casual labourer, there remains no doubt that the disability suffered by him would adversely effect his earning capacity. Following the law laid down by Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101*** learned Tribunal rightly assessed the annual proportionate compensation for 15% permanent disability of the claimant as Rs.7200/- and applied multiplier of '16'. Thus, the amount of Rs.1,15,000/- awarded by learned Tribunal to the claimant towards loss of future earning capacity is just and adequate and calls for no modification.

It was testified by PW3 Dr. Vijay Kumar that the appellant suffered fracture of both femur bones and was having partial stiffness at both hip joint and left knee joint. The gravity of injuries indicates that the appellant may not have been able to resume his daily routine for at least four months. As such, the amount of Rs.4,000/- awarded by learned Tribunal on account of loss of income is enhanced to Rs.16,000/-. The amount of Rs.5,000/- awarded under the head of transportation and special diet is enhanced to Rs.10,000/- and amount of Rs.5,000/- awarded for the pain and suffering to the claimant is enhanced to Rs.25,000/-. The rate of

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interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 17.02.2014 passed by the Tribunal is modified. The appellant-claimant is held entitled to enhanced compensation of Rs.37,000/- in addition to the amount of Rs.1,29,000/- already awarded by learned Tribunal. The enhanced amount of compensation shall be deposited by respondent No.3- insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

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