

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

FAO No.5940 of 2013

Date of decision : 01.02.2016

Mangal Ram

.....Appellant

Versus

Vinod Kumar and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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

Ms. Kaavya Jariyal, Advocate for
Mr. T.K. Joshi, Advocate for respondent No.2.

DARSHAN SINGH, J.

The present appeal has been preferred by appellant-claimant Mangal Ram against the award dated 04.04.2013, passed by the learned Motor Accidents Claims Tribunal, Panchkula (hereinafter called the 'Tribunal').

2. The appellant-claimant aged about 70 years has filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') for grant of compensation to the tune of

Rs.5,00,000/- on account of injuries suffered by him in the motor vehicular accident, which took place on 24.11.2010.

3. The petition filed by the appellant was contested by the respondents.

4. The learned Tribunal has awarded the compensation to the tune of Rs.2,25,307/-.

5. Dissatisfied with the quantum of compensation, the present appeal has been preferred by the appellant for seeking enhancement of the compensation.

6. I have heard Mr. G.S. Sandhu, Advocate for Mr. J.S. Cooner, Advocate, learned counsel for the appellant, Ms. Kaavya Jariyal, Advocate for Mr. T.K. Joshi, Advocate, learned counsel for respondent No.2 and gone through the paper-book.

7. Learned counsel for the appellant contended that the learned Tribunal has not awarded any compensation to the claimant towards loss of income. He contended that the claimant was hale and hearty and was working as an agriculturist. He was earning Rs.10,000/- per month. Due to the injuries suffered by him, he remained confined to bed for about three months. He further contended that the less amount has been awarded towards permanent disability. The claimant has suffered 70% permanent disability of the lower limb but the learned Tribunal has taken into consideration only 25% functional disability. Thus, he pleaded for enhancement of the compensation.

8. Per contra, learned counsel for the respondent contended

that the claimant was more than 70 years of age and a retired person. He was not having any income. So, there was not question of any loss of income. His functional disability has also been rightly taken by the learned Tribunal. Thus, she pleaded that just and appropriate amount of compensation has been awarded by the learned Tribunal.

9. I have duly considered the aforesaid contentions.

10. The claimant had retired from Indian Army. The claimant has not led any evidence to show that he was owing or possessing any agricultural land. So, the plea raised by the claimant that he was an agriculturist and was earning Rs.10,000/- per month is not supported from any evidence. The claimant was a retired person of about 70 years of age. So, he must be leading the retired life. So, there was no question of the loss of income to the claimant on account of the injury suffered in this accident.

11. The claimant has suffered 70% permanent disability of the lower limb. The learned Tribunal while relying upon the case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1*** has rightly concluded that the percentage of the permanent disability cannot be assumed to be the percentage of loss of earning capacity and in order to compute the compensation, the functional disability has to be taken into consideration. The learned Tribunal has taken into consideration 25% functional disability of the appellant and has awarded Rs.75,000/- as compensation under this head. As already discussed the appellant was a retired person leading the retired life, so the compensation awarded under this head

seems to be just and appropriate.

12. Thus, keeping in view my aforesaid discussion, there is no merits in the present appeal and the same is hereby dismissed.

01.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**