IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.5705 of 2014.
Date of Decision: 04.04.2016.

Ritesh Goel ....Appellant.

VERSUS

Parkash and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. J.P. Sharma, Advocate for the appellant.

Mr. Vinod Chaudhari, Advocate for respondent No.3.

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SNEH PRASHAR, J.

This appeal was filed by appellant-claimant Ritesh Goel seeking enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Narnaul (for short, "the Tribunal") vide the award dated 06.03.2014 passed in MACT Petition No.07 of 2011/2014, filed by him on account of injuries sustained in a vehicular accident.

Appellant was 25 years old and was a wholesaler of poultry medicines. Due to the multiple grievous injuries sustained by him in a motor accident that took place on 03.02.2010 when he was returning to Narnaul from Mahendergarh by means of his motorcycle and was hit by a truck bearing registration No.PB-10CD-8597, he suffered permanent physical impairment and as per the disability certificate Ex.PW1/A proved by PW1 Dr. Dinesh Podar, his disability was assessed as 80% on account of amputation of right femur lower (1/3rd region).

The appellant pleaded that he was earning Rs.15,000/- per month but on the basis of income tax return for the year 2008-2009 Ex.PW4/A wherein his income was shown as Rs.1,06,465/- per annum and the income tax return for the year 2009-2010 Ex.P88 according to which his income for the said financial year was Rs.1,60,554/- per annum, learned Tribunal on average basis assessed his income as Rs.11,126/- per month and assuming the permanent functional disability qua whole body as 20%, awarded compensation to the tune of Rs.11,22,937/-, the details of which is as under:-

Medical expenses	:	Rs.2,92,294/-
Pain and suffering	:	Rs.40,000/-
Special diet	:	Rs.30,000/-
Transportation	:	Rs.30,000/-
Loss of future income	:	Rs.4,80,643/-
Loss of amenities	:	Rs.2,40,000/-
Loss of income	:	Rs.10,000/-
Total	:	Rs.11,22,937/-

Feeling dissatisfied with the award, the appellant preferred the instant appeal.

The submissions made by Mr. J.P. Sharma, learned counsel for the appellant and Mr. Vinod Chaudhari, learned counsel for respondent

No.3-insurance company have been heard and record perused.

Learned counsel for the appellant argued that on account of amputation of right leg the appellant has lost almost 100% earning capacity. The nature of his job demanded that he should personally visit the poultry farms for selling medicines. Because of amputation of right leg he has become incapable of travelling independently and his work has come to a halt. His functional disability had been wrongly assessed as 20% by learned Tribunal and he has not been adequately compensated. During the period of his hospitalization the appellant required a full time attendant but no amount was awarded to him on that count. The amount awarded as loss of income during the period of treatment and hospitalization is also on the lower side. To support his argument that the loss of working capacity would be to the extent of permanent disability i.e. 80% suffered by the appellant, learned counsel relied upon ***New India Assurance Co. Ltd. vs. Sukanta Kumar Behera and others, 2015(2) R.C.R. (Civil) 277.***

On the other hand, learned counsel for the respondent-insurance company argued that no evidence was led by the appellant to prove that he had to close the business of wholesale of poultry medicines because of the disability suffered by him. In absence of evidence to that effect it cannot be said that the appellant had suffered loss in future earning capacity. He may have to change the mode of his working due to amputation of leg but he is still capable of doing the same business.

As regards, income of the appellant, learned Tribunal rightly assessed the same as Rs.11,126/- on average basis considering the income tax returns of the appellant tendered in evidence. In his cross-examination, the appellant admitted that he had no diploma in pharmacy and was running business of wholesaler of poultry medicines by keeping an employee who is having the required diploma. He did not state that the services of his employee have been terminated and he has closed the business. When he was doing business with the help of a qualified employee, there was no reason for him to shut the business and he must be continuing with the same. In Sukanta Kumar Behera and others' case (supra) the appellant was a senior medical officer and owing to the permanent disability to the extent of 15% suffered by him his services were terminated, but in the instant case the statement of the appellant proves that there was no reason for him to close down the business being run by him and he had ways and means to continue with the same.

Having said the above, the fact remains that due to amputation of leg the self effort of the appellant in maintaining the business and developing the same would definitely be affected. In other words, he is bound to face loss in earning capacity. The 80% disability suffered by the appellant is qua right lower limb. In view of the law laid down in ***Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101*** the permanent functional disability of the appellant is taken as 45% which will amount to loss of earning capacity to the tune of Rs.60,080/- per annum (11,126 x 45% x 12). The appellant was 25 years old when he met with the accident. Applying the multiplier of '18' the amount comes to Rs.10,81,440/-. Accordingly, the amount of Rs.4,80,643/- awarded by learned Tribunal for loss of future income is enhanced to Rs.10,81,440/-. A further amount of Rs.20,000/- is allowed to the appellant as attendant charges during the period he remained confined to bed. The amount awarded towards medical expenses, pain and suffering, special diet, transportation, loss of enjoyment of amenities in life and loss of income is adequate and calls for no modification.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 06.03.2014 passed by the Tribunal is modified. The enhanced compensation of Rs.6,20,797/- shall be deposited by the respondents 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

04.04.2016.
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