

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

FAO No.6432 of 2013

Date of decision : 12.05.2016

Darshan Singh

.....Appellant

Versus

Jatinder Singh 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. S.S. Sidhu, Advocate for appellant.

Ms. M.B. Jain, Advocate for respondent No.2.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant against the award dated 02.09.2013, passed by the learned Motor Accidents Claims Tribunal, Rupnagar (hereinafter called the 'Tribunal') vide which the appellant-claimant has been awarded compensation to the tune of Rs.5,26,621/- along with interest at the rate of 6% per annum on account of the injuries suffered by him in the motor vehicular accident, which took place on 01.05.2011.

2. The present appeal has been preferred by the appellant-claimant for enhancement of the amount of compensation.

3. Learned counsel for the appellant-claimant contended that the claimants has suffered 80% permanent disability due to amputation of right leg above knee. The claimant was a driver by profession and was getting salary at the rate of Rs.15,000/- per month. He was 35 years of age at the time of the accident. The learned Tribunal has awarded Rs.1,75,000/- as compensation towards permanent disability in lump sum. The amount of the compensation has not been calculated by taking into consideration the loss of his earning capacity and by applying the suitable multiplier. He further contended that nothing has been awarded to the claimant towards attendant charges. Very less amount has been awarded towards pain and suffering and loss of income. No compensation has been awarded to the claimant towards loss of amenities and enjoyment of life. Thus, he contended that the compensation awarded by the learned Tribunal to the claimant is highly inadequate.

4. On the other hand, Mr. M.B. Jain, Advocate, learned counsel for the respondent-Insurance Company contended that a compensation to the tune of Rs.5,26,621/- has been awarded to the claimant. The learned Tribunal has taken into consideration all the aspects of the case while computing the compensation. He contended that there was no evidence to establish that the claimant was working as a driver and was earning Rs.15,000/- per month. He further contended that

the disability suffered by the claimant was only qua one limb and not qua the whole body. Thus, he contended that there is no scope for further enhancement.

5. I have duly considered the aforesaid contentions.

6. The learned Tribunal has awarded a total sum of Rs.5,26,621/- as compensation to the claimant on account of the injuries suffered by him in this accident. The learned Tribunal has awarded Rs.3,21,621/- towards medical expenditure on the basis of the bills Ex.P10 to Ex.P42. The learned Tribunal has also mentioned that it also includes expenditure for fixing the artificial limb. In addition to that Rs.1,75,000/- has been awarded towards permanent disability, Rs.10,000/- on account of pain and suffering, Rs.10,000/- on account of loss of income, Rs.5000/- towards special diet and Rs.5000/- towards transportation. PW-3 Dr. Navtej Pal Singh has proved the disability certificate Ex.P1. As per that disability certificate the claimant has suffered 80% permanent disability as the right leg of the claimant was amputated above knee. The learned Tribunal has awarded a sum of Rs.1,75,000/- in lump sum for the aforesaid disability. That is not the correct way to award the compensation on account of disability. The learned Tribunal should have determined the income of the claimant, then the impact of the disability on future earning capacity should have been taken into consideration and by applying the multiplier the amount of compensation on account of permanent disability should have been

calculated.

7. The appellant-claimant has alleged that he was an agriculturist and was also working as a driver and was earning Rs.15,000/- per month. But the appellant-claimant has not led any evidence to establish his profession and income. The claimant has not placed on record any revenue record to show that he was having any agriculture land. There is also no evidence to show that he was working as a driver. The particulars of the person with whom he was working as a driver have not been disclosed nor any such person has been examined. So, the claimant has not been able to establish that he was an agriculturist and driver by profession and was earning Rs.15,000/- per month. However, there is no denial to the fact that he was a young man of 35 years of age and was hale and hearty. Even by working as a labourer, he could have easily earn Rs.4000/- per month.

8. As per the disability certificate Ex.P1, the appellant-claimant has suffered 80% permanent disability on account of the amputation of right leg above knee but this disability is only qua one limb and not the whole body. Moreover, the Hon'ble Supreme Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1***, has laid down that future loss of earning cannot be assessed on the basis of percentage of the permanent disability but that has to be assessed on the basis of percentage of functional disability *i.e.* effect or impact of such permanent disability on his earning capacity. In that case the claimant has suffered 45%

permanent disability but the Hon'ble Apex Court has considered the permanent functional disability to the extent of 25% and loss of future earning capacity as 20%. In my opinion due to the permanent disability, the appellant-claimant must have suffered the loss of the future income to the extent of 50%. So, the monthly loss comes to Rs.2000/- and the annual loss comes to Rs.24,000/-. The appellant was 35 years of age at the time of the accident, so the multiplier of 16 shall be applicable. The compensation on account of functional disability suffered by the claimant comes to Rs.3,84,000/- (24,000 x 16) instead of Rs.1,75,000/- as awarded by the learned Tribunal.

9. In view of the injuries suffered by the appellant-claimant, he shall be entitled to a sum of Rs.20,000/- on account of pain and suffering, instead of Rs.10,000/- as awarded by learned Tribunal. The learned Tribunal has rightly awarded sum of Rs.10,000/- towards loss of income. As the claimant has suffered serious injuries leading to amputation of right leg, so he might have required the service of attendant at least for a period of two months and shall be entitled to a sum of Rs.4000/- on account of attendant charges. The appellant-claimant has lost his right leg above knee and has become handicapped for whole of his life, so certainly he has suffered loss of amenities and enjoyment of life and shall be entitled to a sum of Rs.1,00,000/- on account of loss of amenity and enjoyment of life.

10. With the aforesaid increase, the amount of compensation

payable to the appellant-claimant will be as follows:-

Sr. No.	Compensation heads	Amount in rupees
1.	Medical expenses	3,21,621 (as awarded by the Tribunal)
2.	Permanent disability	3,84,000 (as enhanced by this Court)
3.	Pain and suffering	20,000 (as enhanced by this Court)
4.	Loss of income	10,000 (as awarded by the Tribunal)
4.	Special diet	5000 (as awarded by the Tribunal)
6.	Transportation charges	5000 (as awarded by the Tribunal)
7.	Attendant charges	4000 (as enhanced by this Court)
8.	Loss of amenities and enjoyment of life	1,00,000 (as enhanced by this Court)
Total		8,49,621

11. In this way the amount of compensation payable to the appellant-claimant comes to Rs.8,49,621/- instead of Rs.5,26,621/- as awarded by the learned Tribunal.

12. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation is enhanced to Rs.8,49,621/- from Rs.5,26,621/- as awarded by the learned Tribunal. The appellant-claimant shall also be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

12.05.2016
sunil yadav

(DARSHAN SINGH)
JUDGE