

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

FAO No.934 of 2013.

Date of Decision: 03.05.2016.

Ram Dass

....Appellant.

VERSUS

Rajwant Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ravi Gakhar, Advocate for
Mr. Jagdish Manchanda, Advocate for the appellant.

Mr. Ramesh Kumar, Assistant Advocate General, Haryana
for respondents No.2 and 3.

Mr. M.B. Jain, Advocate for respondent No.4.

SNEH PRASHAR, J.

By way of this appeal, appellant-claimant Ram Dass seeks enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Kaithal (for short, “the Tribunal”) vide award dated 09.05.2012 passed in MACT Case No.29 of 2011, filed by him on account of injuries sustained in a vehicular accident on 07.07.2009.

The submissions made by Mr. Ravi Gakhar, learned counsel for the appellant, Mr. Ramesh Kumar, learned Assistant Advocate General, Haryana for respondents No.2 and 3 and Mr. M.B. Jain, learned counsel for respondent No.4 have been heard and record perused.

Learned counsel for the appellant argued that due to the injuries suffered by the appellant during the accident, he has become permanently disabled. Ex.P19 is the disability certificate proved by PW6 Dr. Sujata Sethi, Senior Professor, P.G.I.M.S., Rohtak, according to which the disability suffered by the appellant relating to his both eyes and IQ was assessed as 68%, however, learned Tribunal awarded only Rs.1,35,000/- on this count. The amount of Rs.10,000/- awarded for the pain and suffering is on the lower side and nothing was awarded for expenditure on transportation and attendant. The appellant suffered huge loss of income during the period of his hospitalization and follow up treatment but nothing was awarded on that count also.

On the other hand, learned counsel for the respondents submitted that no evidence has been led by the appellant to prove that he was facing loss in future earning capacity due to the disability suffered by him. There is also no evidence to prove that he is unable to continue with his occupation and the compensation awarded by learned Tribunal is adequate.

The appellant appeared in the witness box and made a deposition giving details of the accident as well as the facts relevant for proving the pecuniary and non-pecuniary loss suffered by him. No medical evidence or expert opinion was produced by him to prove that he had become incapable of doing the work he was already engaged in for earning livelihood for himself and his family. But at the same time it is important to

note that PW6 Dr. Sujata Sethi, Senior Professor, Department of Psychiatry, P.G.I.M.S., Rohtak proving the disability certificate Ex.P19 had given the detail of the disability as under:-

“Visual disability is 40% and intellectual disability is 50% and after calculating the disability of whole body the disability of the patient comes to 68%. ”

Dr. Sujata Sethi PW6 added that there is no chance of reduction of disability by passage of time or active treatment.

Since the appellant suffered visual disability to the extent of 40% and his IQ had also been effected, there remains no doubt that the disability will adversely affect his future earning capacity. PW3 Dr. Anand Kumar Goel stated that the appellant had worked at his clinic from 01.04.2009 to 06.07.2009 in the capacity of P.R.O.-cum-Helper and during this period he had paid him Rs.7000/- as salary but he could produce no salary register, attendance register or any other record maintained at his clinic to prove that the appellant was employed with him. Also no document was produced by the appellant that he was qualified to work in the capacity of P.R.O.-cum-Helper at an Ultrasound and X-ray Centre. There being no substantive evidence to prove the qualification, occupation and income of the appellant, considering the relevant year and other relevant circumstances, his income is assessed as Rs.4200/- per month. The appellant mentioned his age as 36 years when he appeared in the witness box on 28.02.2012 which means that on the date of accident i.e. 07.07.2009

he was 33 years aged.

In **Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R.**

(Civil) 101, Hon'ble Supreme Court held as under:-

“The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.”

Elaborating the method of ascertaining effect of the permanent disability on the actual earning capacity, Hon'ble Apex Court in Para No.10 of Raj Kumar's case (supra) held as under:-

“Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60%

which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand.

Since the disability of the appellant relates to both eyes as well as IQ, his permanent functional disability is taken as 35% which will amount to loss of earning capacity to the tune of Rs.17,640/- per annum (4200 x 35% x 12). The appellant was 33 years old when he met with the accident. Applying the multiplier of '16' the amount comes to Rs.2,82,240/-. Accordingly, the amount of Rs.1,35,000/- awarded by learned Tribunal on account of disability is enhanced to Rs.2,82,240/-. The appellant suffered multiple grievous injuries and remained hospitalized for four days i.e. from 07.07.2009 to 11.07.2009. Considering the nature of injuries suffered by him and the period of his hospitalization, the amount of Rs.10,000/- awarded as compensation for pain and suffering undergone by him is enhanced to Rs.30,000/-.

Needless to say that during the period of hospitalization, the appellant required a full time attendant. Even if his family members were attending on him, it is obvious that he must have spent a good amount on their transportation and boarding-lodging. He also must have spent on his own transportation etc. On all these counts, a further amount of Rs.10,000/- is allowed. The amount of Rs.6380/- awarded towards medical treatment and Rs.10,000/- awarded on account of special diet is adequate and calls for

no modification. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 09.05.2012 passed by learned Tribunal is modified. The enhanced compensation of Rs.1,77,240/- shall be paid to the appellant 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

03.05.2016.
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