

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

FAO No.8907 of 2014

Date of decision : 28.05.2016

Shankar Singh

.....Appellant

Versus

Deen Bandu and others

...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. J.P. Sharma, Advocate for appellant.

Mr. Sanjeev Goyal, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 05.07.2014 passed by the learned Motor Accidents Claims Tribunal Narnaul (hereinafter called the Tribunal) vide which the appellant-claimant has been awarded compensation to the tune of Rs.1,29,500/- on account of the injuries suffered by in the motor vehicular accident which took place on 05.09.2012.

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 claimant has suffered 12% of the permanent disability. He was 19 years

of age. He was earning Rs.15,000/- per month by working as an electrician but the learned Tribunal has only awarded the compensation to the tune of Rs.24,000/- on account of permanent disability. He further contended that no separate amount of compensation has been awarded towards special diet and attendant charges. Thus, he contended that the compensation awarded by the learned Tribunal is highly inadequate.

4. On the other hand, Mr. Sanjeev Goyal, Advocate, learned counsel for respondent No.3 contended that the learned Tribunal has taken into account all the heads while computing the compensation. Sufficient compensation has been awarded on account of permanent disability suffered by the claimant. There was no evidence to show that the claimant was working as an electrician and was earning Rs.15,000/- per month. He further contended that 12% disability suffered by the claimant was only with respect to a particular limb. It can also not be considered to be the functional disability of the claimant. Thus, he contended that the just compensation has been awarded by the learned Tribunal.

5. I have duly considered the aforesaid contentions.

6. The learned Tribunal has awarded a total sum of Rs.1,29,500/- as compensation to the claimant on account of the injuries suffered by him. Rs.86,903/- has been awarded on account of medicines and hospitalization charges. Rs.8550/- has been awarded as transportation charges. Rs.24,000/- have been awarded on account of 12% permanent disability suffered by the claimant. Rs.10,000/- has been awarded towards pain and suffering, diet and attendant charges.

7. Ex.P14 is the disability certificate, which shows that claimant Shankar Singh has suffered 12% permanent disability on account of restriction of movement of left knee joint and ankle joint. So, the disability suffered by the claimant was only on account of a particular limb i.e. left knee joint and ankle joint and not qua whole body. 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 the instant case in view of the nature of permanent disability suffered by the claimant, only 7% permanent disability can be taken into consideration which will have an impact on the future earning of the claimant.

8. The claimant has alleged that he was doing the private job of electrician and was earning Rs.15,000/- per month. In the cross-examination he deposed that he has not brought any proof of income. He further admitted that he had no record regarding job work which was performed by him. Thus, there is no documentary evidence with respect to the profession and income of the claimant. However, there is no denial to the fact that claimant was a young man of 19 years of age. He was hale and hearty and even by working as a labourer he could have easily earned

Rs.4000/- per month *i.e.* Rs.48,000/- per annum. Thus, the compensation on account of permanent disability comes to Rs.60,480/- (48,000 x 7 x 18 / 100).

9. The learned Tribunal has already awarded a sum of Rs.8550/- towards transportation charges, which are quite sufficient. The learned Tribunal has awarded a sum of Rs.10,000/- towards pain and suffering, special diet and attendant charges. The same is enhanced to Rs.15,000/-.

10. The learned Tribunal has not awarded any compensation to the claimant towards loss of income. The claimant has suffered fracture hemorous left and patella and nailing was done. So, the claimant must had remained confined to bed at least for a period of two month. So, the claimant shall be entitled to a sum of Rs.8000/- on account of loss of income. Thus, the compensation payable to the claimant comes to Rs.1,78,933/-.

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellant-claimant is enhanced to Rs.1,78,933/- from Rs.1,29,500/- as awarded by the Tribunal. The appellant-claimant shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

28.05.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**