

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

FAO No.9213 of 2014

Date of decision : 19.08.2016

Damanjeet Singh

.....Appellant

Versus

Upkar Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. R.K. Shukla, Advocate for appellant.

Mr. Amit Kundra, Advocate for
respondent No.3-Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant Damanjeet Singh against the award dated 22.07.2014 passed by learned Motor Accidents Claims Tribunal, Fatehgarh Sahib (hereinafter Called the “Tribunal”), vide which he has been awarded compensation to the tune of ₹8,70,000/- on account of the injuries suffered by him in the motor vehicular accident which took place on 27.10.2011.

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

3. I have heard learned counsel for the parties and have gone through the record of the case meticulously.

4. Learned counsel for the appellant contended that claimant has suffered 35% permanent disability as a result of the injury suffered in

this accident but the learned Tribunal has awarded only ₹70,000/- on account of the permanent disability in lump sum whereas the compensation on account of the permanent disability should have been assessed by taking into consideration the notional income of the injured claimant and by applying the multiplier. He further contended that no amount of compensation has been awarded by the learned Tribunal towards loss of enjoyment and amenities of life and adverse effect on the marriage prospects of the appellant.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that the claimant has already been awarded handsome compensation by the learned Tribunal i.e. ₹8,70,000/-. Thus, just compensation has already been awarded to the appellant by the learned Tribunal and there is no scope for any further enhancement.

6. I have duly considered the aforesaid contentions.

7. Ex.C6 is the disability certificate which has been proved by CW6 Dr. Parshotam Dass, Orthopedic Specialist. He deposed that the appellant had compound fracture both bones of right leg with arthodesed ankle and fracture femur right side with delayed union. As per the disability certificate Ex.C6 and the statement of CW6 Dr. Parshotam Dass, the claimant has suffered 35% permanent disability.

8. The learned Tribunal has awarded ₹70,000/- as compensation on account of disability in lump sum, which is not the correct method to assess the compensation on account of the disability. The learned Tribunal should have determined the notional income of the deceased, then taking into consideration the functional disability the multiplier should have

been applied.

9. In the instant case, the claimant was a student of B. Tech. He has also alleged that he was also running the dairy farming and was earning ₹15,000/- per month. It is not believable that a student of B. Tech. can also run the dairy farming, which is a whole time job. So, claimant Damanjeet Singh was only a student of B. Tech. and his notional income is taken to be ₹5000/- per month *i.e.* ₹60,000/- per annum.

10. 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 capacity 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 claimant has suffered total 35% permanent disability. 20% of the disability suffered by him is taken to be the functional disability. He was 21 years of age at the time of the accident. So, the multiplier of 18 shall be applicable. Thus, the compensation on account of the disability suffered by the claimant comes to ₹2,16,000/- (60,000 x 20 x 18 / 100). So, the amount under this head is hereby enhanced from ₹70,000/- to ₹2,16,000/-.

11. The claimant has not been awarded any compensation by the learned Tribunal on account of loss of amenities and enjoyment of life. So, he will be further entitled to a sum of ₹40,000/- on account of loss of amenities and enjoyment of life. Thus, the total increase in the amount of

compensation comes to ₹1,86,000/- (2,16,000 + 40,000 – 70,000).

12. The claimant has not suffered that type of permanent disability which may adversely affect his marriage prospects. So, the claimant shall not be entitled to any compensation under this head.

13. 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 ₹10,56,000/- from ₹8,70,000/- as awarded by the Tribunal. The appellant-claimant shall also 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.

19.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No