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

**FAO No. 155 of 2002
Decided on: 04.09.2017**

Mangal Din**.....Appellant**

versus

Dhera Singh and others**.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Ms. Ekta Thakur, Advocate,
for the appellant.

Mr. Ravinder Arora, Advocate
for respondent No. 3-Insurance Company.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the injured claimant against the award passed by the Motor Accident Claims Tribunal, Chandigarh on account of insufficiency of the compensation awarded.

The brief facts of the case are that, on 23.02.1999, he was driving a Maruti van bearing registration No. CH-01-X-6249. He was going from Village Mauli Jagran to Kalka. When he crossed the railway crossing and had gone about 150 yards towards Kalka, Mini Bus bearing registration No. HP-15-1307 came from the opposite side which was being driven by respondent No.1 in a rash and negligent manner at a very high speed. The mini bus driven by respondent No. 1 struck against the van being driven by the claimant and the van turned turtle. The offending bus stopped only when it struck against the big Eucalyptus tree at a distance of 50 feet and that too on the wrong side at Kucha portion. In this accident, the

appellant suffered multiple fractures in his both legs. He was first given treatment at Kalka Hospital and later on; he was shifted to PGI, Chandigarh. Regarding that accident, the FIR No. 27 dated 23.05.1999 was also registered. In the accident in question, the appellant suffered 40% of disability. It was further claimed that monthly income of the appellant was Rs.4,000/-.

The respondents took the plea that accident did not happen due to the negligence of the offending bus and in fact it happened due to the negligence of the claimant himself. The Insurance Company took a plea that the offending bus was not insured with it on the date of accident.

Parties led their evidence. To prove his case, the claimant-appellant examined himself as PW-1. He also examined PW-2, Dr. Narinder Kumar Arora, Senior Medical Officer, General Hospital, Sector-16, Chandigarh; to prove his treatment and disability. The respondents did not produce any witness, however, they produced the copy of driving license as Ex-R1 and the insurance policy as Ex.R2.

The Tribunal while dealing with issue No. 1 held that respondent No. 1 was driving the mini bus rashly and negligently and caused the said accident. While deciding issues No. 2 and 3, the Tribunal held that respondent No. 3-Insurance Company has failed to lead any evidence to prove that the driver of the offending vehicle was not having any valid license at the time of accident. Rather, the documents, produced on record, show that the driver was having a valid license and the vehicle was insured.

Regarding the quantum of the compensation, the Tribunal held that the disability proved on record; though was 40% but this was with respect to the left lower limb. The Tribunal considered this disability qua the whole body and assessed it to be roughly 14%. The Tribunal assessed the age of the injured to be 21 years on the day of accident and taking the income of the appellant as a driver; the same was assessed to be Rs. 3,000/- per month. While calculating the loss of income, the Tribunal calculated the 14% loss of income and annual loss was calculated to be Rs. 5040/-. Then after applying the multiplier of 16, total loss of income on account of disability was assessed to be Rs. 80,640/- (5040 X 16).

Besides this, the appellant was awarded an amount of Rs. 15,000/- on account of pain and sufferings due to the operation, accident and fractures. Transportation charges were awarded at Rs. 10,515/- on the basis of the receipts produced on record by the claimants-appellants. Besides this, Rs. 5,500/- were awarded on account of attendant charges. Therefore, a total amount of Rs. 1,18,992/- was awarded as compensation to the appellant.

Assailing the award of the Tribunal, learned counsel for the appellant has submitted that the appellant has not been awarded any amount by the Tribunal for physical disability. His submission is that since disability is 40%, therefore, he is entitled to Rs. 80,000/- on account of physical disability. He has further argued that the income of the appellant has been wrongly assessed at Rs. 3,000/- per month whereas he has produced the certificate showing his salary as a driver to be Rs. 4,000/- per month. It is his further submission that

the multiplier of 18 should have been applied in view of the fact that the appellant was of the age of 21 years at the time of accident. It is his further submission that he had produced on record the medical bills amounting to Rs. 8,337/- through Ex.P3 to Ex. P65. However, the Tribunal has not considered these bills and have not awarded any amount on account of medical expenses. Still further the amount of pain and sufferings, transportation and attendant charges have also been assailed by the counsel for the appellant on the ground that the same are grossly insufficient.

After hearing learned counsel for the parties and perusing the record, this Court finds that reduction of disability by the Tribunal from 40% to 14% was not based on any document or on the basis of any criteria. Once, the doctor has proved the disability to be 40% then the same cannot be reduced by the Tribunal. The assessment of the disability falls in the domain of the medically qualified person. Since the appellant has been taken to be a driver while considering his notional income, that would show that disability of the appellant was a functional disability because the function of the left leg in the driving process is directly important. The injuries to the left leg directly affects the capability of the person to drive a vehicle. Therefore, the Tribunal should not have reduced the disability from 40% to 14% on the ground that the disability has to be assessed with reference to the whole body. The functional relevance of the disability in the present case requires that the disability has to be read as it is. Therefore, the disability is retained as at 40% by setting aside the conclusion arrived at by the Tribunal in this regard.

A perusal of the award also shows that no amount has been awarded on account of suffering physical disability by the appellant. As per the normal formula also, the appellant is entitled to Rs. 80,000/- on account of physical disability suffered by him. Therefore, the same is awarded to the appellant.

So far as the compensation on account of loss of income is concerned, that also has to be increased as a consequence of setting aside the conclusion of the Tribunal regarding reducing the extent of disability. Hence, while retaining the conclusion of the Tribunal qua the income assessed. The loss of income is assessed at 40% of Rs. 3,000/-. So, the loss of monthly income with reference to 40% disability is assessed to be Rs. 1200/- per month. Hence, the annual loss of income would be Rs. 14,400/-.

The argument of learned counsel for the appellant that the multiplier of 18 should have been applied in view of the age of the appellant being 21 years at the time of accident, is also justified and is supported by the judgment of Hon'ble the Supreme Court. Therefore, the multiplier applied in the case is enhanced from 16 to 18. Hence, a total amount of Rs. 2,59,200/- (14400×18) is assessed as loss of income due to disability.

So far as the amount awarded on account of pain and sufferings, transportation charges and the attendant charges are concerned; there does not appear to be anything wrong in the assessment made by the Tribunal. The award of the compensation on these counts by the Tribunal is upheld.

However, it is apparent that no amount had been

awarded on medical bills and treatment taken by the appellant. Therefore, as per the bills, Ex. P-3 to Ex. P65, an amount of Rs. 8,337/- is awarded on account of medical bills and treatment as well.

In view of the above, the appellant is awarded compensation as under:-

1	Compensation on account of physical disability	Rs. 80,000/-
2	Compensation on account of loss of income(14400 X 18)	Rs. 2,59,200/-
3	Compensation on account of pain and sufferings	Rs. 15,000/-
4	Compensation on account of Transportation	Rs. 10,515/-
5	Compensation on account of attendant charges	Rs. 4,500/-
6	Compensation on account of medical bills	Rs. 8,337/-

Total:- Rs. 3,77,552 /-

The interest awarded by the Tribunal is retained as such.

In view of the above, the award of the Tribunal is modified to the above extent. The appeal is allowed.

4th September, 2017

shabha

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes