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

**FAO No. 2427 of 1996 (O&M)
Date of Decision: 26.04.2017**

Sat Pal Garg

... Appellant

vs.

Rajnesh Kumar and others

... Respondents

with FAO No. 2428 of 1996
Manohar Lal Mittal

... Appellant

vs.

Rajnesh Kumar and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. S.D. Bansal, Advocate
for the appellants.**

**Mr. Deepak Suri, Advocate
for respondent No.5 New India Assurance Co.**

**Mr. Pardeep Goyal, Advocate and
Mr. Abhishek Goyal, Advocate
for respondent No.6 National Insurance Co.**

ANITA CHAUDHRY, J.

These are two appeals arising out of an award dated 02.04.1996 passed by the Motor Accident Claims Tribunal, Patiala(for brevity, the Tribunal). Both the appellants are seeking enhancement in the award.

Sat Pal Garg, the then ADA and Manohar Lal Mittal, SDO, PSEB were travelling in a maruti car driven by Manohar Lal and they were going to Patiala with one other person namely Maninder

Singh. They had crossed Shambhu Barrier when a tanker bearing registration No. UHQ-305 driven by respondent No.2 came from the opposite direction. Behind the tanker a Fiat Car bearing No. UP11-8228 was following and was trying to over-take the tanker, but the driver was not allowing the driver of the car to over-take and both the vehicles were driven in a rash and negligent manner and in the process the tanker driver brought his tanker on the wrong side and struck against its rear right side. The driver of the Fiat car also could not control the vehicle and struck against the maruti car and the occupants suffered multiple injuries and fractures. Two claim petitions were filed which were consolidated.

Sat Pal appellant had suffered injuries on his face, head and both bones of right leg were fractured. He was admitted in two different hospitals and the injuries led to shortening of leg by one inch, resulting in permanent disability of 30%. The claimant was able to prove the bills only for Rs.6770/-. The Tribunal, however, awarded the following compensation under different heads:-

1	Compensation for pecuniary loss pertaining to medical expenses		Rs.25000/-
2	Compensation care and transport		Rs.5000/-
3	Compensation for expenses of physiotherapy treatment		Rs.2400/-
4	Compensation for expenses on High Protein Diet		Rs.10,000/-
5	Compensation for car with driver to drop at the office for five months		Rs.5000/-
6	Compensation on account of the salary medical leave		Rs.15,463/-
7	Compensation for permanent disability 30% pain and sufferings		Rs.50,000/-
	Total		1,12,863/-

The figure was rounded off to Rs.1,13,000/- payable with interest @ 12%. The driver, owner and insurer of both the vehicles were found jointly liable to pay the amount in equal shares.

Manohar Lal, SDO was 49 years old. He was admitted in the hospital for over a week. He had sustained fracture of the left shoulder, left leg. He suffered a disability of 20% and the Tribunal had awarded the following compensation:-

1	Medical treatment		Rs.20000/-
2	High Protein Diet		Rs.10,000/-
3	Physiotherapic Treatment		Rs.2400/-
4	Expenses on attendant and car driver		Rs.10,000/-
5	For 20% permanent disability		Rs.50,000/-
6	For scar on nose and disfigurement		Rs.7600/-
	Total		1,00,000/-

The amount was to be paid in equal shares by the owner, driver and insurer of the offending vehicle with 12% interest.

I have heard learned counsel for the parties and have gone through the records carefully.

The submission on behalf of appellant Satpal was that he was 50 years old and had suffered disability to the extent of 30% with shortening of leg and his leg remained under plaster for over five months and the multiplier method should have been applied to calculate the amount for the disability. Counsel refers to **Raj Kumar Vs. Ajay Kumar & Anrs. 2011(1) SCC 343.** It was urged that the face of the appellant was disfigured and the treatment was still going on and he had not been adequately compensated.

So far as appellant Manohar Lal Mittal is concerned, it was urged that the amount allowed for the medical expenses was only

Rs.20,000/- though the claim of Rs.40,000/- was made. It was urged that he had sustained injury on the right eye and the appellant was unable to attend to the daily chores and had to hire an attendant. It was submitted that the appellant had suffered disability to the extent of 30% and only a sum of Rs.50,000/- was awarded and the multiplier method should have been adopted to calculate the compensation.

The submission on the other hand was that both the appellants were the Government employee and there was no loss of income and they were getting the same salary nor there was any demotion nor any loss of future earnings.

It was urged that the appellant Sat Pal Garg had only produced the bills of Rs.6770/-, but the Tribunal had awarded Rs.25,000/-. He had further submitted that only few bills were produced by appellant Manohar Lal Mittal and the Tribunal had noted the fact that there was no positive evidence to show that he had spent sufficient amount as claimed by him and the Tribunal had allowed Rs.20,000/-, but the bills were much less in number and already a higher amount had been awarded. He had further urged that there was no evidence to show that any expenditure was made after the award had been made and it was the duty of the appellants to place on record those bills to claim additional amount. According to learned counsel, when there was no evidence, it can be presumed that the bills were reimbursed from the office.

In the present case, the appellants were government employees and there was no loss of earning capacity. The Tribunal had allowed the loss on account of medical leave. It had awarded adequate compensation for their treatment, physiotherapy, special diet, for the attendant. A sum of Rs.50,000/- for the disability and pain and suffering. The percentage of permanent disability given by the Medical Officer was with reference to the whole body and cannot be assumed to the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability and each case has to be seen on its own facts, the nature of profession, the job, the age and the other factors. There may be cases where there is no loss of earning capacity, but it results in the loss of amenities. It has to be seen whether the claimant could effectively carry on the same activities which he was earlier carrying or whether he was prevented from discharging his previous activities or a lesser scale of activities. It has also to be assessed as to what was the functional disability.

In the present case, there was no loss of income so far as both the appellants are concerned. There was no demotion. They were carrying on the same work and were not stripped of any duty. However, there was loss of amenities and the compensation on the head of permanent disability leading to loss of amenities should have been calculated by adopting the multiplier method.

The record reveals that the appellant Sat Pal was getting salary of Rs.5985/-, which is rounded off to Rs.6000/-. Taking the functional disability to be 20% and applying the multiplier of 13, the loss comes to Rs.1,87,200/- (1200x12x13). The Tribunal had awarded

Rs.50,000/- which would be deducted and the remaining amount of Rs. 1,37,200/- shall be payable with interest @ 6% w.e.f. January, 1997 till realization.

Likewise, the annual income of appellant Manohar Lal Mittal, as mentioned in the petition, was Rs.6000/- per month. Taking the functional disability to be 10% and applying the multiplier of 13, the loss comes to Rs.93,600/- (600x12x13). The Tribunal had awarded Rs.50,000/- which would be deducted and the remaining amount of Rs. 43,600/- shall be payable with interest @ 6% w.e.f. January, 1997 till realization.

The Tribunal had awarded the compensation to the appellants under each of the heads and no further addition should be made, except mentioned above. The appellants had adequately been compensated as per the price index existing in that year.

The appeals are partly allowed. It is held that appellant Sat Pal Garg is entitled to Rs.1,37,200/- and appellant Manohar Lal Mittal is held entitled to Rs.43,600/-. The enhanced amount of compensation shall be shared in the same proportion as was directed by the Tribunal and shall be paid to the appellants along with interest @ 6% per annum w.e.f. January 1997 till realization.

26.04.2017 **(ANITA CHAUDHRY)**
Jiten **JUDGE**

Whether speaking/ reasoned Yes/ No

Whether reportable Yes/ No