

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

FAO No.1227 of 2001

Date of Decision.05.07.2017

Raghu Malhotra

.....Appellant

Vs

Harvinder Singh and others

.....Respondents

Present: Mr. Atul Gaur, Advocate and
Mr. Sumeet Goel, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal is for enhancement of compensation for injuries suffered in a motor accident that took place on 6.11.1997. The claimant was riding pillion on a scooter bearing No.CHL-1844 when another scooter bearing registration No.HR-49-0532, being driven rashly and negligently by respondent No.1, came from opposite and dashed against the scooter of claimant, resulting into serious injuries on vital parts of his body. He was taken to Civil Hospital, Sector 6, Panchkula from where he was referred to General Hospital, Sector 16, Chandigarh and remained admitted from 6.11.1997 to 17.11.1997 and later on received treatment from PGI. He suffered multiple fractures in right leg below knee, besides other injuries on right arm, hip joint, head and back etc. On account of aforementioned injuries, he was assessed to be permanently disabled to the extent of 30%. The claimant was running an iron store with the name and style of Malhotra Iron Store, near Bus Stand Pinjore and was also a partner in M/s Eros Expo International, Panchkula.

The claimant in his statement before the Tribunal deposed that he spent ₹3,50,000/- on his treatment, special diet, attendant charges and transportation etc. His wife has to obtain leave of 70 days to attend him. He was earning ₹10,000/- from his shop and was also earning ₹15,000/- from M/s Eros Expo International of which he was a partner and claimed a compensation of ₹15 lacs.

The Tribunal while assessing the compensation provided ₹30,000/- on his treatment, transportation and special diet etc, ₹15,000/- for pain and suffering, ₹5,000/- for loss of income and ₹79,200/-for loss of income due to disability, thus, in total awarded ₹1,32,000/-.

The contention of learned counsel appearing on behalf of the appellant is that the Tribunal has erred in taking the loss of future income of the claimant to the extent of ₹600/- per month whereas it took the income of the claimant as ₹4000/- per month and 30% of the same would come to ₹1200/- per month, thus, there is scope for enhancement, besides other heads of compensation viz; pain and suffering and expenses on medicines.

On the contrary, learned counsel appearing on behalf of the insurance company contends that the compensation assessed by the Tribunal is fair and just and there is no scope for enhancement, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gaur. As per the testimony of Dr. D.K. Pathak, Medical Officer, General Hospital, Sector 16, Chandigarh appeared as PW1, the claimant was operated upon 1/3rd tubular plates with three screw applied in the left lower limb and POP was applied for six weeks. Dr. Aditya Aggarwal, Assistant

Professor, Department of Orthopaedics appeared as PW2 and deposed that the claimant-Raghunath Malhotra reported as an outdoor patient in the department of Orthopaedics on 13.02.1998 and was found to have fracture tibial condyle right side with sub-luxation of right knee joint with fracture dislocation of right ankle joint. He was treated in the form of close reduction of knee joint sub luxation and application of plaster of paris. Dr. R.C. Jindal, Orthopaedic Surgeon, Civil Hospital, Ambala City appeared as PW6 to prove the disability certificate Ex.P11 and stated that the claimant had suffered 30% permanent disability.

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 disability (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. The aforementioned principles have been culled out by the Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar and another (2011) 1 SCC 343.**

In the present case, the claimant was running an iron store and

the PW6, Dr.R.C. Jindal stated in his cross-examination that the claimant can do the light work. In the present situation, it can be presumed that a person even with restricted movement of leg can effectively run a shop. Had he been doing labour work or any other physical work, which requires squatting, long standing, frequent bending down or walking then the proposition could have been different. In my view, no functional disability can be assessed, which can affect the earning capacity of the claimant being a shop owner.

Even otherwise, if I re-assess the other heads of claim like attendant charges, special diet, transportation, pain and suffering and loss of amenities, the amount would still come near about what has already been assessed by the Tribunal.

There is no scope for enhancement. The award passed by the Tribunal is upheld and the appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 05, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No