

In the High Court of Punjab and Haryana at Chandigarh

**F.A.O No. 4128 of 2001
Date of Decision: 02.3.2017**

Ram Juwari

.....Appellant

Versus

Jagmal Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Arvind Singh, Advocate
for the appellant.

Ms. Shamsheer Kaur, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

This is the claimant's appeal seeking enhancement of the award passed by the Motor Accident Claims Tribunal, Karnal.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Only the copy of the award could be reconstructed. The counsels appearing for the parties agreed that the matter can be decided on the basis of the award.

Ram Juwari, 35 years old met with an accident on 13.9.1998 and he sustained fracture of the right femur and suffered a wound on the inner right thigh. He had also sustained a fracture of the right clavicle, left wrist. The claimant remained hospitalized from 14.9.1998 to 30.10.1998 and K.nail was inserted and he underwent bone grafting.

A perusal of the judgment shows that the claimant had

was hospitalized upto 30.7.1999 and the doctors had issued a disability certificate Ex. PJ and according to it there was 100% disability in the right leg as it was shortened.

It appears from the judgment that the claimant was a JBT Teacher. It was claimed that he did not attend office for 13 months. No evidence was produced with respect to his salary. The Court assumed the salary to be around 6,000/- per month taking judicial notice and allowed the following compensation:-

Pain and suffering	Rs. 80,000/-
Medication and treatment	Rs. 1,06,200
Loss of income	Rs. 78,000/-
Transportation	Rs. 15,000/-
Special diet	Rs. 10,000
Pecuniary loss on account of permanent disability	Rs. 61,800/-

An award of Rs. 3,51,000/- was passed.

The submission on behalf of the appellant is that there was a long hospitalization and the appellant had engaged an attendant and he had visited the hospital on a number of occasions and no amount had been awarded for physiotherapy, transportation, attendant charges and very less amount had been awarded for pain and suffering.

The submission on the other hand was that there was no loss of income and the Court had awarded the amount for the leave period and the claimant had withheld his income and sufficient amount had been awarded. It was urged that the claimant did not lose his job and there was no loss of income and the shortening of leg would not affect any other aspect of his life. In ***Raj Kumar versus Ajay Kumar and another, Civil Appeal No.***

8981 of 2010 decided on 18.10.2010 the Apex Court had laid down the

principles for determining the loss and the affect of permanent disability on the actual earning capacity. It would be useful to refer to the relevant paragraphs:-

“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. 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 ability (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. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as

otherwise there may be a duplication in the award of compensation. Be that as it may.”

It is not in dispute that the claimant has not lost his job and is still working in the same position and there is no loss of income or employment therefore there was no loss of any future earnings and the disability has not reduced his earning capacity but the Tribunal has still awarded some amount towards permanent disability.

The claimant had failed to lead evidence with respect to his income nor he had summoned the record to show that he was on leave for 13 months. I find that there was a reference to a fitness certificate that the claimant was fit to resume his duty in December 1998 though the claimant could walk with crutches. The claimant did not summon the record from his office to actually show the period of leave taken by him. But from the statement of PW-3 it appears that the hospitalization was continuous. Since the records are not available therefore I would not choose to make any changes/modification. The amount of Rs. 78,000/- can be taken to be the amount for the earned leave which the claimant would have taken.

The amount of compensation depends upon the facts and circumstances of each case. While awarding compensation the status of the claimant, his age, his occupation, his future prospects, the nature of injury will have to be kept in mind. The appellant in this case had undergone an operation and bone grafting was done. He remained in the hospital for different periods and the treatment continued for about 13 months. Apparently, during this period he must have suffered. The Tribunal had granted sufficient amount on the heads on which the award was passed but I find that there are few heads on which the claimant was not granted any

physiotherapy, Rs. 20,000/- for transportation and Rs. 18,000 (RS. 3000 x 6) for the attendant charges. The total of this comes to Rs. 63,000/-. The compensation is enhanced by Rs. 63,000/-. The appellant would be entitled to this amount with interest @ 6% from September 2001 onwards till payment.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

March 02, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No