

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

FAO No.3883 of 2002

Date of decision : 03.03.2017

Ashok Kumar

.....Appellant

Versus

Amarjit Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Satyendra Chauhan, Advocate for
Mr. Shailendra Jain, Senior Advocate for appellant.

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

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant against the award dated 24.04.2002, passed by learned Motor Accidents Claims Tribunal, Sirsa (hereinafter called the “Tribunal”), whereby the claim petition filed by the appellant-claimant under Section 166 of the Motor Vehicles Act, 1988 (for short – the “Act”) was allowed and appellant-claimant has been awarded compensation to the tune of ₹4,26,400/- on account of the injuries suffered by him in the motor vehicular accident which took place on 04.05.1999.

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

3. I have heard learned counsel for the parties and have gone through the paper-book carefully.

4. Initiating the arguments, learned counsel for the appellant-claimant contended that the learned Tribunal has taken the income of the appellant to be only ₹1700/- per month which is extremely on the lower side. In fact the claimant was working as a Sound Operator with M/s Azad Loud Services, Sirsa and was earning ₹3000/- per month. The claimant has examined his employer Ram Parkash as PW-4 who has corroborated the version of the claimant. Thus, he contended that the income of the claimant should have been taken to be ₹3000/- per month.

5. He further contended that learned Tribunal has wrongly applied the multiplier of 16. The claimant was only 23/24 years of age and multiplier of 18 should have been applied. He further contended that the appellant-claimant has not been awarded any amount of compensation towards special diet, attendant and transportation charges. Thus, he contended that the learned Tribunal has not awarded the just amount of compensation.

6. On the other hand, learned counsel for respondent-Insurance Company contended that even as per the case of the appellant-claimant he has suffered only 75% disability, but the learned Tribunal has adopted a wrong method to compute the compensation on account of disability as it has applied the multiplier of 16 to the entire annual income of the claimant. It should applied only the actual loss of his future earnings due to permanent disability. Thus, he contended that more than just amount of

compensation has already been awarded to the appellant-claimant by the learned Tribunal.

7. I have duly considered the aforesaid contentions.

8. The appellant-claimant has alleged that he was employed as Sound Operator with M/s Azad Loud Services, Sirsa and was earning ₹3000/- per month. Ram Parkash his employer who was also the claimant in the connected claim petition appeared as PW-4. The learned Tribunal has taken into consideration the statement of Ram Parkash the employer of the appellant-claimant and the certificate Ex.R2 dated 07.09.2000 issued by him. In the said certificate it was mentioned that Ashok had been taking training from the shop of Ram Parkash for the last six months and was being paid ₹1000/- per month. It is further mentioned in the impugned award that at the relevant time the minimum wages for the unskilled labourer was not less than ₹2000/- per annum. So, this Court can easily take the income of the appellant-claimant to be ₹2000/- per month *i.e.* ₹24,000/- per annum.

9. From the medical evidence brought on record it comes out that the claimant was having right side hemiparesis with flexion contraction right knee. As per the disability certificate Ex.P55 his permanent disability was assessed to be 75%. The learned Tribunal has awarded a sum of ₹3,26,400/- towards the loss of income and loss of comforts to the life taking the monthly loss to be ₹1700/- per month and applying the multiplier of 16. The Hon'ble Apex Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1*** has laid down that loss of future earning 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 PW-2 Dr. Y.K. Choudhary has stated that appellant-claimant Ashok has not been able to stand or sit without assistance and may not be able to carry out his routine activities in a proper way. Thus, keeping in view the aforesaid medical condition, the functional disability of the appellant-claimant can be taken to be 60% having impact on his earning capacity. Thus, the amount of compensation on account of future loss of income due to permanent disability suffered by the claimant comes to ₹2,59,200/- (24,000 x 60 x 18 / 100). ₹50,000/- can more be awarded on account of loss of enjoyment and amenities of life. So, the total amount on account of permanent disability and loss of amenities and enjoyment of life comes to ₹3,09,200/-. The learned Tribunal has already awarded a sum of ₹3,26,400/-, which is more than the amount so calculated by this Court. No doubt the learned Tribunal has not awarded any separate amount to the appellant-claimant towards the special diet, attendant and transportation charges, but the surplus amount awarded by the learned Tribunal will cover all these three heads. Thus, it cannot be stated that the amount of compensation of ₹4,26,400/- awarded by the learned Tribunal is not the just amount of compensation.

10. Consequently, I do not find any legal infirmity in the amount of compensation determined by the learned Tribunal to be awarded

to the appellant-claimant.

11. Resultantly, present appeal is without any merit and the same is hereby dismissed.

03.03.2017
sunil yadav

(DARSHAN SINGH)
JUDGE

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