

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

FAO No.1972 of 2004

Date of decision : 20.01.2017

Parmeshwar Mandal

.....Appellant

Versus

Ratti Ram and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Mr. Neeraj Khanna, Advocate for respondent-
Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred by appellant-claimant Parmeswar Mandal against the award dated 11.03.2004 passed by the learned Motor Accidents Claims Tribunal, Karnal (hereinafter called the “Tribunal”), whereby in a claim petition filed by the appellant-claimant under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”) the appellant-claimant has been awarded compensation to the tune of ₹1,20,000/- on account of the injuries suffered by him in this motor vehicular accident, which took place on 05.06.2002.

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

3. I have heard learned counsel for the parties and have gone through the record of the case carefully.

4. Learned counsel for the appellant-claimant contended that the appellant-claimant has suffered 60% disability as a result of the injuries suffered in this accident. But the learned Tribunal has granted only ₹60,000/- towards permanent disability and loss of amenities of life. He contended that compensation should be awarded separately under both these heads. He further contended that the appellant-claimant has suffered amputation of left hand. He was a driver by profession which is proved from the statement of PW-2 Naveen Kumar Thakur, Manager of M/s Veenn International, Delhi but now due to amputation of left hand he has become disable to drive vehicle. The claimant was getting salary at the rate of ₹3000/- per month besides ₹40/- per day as daily expenses, which is established from the salary certificate Mark-A but the learned Tribunal has wrongly discarded this evidence. He further contended that learned Tribunal has not awarded any compensation towards attendant charges, special diet and transportation charges, etc. Thus, he contended that the just amount of compensation has not been awarded.

5. On the other hand, Mr. Neeraj Khanna, Advocate, learned counsel for respondent-Insurance Company contended that the learned Tribunal has taken into consideration all the relevant heads to assess the compensation. He further contended that the salary certificate Mark-A was not proved in accordance with law. It was only a marked document. The proprietor of the firm was not examined. The claimant has also not placed

on file any corroborative evidence to the salary certificate Mark-A. Even the driving licence of the claimant was not brought on record to show that he was holding any driving licence to drive a vehicle as a professional driver. Thus, he contended that there is no scope for enhancement of the amount of compensation.

6. I have duly considered the aforesaid contentions.

7. The appellant-claimant has pleaded that he was 26 years of age and was a driver by profession. He used to get ₹3500/- per month as salary. The claimant has examined Naveen Kumar Thakur as PW-2 to prove his employment as driver with M/s Veenn International, Delhi. He has also brought on file the salary certificate Mark-A. But in the cross-examination, PW-2 Naveen Kumar Thakur stated that as per the registration certificate the owner of the car was M/s Vijay Elastics Ltd. and that firm has been lying closed for the last four years. He further stated that the salary paid to the claimant was not shown by Vijay Kumar in any of his account. Thus, there is no corroborative evidence to the statement of PW-2 Naveen Kumar Thakur and the salary certificate Mark-A. Mere salary certificate cannot establish the employment of the claimant as a driver. The claimant has not even placed on file his driving licence to show that he was authorized to drive the vehicle as a professional driver. So, the learned Tribunal has rightly discarded this evidence and has rightly taken the income of the claimant to be ₹2000/- per month.

8. The learned Tribunal has awarded lump sum ₹60,000/- as compensation for future loss of earning, loss of amenity of life due to

permanent disability to the extent of 60% with respect to the particular limb.

9. As a result of the injuries suffered in this accident, the appellant-claimant has suffered traumatic amputation left distal forearm and has suffered 60% permanent disability as per the disability certificate Mark-B issued by the Medical Board of Dr. Ram Manohar Lohiya Hospital, New Delhi. I found substance in the plea raised by learned counsel for the appellant that the learned Tribunal was required to separately assess the compensation for the future loss of earning due to permanent disability and loss of enjoyment and amenities of life.

10. As already mentioned, the income of the deceased has been determined to be ₹2000/- per month i.e. ₹24,000/- per annum. He has suffered permanent disability to the extent of 60% due to amputation of left forearm. This disability cannot be considered to be the disability for the whole body. 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 view of the aforesaid ratio of law laid down by Hon'ble Apex Court, though the appellant-claimant has suffered 60% disability but only 35% of his disability shall be taken to be his functional disability having impact on his future earning

capacity. In view of the age of the appellant-claimant, multiplier of 17 shall be applicable. So, the amount of compensation payable to the appellant-claimant on account of the disability comes to ₹1,42,800/- (24,000 x 35 x 17 / 100). Thus, the appellant-claimant shall be entitled to sum of ₹1,42,800/- as compensation on account of loss of future earning due to permanent disability suffered by him.

11. The appellant-claimant suffered amputation of the left forearm which has permanently made the appellant-applicant handicapped. He will be deprived of the use of his left hand/forearm. So, certainly his enjoyment and amenity of life has been adversely affect. Thus, he will be entitled to ₹30,000/- on account of loss of enjoyment and amenities of life.

12. In addition to that, the appellant-claimant shall be entitled to a sum of ₹4000/- towards attendant charges, ₹4000/- towards special diet and ₹4000/- towards transportation charges. The learned Tribunal has already awarded ₹40,000/- towards medical and treatment expenses and ₹20,000/- towards pain and suffering and loss of earning during the period of treatment. In this way, the total amount of compensation payable to appellant-claimant comes to ₹2,44,800/-.

13. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The total amount of compensation payable to appellant-claimant is enhanced to ₹2,44,800/- from ₹1,20,000/- as awarded by the Tribunal. The enhanced amount of compensation be deposited with the learned Tribunal within a period of 45 days from today, failing which the appellant-claimant shall be entitled to interest at the same

rate as awarded by the learned Tribunal from the date of filing the claim petition till realisation. The liability to pay the enhanced amount of compensation shall remain same as determined by the learned Tribunal in the main award.

20.01.2017

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No