IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.351

FAO No.3851 of 2005 (O&M)
Date of decision : 09.11.2017

Gurmit Singh ..... Appellant

VERSUS

Jaswinder Kaur and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Gurcharan Singh, Advocate for
Mr. Vijay Sharma, Advocate, for the appellant.

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SUDHIR MITTAL, J. (Oral)

In this case, service is complete. However, none is present on behalf of the respondents. The Insurance Company, in this case, is Oriental Insurance Company. One of its panel counsel is Mr. Ravinder Arora, who is present in Court, and accepts notice at the asking of the Court.

2. I have heard learned counsel for the parties and with their assistance have gone through the record.

3. An accident took place on 25.02.2003 between an Ambulance of A.P. Jain Hospital, Rajpura, and a Tata Qualis vehicle. The Ambulance had gone to Patiala for shifting a patient to Rajindra Hospital, Patiala, and the claimant was also present in the said Ambulance because the patient was acquainted with him. After leaving the patient at Rajindra Hospital, Patiala, the Ambulance was going back and near Rajpura-Sirhind bye-pass road, it was struck by a Tata Qualis, which was being driven in a rash and negligent manner. As result of the collision, the Ambulance fell into the ditches on the left side of the road. The driver of the Ambulance, the claimant and the

driver of the Tata Qualis suffered multiple injuries. All of them were taken to Rajindra Hospital, Patiala, for treatment. On the statement of the driver of the Ambulance, FIR No.109 of the year 2003 was registered. The claimant was referred to PGI, Chandigarh and he remained admitted there till 07.03.2003. Thereafter, he remained under treatment at A.P. Jain Hospital, Rajpura till 23.07.2003. The age of the claimant at the time of accident is stated to be twenty years and he was working as a contractor of cycle stand in the said A.P. Jain Hospital, Rajpura. It is claimed that his monthly income was ₹3,000/-. As a result of the accident, he suffered compound fracture of cervical spine resulting in neuorological deficit and became permanently disabled.

4. The learned Tribunal has granted a total compensation of ₹3,88,000/- by the impugned Award dated 27.01.2005. The claimant seeks enhancement.

5. Reference is made to the statement of PW-1, Ishar Singh, who was the contractor of the cycle stand at A.P. Jain Hospital, Rajpura. He has stated that the claimant was in partnership with him and was earning proximately ₹3,000/- per month. However, no record has been produced regarding the income. The learned Tribunal has taken the income to be ₹2300/- per month by treating the claimant as an un-skilled labourer. Taking the state of evidence on record regarding income of the claimant, I deem it to appropriate to increase the same to ₹2500/- per month. The age is not in dispute and has been accepted as twenty years. Thus, a multiplier of 18 is applicable as per the judgment of **Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77.** The

medical evidence brought on record conclusively establishes that there is no sensation in both the limbs of the claimant and he is unable to walk. Disability certificate has been brought on record as Ex. P-25, according to which, the permanent disability is to the extent of 73%. There is extensive damage to the spinal cord of the claimant. As a result of the injury, even his left upper limb has been compromised. In injury cases, the Hon'ble Supreme Court has laid down the test of 'functional disability' for determining the amount of compensation payable. The percentage of disability expressed in the disability certificate is not the only factor to be taken into consideration. In **Basappa S/o Sanganabasappa Bahvikatti Vs. T. Ramesh S/o Tangavelue and another, 2014 (4) RCR (Civil), 662,** the Hon'ble Supreme Court, after discussing the case law on the subject, has held as follows-:

> "12. It is to be borne in mind that before the incident, the appellant was hail and healthy who enjoyed robust health as it has emerged from the record that he was working as Goundi i.e. at the building construction sites. Because of the permanent disability of the nature described above, PW-3 has very categorically stated in his testimony that the appellant is unable to walk and stand for a long time and is not capable of doing heavy work. It is also testified that he is suffering general weakness as well. This would lead us to the conclusion that the appellant suffers 85% functional disability. On arriving at this conclusion, we are bolstered by the judgment of this Court in the case of Raj Kumar v. Ajay Kumar & Another, (2011) 1 SCC 343 wherein this aspect is lucidly explained with impeccable erudition, as is discerned from the following passages of the said judgment, reading whereof would amply demonstrate that the nuances are so exhaustively dealt with, leaving no scope for restating, much less refuting or refining:

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the [pic] injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

X X X

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be

different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, [pic] it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254 and Yadava Kumar v. National Insurance Co. Ltd., (2010) 10 SCC 341)

12. 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."

6. Thus, keeping in view the fact that the claimant was doing the work of a cycle stand contractor, his functional disability has to be assessed as 100% because he is unable to walk by himself and is also not in a position to move his left arm. The compensation will have to be re-assessed taking into view his functional disability. In **Raj Kumar Vs. Ajay Kumar and another, 2011 (1), SCC 343,** the Hon'ble Supreme Court has laid down the heads under which the compensation is to be awarded in injury cases as follows:-

"5. The heads under which compensation is awarded in personal injury cases are the following:-

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

7. Keeping in view the above principles, the compensation is re-assessed as under:-

1.	Loss of earning 2500x12x18 (taking functional disability as 100%)	₹5,40,000/-
2.	Medical expenses (actual as per bills produced on record)	₹34,622/-
3.	Future medical expenses	₹1,00,000/-
4.	Loss of amenities	₹1,00,000/-
5.	Pain and suffering	₹1,00,000/-
	Total	**₹8,74,622/-**

8. The appeal is allowed in the above terms. The enhanced amount of compensation shall be paid within a period of three months from the date of receipt of a certified copy of this judgment alongwith interest @ 7.5% per annum, from the date of claim petition till the date of actual payment.

(SUDHIR MITTAL)
JUDGE

November 09, 2017
Ramandeep Singh

Whether speaking / reasoned Yes / No
Whether Reportable Yes/ No