

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

**FAO No.4692 of 2007 (O&M)
Date of decision: 26.07.2017**

Mohinder SinghAppellant

Versus

Kulbir Singh and othersRespondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Ekta Thakur, Advocate,
for the appellant.

None for respondent No.1.

Mr. S.S. Sidhu, Advocate,
for respondent No. 3-Insurance Company.

Ritu Bahri, J.

CM No.25915-CII of 2014

For the reasons mentioned in the application, same is allowed and the main appeal i.e. FAO No.4692 of 2007 is taken up today itself for its disposal.

FAO No.4692 of 2007

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') vide award dated 24.10.2007 on account of injuries suffered by him in a vehicular accident, which took place on 10.12.2004.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 10.12.2004, at about 11.30 a.m.,

Mohinder Singh-appellant was going on a scooter bearing registration No.

CH-3118, which was being driven by Hoshiar Singh. When they reached near village Chhat, a truck bearing registration No. CH-01-K-7101, being driven by Kulbir Singh-respondent No.1 in a rash and negligent manner, came from the opposite side and struck against the scooter, as a result of which, claimant-appellant sustained injuries. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

The Tribunal, on the basis of evidence led by the parties, gave finding on issue No.1 in favour of the claimant by observing that the accident took place on account of rash and negligent driving of truck bearing registration No. CH-01-K-7101 by respondent No.1. As per disability certificate (Ex.P4), the claimant had suffered 22% disability with respect of lower limb. While assessing the compensation, the Tribunal has observed that there are four limbs in the human body i.e. two upper limbs and two lower limbs. In view of this, the permanent disability in respect of whole body came to only 5½%. Accordingly, a sum of Rs.40,000/- was awarded on account of disablement. Apart from this, Rs.10,000/- were awarded towards pain & sufferings, transportation etc. Hence, the claimant was found entitled to a total sum of Rs.50,000/- as compensation on account of injuries suffered by him. He was also found entitled to receive interest at the rate of 7.5% per annum from the date of filing of the petition till its realization.

Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the claimant-appellant has received injuries as a result of the accident. The compensation is being sought to be reassessed on the basis of deposition of Dr. Narinder Kumar Arora, SMO, GMCH, Sector 32, Chandigarh (PW-2), who has proved on record disability certificate as Ex.P4. As per this certificate, claimant-appellant has suffered 22% disability in respect of lower limb. At this stage, reference can be made to a judgment passed by the Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar & anr.**, Civil Appeal No.8981 of 2010 (decided on 18.10.2010), wherein it has been held as under:-

18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.”

In the present case, at the time of accident, the appellant was aged around 55 years. There is no documentary or oral evidence in respect of income of the appellant. However, even a daily wager earns about

Rs.3500/- per month. Therefore, the income of claimant-appellant, in the present case, can be assessed as Rs.3500/- per month i.e. Rs.42,000/- per annum. As per disability certificate, he has suffered 22% disability in respect of lower limb. Permanent disability in respect of whole body can be taken to 8%. Accordingly, the loss of earnings due to functional disability would be 8% of Rs.42,000/- i.e. Rs.3360/- per annum. Since the age of claimant-appellant at the time of accident was 55 years, multiplier of 11 would be applicable in this case. Therefore, loss of future earnings would be Rs.3360 x 11 = Rs.36,960/-. As per claimant, he remained admitted in Command Hospital, Chandi Mandir w.e.f. 12.12.2004 to 06.01.2005. He might have spent some amount on his treatment.

Accordingly, in view of the judgment passed in Raj Kumar's case (supra), to meet the ends of justice, the compensation is hereby reassessed as under:-

SR. No.	HEADS	CALCULATION
(i)	Compensation on account of loss of future earnings	Rs.36,960/-
(ii)	Compensation on account of functional disability of 8%	Rs.16,000/- (Rs.2000/- per percent)
(iii)	Compensation on account of pain and sufferings	Rs.10,000/-
(iv)	Special diet and transportation charges	Rs.10,000/-
(v)	Loss of amenities	Rs.10,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.82,960/-
	Enhanced amount of compensation	Rs.82,960 – 50,000/- = Rs.32,960/-

The enhanced amount of compensation of **Rs.32,960/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry

realization, in view of the judgment of Hon'ble the Supreme Court in the case of Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

26.07.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No