

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

FAO No.2906 of 2011(O&M)

Date of decision: 28.8.2017

Subedar Soundra Rajan

.....Appellant

VERSUS

Pawan Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Prateek Pandit, Advocate for the appellant.

Mr. R.C. Gupta, Advocate for respondent No.3.

REKHA MITTAL, J.

The injured victim is in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Kapurthala (in short 'the Tribunal') on account of injuries sustained by him in a motor vehicular accident that took place on 22.02.2009.

The Tribunal awarded compensation to the tune of Rs.1,00,000/- detailed hereunder:-

Compensation for loss qua disability of 80%	Rs.80,000/-
Pain and suffering	Rs.10,000/-
Additional Compensation	<u>Rs.10,000/-</u>
Total	<u>Rs.1,00,000/-</u>

Counsel for the appellant has submitted that compensation awarded by the Tribunal is grossly inadequate and reflects complete insensitivity of the Tribunal towards plight of the injured victim whose left leg above knee has been amputated and has been discharged from army service due to disability.

To support his claim for enhancement of compensation, it has been submitted that had the claimant not sustained injury in the occurrence resulting in amputation of his left leg and disability to the extent of 80%, he would have continued in service up to the age of 50 years, therefore, his service in the Army has been curtailed by six years. It has further been argued that had the claimant continued in service, he would have been promoted to the rank of Captain by the time of his retirement attracting additional benefit of higher salary and other pensionary benefits. However, counsel for the appellant has fairly informed that the claimant would be satisfied if he is awarded compensation by taking into consideration loss of his salary at the rate of Rs.25,104/- for the period of curtailment of his service. At the same time, it is submitted that the claimant would be more satisfied if he is also extended benefit of increase in salary towards future prospects. Simultaneously, counsel would urge that had the claimant not suffered any disability or amputation of his left leg, after retirement he would have got post retirement job as a Security Officer in a Bank or some other organization at a good salary.

Counsel representing the insurance company has fairly conceded that compensation awarded by the Tribunal is not commensurate to the disability suffered by the victim and consequential loss to his income. Nevertheless, it is argued that the claimant has not examined his treating doctor or the doctor who issued the disability certificate. It has been submitted that on the basis of materials on record, reasonable compensation may be awarded to the claimant.

I have heard counsel for the parties, perused the paper-book and the records.

The claimant appeared in the witness-box as PW-1 and examined Major Raman Kumar Samanhotra PW-2, Lance Naik Anup Singh PW-3 and Subedar Ashok Kumar PW-4. The witnesses produced on record medical certificate with regard to disability Ex.P2, salary certificate Ex.P3, certificate with regard to retirement Ex.P4 and the documents with regard to discharge from Artificial Limb Centre Ex.PW4/A, diagram of artificial limb Ex.PW4/C.

The claimant has categorically deposed that due to disability suffered by him, he would suffer loss of his service for a period of 6 years. His testimony finds corroboration from depositions of Major Raman Kumar Samanhotra PW-2 and Lance Naik Anup Singh PW-3. There is no challenge to testimony of the claimant and his witnesses that the claimant would be relieved from Service in November 2010 due to sustaining of injury / disability and curtailment of 6 years service in Army.

Perusal of the certificate Ex.P4 makes it evident that the claimant was born on 03.02.1965. As per plea of the claimant, he would have continued in service up to age of 50 years i.e. 02.02.2015. The claimant has been retired from service w.e.f. 30.11.2010. The claimant appeared in the witness box in June 2010 and he was allowed to continue in service till that time and even till November 2010. In the given scenario, the claimant's service was curtailed for a period of 4 years and 2 months. Salary certificate Ex.P3 proves that the claimant got monthly salary of Rs.25,104/- in April 2010. Taking into consideration salary of April 2010 and curtailment of service for a period of 4 years and 2 months coupled with liability of the claimant to pay income tax, loss of income qua curtailment of service comes to Rs.11,96,350/-.

Plea of the claimant that he would have been promoted to the rank of Captain resulting in financial benefits cannot be accepted. In the Army, promotion is not granted merely on the basis of seniority. An Army personnel has to satisfy various benchmarks to become eligible for promotion. Under the circumstances, it cannot be held that had the claimant remained in service, he would have been granted promotion to the next rank or to the rank of Captain by the time of his retirement. For this reason, I do not intend to extent benefit of increase in income for future prospects.

The claimant appeared before this Court on 22.08.2017. His left leg above knee has been amputated. He has been given an artificial leg by the Army Authorities as reflected in the documents Ex.PW4/A and PW4/C. He has not sustained any injury on his right leg. The claimant could stand in the Court even without the help of artificial limb. Merely because, he has suffered amputation of his left leg, it cannot be said that he cannot perform any work and crate a source of income. In addition, he is being paid disability pension which has not been deducted for assessing loss of income qua curtailment of service. Taking a cumulative view of the aforesaid discussion, I do not intend to grant any compensation for loss of future income beyond the age of 50 years.

The claimant has not prayed for compensation in respect of medical treatment. He has fairly admitted that his treatment in various hospitals of the Army was free of costs. However, it remains a fact that his left leg above knee was amputated. He remained getting treatment from various Army Hospitals namely military hospital Suratgah, Command Hospital Chandimandir, Panchkula, Command Hospital Air Force Bangalore and Artificial Limb Centre Command Hospital, Pune,

Maharashtra. Loss of a limb is really traumatic for any person whatever may be his status. Claimant has deposed that there was amputation in the Military Hospital Suratgah but later as he developed gangrene, there was further amputation above knee when he was lying admitted in Command Hospital Chandimandir, Panchkula. In the present scenario, the claimant is awarded an amount of Rs.50,000/- for pain and sufferings.

As has been noticed hereinabove, the claimant has suffered amputation of his left leg above knee and got artificial limb. He can never be the same as he was before this unfortunate occurrence. With the artificial limb, he would not be able to run and do various other activities. He was 44 years old at the time of occurrence. He may live for another 30 to 40 years but with an artificial limb. Hence, he is awarded another amount of Rs.1,50,000/- for loss of amenities of life. The total compensation comes to Rs.13,96,350/- and the additional amount is Rs.12,96,350/- payable with interest at the rate of 7.5% per annum from the date of petition till realisation.

The appeal is partly allowed in the aforesaid terms.

AUGUST 28, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no