IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

FAO No.1540 of 2012
Date of Decision :11.12.2017

Darshan Kumar ....Appellant

Versus

Sant Ram and Others ....Respondents

BEFORE HON'BLE MRS. JUSTICE RITU BAHRI

Present: Mr.Ashwani Arora, Advocate, for the appellant.

Mr.Subhash Goyal, Advocate, for
the respondent No.3/Insurance Co.
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RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimant-appellant (for short 'the appellants'), against award dated 12.05.2011, passed by the learned Motor Accident Claims Tribunal, Panchkula (for short, 'the Tribunal') vide which compensation to the tune of Rs.8,19,000/- was awarded to the claimant on account of injuries suffered by him.

FACTS NOT IN DISPUTE

On 07.11.2008 at about 12:45 P.M., the claimant Darshan Kumar was going from Derabassi to his house while driving his motorcycle at slow speed and on the left side of the road. When claimant reached near Hemkund Stone Crusher, at that time a tipper bearing registration No.HR37-4311, came at a fast speed from opposite side direction and while coming on the wrong side of the road, it struck against the motorcycle of claimant. After the accident, the tipper driver stopped his tipper for some time and thereafter ran away from the sit1e of the accident along with the tipper. The said tipper was being driven at a fast speed and in a rash and negligent manner by its driver Lalu Ram, respondent No.2. As as result of the accident, claimant received serious injuries and was taken to the hospital immediately. In this regard, an FIR Ex.P13 for the offence under Sections 279, 337, 338 and 427 IPC.

After issuance of notice, respondent No.1 appeared and filed a written statement taking preliminary objections that the claim petition is not maintainable nor the claimant has any cause of action to file the same. No accident took place with the tipper in question driven by respondent No.2 and and he is not liable to pay compensation.

COMPENSATION ASSESSED BY MACT

The claimant had suffered 75% disability as per disability certificate Ex.P1. The State of PW1 Dr.Umesh Modi, who was one of the members of the medical board, proves that on 23.12.2009, Darshan Kumar-appellant was examined by the Medical Board. On examination, it was found that he was a case of amputation of through right leg with scarring with operated case of fracture femur right side with non union. His physical disability was assessed to be 70%. Thus it was proved that due to accident, the claimant received grievous injuries and his leg was amputated and the board of the doctors had assessed 70% disability of limb. Learned Tribunal has held that the claimant has suffered the disability to the extent of 70% of a particular limb, as such, disability of the claimant was assessed by the learned Tribunal to the extent of 20% keeping in view the fact that now he is not in a position to work with the same strength and his chances to get the better post to the better job have become dim. In this way, the future loss of the earning to the claimant is to the extent of 20%. The factum of accident had been proved and the offending vehicle was insured with respondent No.3-Insurance Company. Compensation has been assessed by the learned Tribunal as under:

Sr.No.	Heads of compensation	Amount
1.	Income	Rs.2000/- per month
2.	Total loss of income after applying multiplier	Rs.2000 X17 X 12=Rs.4,08,000/-
3	Purchase of artificial limb	Rs.1,50,000/-
4	Special diet	Rs.25,000/-
5	Transportation and miscellaneous expenses	Rs.10,000/-
6	Loss of earning	Rs.2,06,000/-
7	Damage for pain, suffering	Rs.20,000/-

	Total	Rs.8,19,000/-

Learned counsel for the claimant-appellant has referred to the judgment i.e. **Sandeep Khanuja vs. Atul Dande and anr, 2017 AIOL 3074,** in which, a Chartered Account has suffered injuries 70% permanent disability in both the legs in a motor accident. The learned Tribunal had refused to award compensation to the appellant by applying the principle of multiplier based on permanent disability and granted a lump sum amount of Rs.70,000/- as he was working as a Chartered Accountant, he could still perform it properly and there was no impairment therein. The Supreme Court has allowed the appeal and held the nature of injuries suffered by him 70% disability and even he was Chartered Accountant, this can be hampered his work culture. An important feature and aspect which is ignored by the MACT is that the appellant is a professional Chartered Accountant. To do this work efficiently and in order to augment his income, a Chartered Accountant is supposed to move around as well. If a Chartered Accountant is doing taxation work, he has to appear before the assessing authorities and appellate authorities under the Income Tax Act, as a Chartered Accountant is allowed to practice up to Income Tax Appellate Tribunal. Many times Chartered Accountants are supposed to visit their clients as well. In case a Chartered Accountant is primarily doing audit work, he is not only required to visit his clients but various authorities as well. The High Court as well as Tribunal while assessing the compensation, the abovesaid aspect had not been considered. While allowing the SLP, the Hon'ble Apex Court had taken the income of the claimant as Rs.10,000/- and applied the multiplier method and assess the future loss of income at Rs.14,28,000/-

In the present case, an application under Order 41, Rule 27 CPC was filed for leading additional evidence. In this application a direction was issued to the both the parties to enable the appellant to prove that his services have been terminated as a consequence of the disability which he had suffered and sent the report back to this Court on or before the next date vide order dated 22.04.2014. In compliance of the said direction, a report has been sent by MACT, Panchkula dated 23.08.2014. A perusal of the same shows that the services of the claimant were terminated as per termination letter Ex.P-23. PW-4 Ms.Dipty Joshi, Executive HR, Sabboo

Coatings Limited, who stated that the claimant joined above organization on 16th January 2008 as Officer Purchase and he met with a road side accident on 07.11.2008 while in service of Sabboo Coatings Limited, Dera Bassi and after the accident, he remained out of job for about 1 ½ years without salary. But he was permitted to join back on his application submitted by the claimant and was assigned duties in store department keeping in view the nature of injuries suffered by him in this accident on the same salary, which was was getting prior to this accident. However, she further alleged that lateron on account of amputation, he was unable to perform his duties as a result, his services were terminated as per termination letter Ex.P-23. Copy of which is Ex.P-23 is reproduced as under:-

> *" on further discussion with you, it was also accepted by you that you were not able to discharge your duties as per the desired level of expectations. Being at the supervisory level and as an in charge of the department under management capacity, you are holding a veru sensitive position and you did not discharge your duties as per the system and process and also as per the job profile agreed. It was expected from you to get the work done from your team by strictly following the systems. Because of your inability in following and adhering to systems and also your failure to supervise your team in adhering into system and processes along with incapability, non-performance and serious attitudinal issues, management has decided to terminate your services with one month notice. You shall be relieved from the duties on closing business hours on dated 06.09.2011 and you are advised to*

collect your dues on the same day.

RE-ASSESSED COMPENSATION

A perusal of the report clarifies that on account of disability the services of claimant have been terminated. Keeping in view the ratio of the judgment in the case of **Sandeep Khanuja supra,** the compensation is being assessed by taking the loss of income as 70%

I have heard learned counsel for the parties and perused the record.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgments, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1.	Income 70% of income i.e. Rs.10,050/-	Rs.7,000/- per month (Approx)
2.	Future prospect 40%	Rs.7,000/- + Rs.2800/-=Rs.9800/-
3.	Total loss of income after applying multiplier	Rs.9800/- X17 X 12=Rs.19,99,200/-
4	Purchase of artificial limb	Rs.1,50,000/-
5	Special diet	Rs.25,000/-
6	Transportation and miscellaneous expenses	Rs.25,000/-
7	Loss of earning	Rs.2,06,000/-
8	Damage for pain, suffering	Rs.1,00,000/-
	Total	Rs.25,05,200/-
	Enhanced amount of compensation	Rs.25,05,200/- ---- Rs.8,19,000/- =Rs.16,86,200/-

Resultantly, the enhanced amount of compensation of Rs.16,86,200/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a 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. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

11.12.2017
anil

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