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

F.A.O No. 5043 of 2012
Date of decision:- 22.08.2017

Partap Singh ...Appellant

Versus

Manoj Kumar & ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rakesh Nagpal, Advocate
for the appellants

Brig. B.S. Taunque, Advocate
for respondent No. 3

RITU BAHRI J. (Oral)

1. The present appeal has been preferred by the injured-appellant (for short 'the appellant'), against award dated 10.01.2012 passed by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal') to the tune of Rs.5,50,000/- in an appeal filed under Section 163-A of the Motor Vehicles Act.

FACTS NOT IN DISPUTE

On 30.04.2009, the claimant-appellant along with respondent No. 1 Manoj Kumar was going to village Rajound from Kaithal in a car bearing No. HR-08-H-7984 being driven by respondent No. 1 at a high speed. When the appellant reached within the area of village Narwal District Kaithal, then from Rajound side, an antelope suddenly came in front of the vehicle and respondent No. 1 lost the balance and the vehicle went to the ditches by the side of the raod and struck against a standing tree. Both the occupants of the car received injuries. The appellant received multiple grievous injuries and fracture on his leg and was shifted to Civil Hospital, Kaithal from where he was referred to PGI, Chandigarh.

3. The learned counsel for the claimant-appellant contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to the enhanced, in view of the judgment of Hon'ble the Supreme Court of India in a case of ***Govind Yadav vs. The New India Insurance Co. Ltd., 2011(4) RCR (Civil) 817*** wherein a claimant who was working as a helper met with an accident and his leg was amputated resulting in 70% permanent disability. Since, he could not prove his salary, his salary was taken at Rs.3000 per month and his notional annual income comes to Rs 36000/- and loss of earning on account of 70% permanent disability came at Rs.25,200/- per annum and multiplier of 18 was applied. Further Rs. 2 lacs was awarded towards future treatment and Rs.1.50 lacs towards pain and suffering and trauma and further Rs.1.50 lacs towards loss of amenities. In para 17, 18, 19 and 20 of the judgment, it has been observed as under:-

"17. A brief recapitulation of the facts shows that in the petition filed by him for award of compensation, the appellant had pleaded that at the time of accident he was working as Helper and was getting salary of Rs.4,000/- per month. The Tribunal discarded his claim on the premise that no evidence was produced by him to prove the factum of employment and payment of salary by the employer. The Tribunal then proceeded to determine the amount of compensation in lieu of loss of earning by assuming the appellant's income to be Rs.15,000/- per annum. On his part, the learned Single Judge of the High Court assumed that while working as a Cleaner, the appellant may have been earning Rs.2,000/- per month and accordingly assessed the compensation under the first head. Unfortunately, both the Tribunal and the High Court overlooked that at the relevant time minimum wages payable to a worker were Rs.3,000/- per month. Therefore, in the absence of other cogent evidence, the Tribunal and the High Court should have determined the amount of compensation in lieu of loss of earning by taking the appellant's notional annual income as Rs.36,000/- and the loss of earning on

account of 70% permanent disability as Rs.25,200/- per annum.

The application of multiplier of 17 by the Tribunal, which was approved by the High Court will have to be treated as erroneous in view of the judgment in **Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121**. *In para 42 of that judgment, the Court has indicated that if the age of the victim of an accident is 24 years, then the appropriate multiplier would be 18. By applying that multiplier, we hold that the compensation payable to the appellant in lieu of the loss of earning would be Rs.4,53,600/-.*

18. The award made by the Tribunal for future medical expenses was wholly inadequate. In **Nagappa v. Gurudayal Singh (2003) 2 SCC 274,** *this Court considered whether it was permissible to award compensation in installments or recurring compensation to meet the future medical expenses of the victim. After noticing the judgment of* **M. Jagannadha Rao, J.** *(as he then was) in* ***P. Satyanarayana v. I. Babu Rajendra Prasad 1988 ACJ 88 (AP)****, the judgment of the Division Bench of the Kerala High Court in* ***Valiyakathodi Mohd. Koya v. Ayyappankadu Ramamoorthi Mohan 1991 ACJ 140 (Kerala)****, this Court observed:*

"In this view of the matter, in our view, it would be difficult to hold that for future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment, the court has to arrive at a reasonable estimate on the basis of the evidence brought on record. In the present case, it has been pointed out that for replacing the artificial leg every two to three years, the appellant would be 1 required to have some sort of operation and also change the artificial leg. At that time, the estimated expenses for this were Rs 18,000 and the High Court has awarded the said amount. For change of the artificial leg every two or three years no compensation is awarded. Considering this aspect, if Rs one lakh is awarded as an additional compensation, the appellant would be in a position to meet the said expenses from the interest of the said amount." After the aforesaid judgment, the cost of living as also the cost of artificial limbs and expenses likely to be incurred for

periodical replacement of such limb has substantially increased. Therefore, it will be just and proper to award a sum of Rs.2,00,000/- to the appellant for future treatment. If this amount is deposited in fixed deposit, the interest accruing on it will take care of the cost of artificial limb, fees of the doctor and other ancillary expenses.

19. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the Tribunals and the Courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the Tribunals and the Courts should make a broad guess for the 1 purpose of fixing the amount of compensation. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs.1,50,000/- in lieu of pain, suffering and trauma caused due to the amputation of leg.

20. The compensation awarded by the Tribunal for the loss of amenities was also meager. It can only be a matter of imagination as to how the appellant will have to live for the rest of life with one artificial leg. The appellant can be expected to live for at least 50 years. During this period he will not be able to live like normal human being and will not be able to enjoy the life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs.1,50,000/- for the loss of amenities and enjoyment of life."

4. I have heard learned counsel for the appellant and perused the record.

COMPENSATION ASSESSED BY MACT

5. The learned Tribunal assessed the salary of the claimant to the

tune of Rs.3000/- as per month and assessed the loss of income to the extent of 80% at Rs.2400/- per month and the yearly loss of income of the appellant comes to Rs.28,800/- (rounded to Rs.29,000/-). Multiplier of 16 was applied, Rs.73000/- was awarded towards medical bills, Rs.13,000/- was awarded towards diet and transportation. He was awarded total compensation of Rs.5,50,000/-.

RE-ASSESSED COMPENSATION

7. It is not in dispute that the offending vehicle was fully insured with the Insurance company. The deceased was 32 years old at the time of alleged accident. The compensation requires enhancement only to the extent that the salary should be taken at Rs.3900/- per month i.e minimum wages and something should be given under conventional head, as per judgment of Hon'ble the Supreme Court in a case of ***R.K. Malik and anr. vs. Kiran Pal and others, 2009(14) SCC 1*** wherein Rs.75,000/- had been awarded under conventional head in claim petitions filed under Section 163-A of the Motor Vehicle Act.

8. 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:-

HEAD	*COMPENSATION AMOUNT*
Salary	*Rs.3900 per month*
Annual Salary	*Rs.3000X12=46,800/-*
Loss of Earning with 80% disability	*Rs.46800 + 80% = Rs.37,440/- (rounded of to Rs.37,500/-)*
Compensation after multiplier of 16	*37500X16=Rs.6,00,000/-*
Medical Bills	*Rs.73000/-*
Conventional heads	*Rs.75,000/-*
TOTAL COMPENSATION AWARDED:-	*Rs.07,48,000/-*
ENHANCED AMOUNT OF COMPENSATION	*Rs.07,48,000-5,50,000=Rs.1,98,000/-*

The enhanced amount of compensation of Rs.1,98,000/- 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.

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

22.08.2017 **(RITU BAHRI)**
G Arora ***JUDGE***

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