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

1. FAO No.108 of 2013
Date of Decision: 02.08.2017

Mohinder Singh ......Appellant
vs
Jasbir Singh and others ....Respondents

2. FAO No.4321 of 2012

HDFC ERGO General Insurance Co. Ltd.
......Appellant
vs
Mohinder Singh & others ....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Raj Kapoor Malik, Advocate
for the appellant in FAO No.108 of 2013 and
for the respondent No.1 in FAO No.4321 of 2012.

Mr. Rajneesh Malhotra, Advocate for
respondent No.3 in FAO No.108 of 2013 and
for the appellant in FAO No.4321 of 2012.

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<u>RAJ MOHAN SINGH, J.</u>

[1]. Vide this common order FAO Nos.108 of 2013 and 4321 of 2012 are being decided as both the appeals have arisen out of the common award dated 11.05.2012 passed by the Motor Accident Claims Tribunal, Kaithal (hereinafter to be referred to as 'the Tribunal'). For brevity, facts are being culled out from FAO No.108 of 2013.

<u>FAO No.108 of 2013</u>

[2]. This appeal has been preferred by the claimant for the enhancement of compensation awarded by the Tribunal vide order dated 11.05.2012.

[3]. Brief facts are that claimant Mohinder Singh filed petition under Section 166 of the Motor Vehicles Act on account of injuries suffered by him. The accident in question took place on 07.11.2009 in which claimant had received the injuries. Without elaborating unnecessary details, it would be relevant to point out that the Tribunal under issue No.1 came to the conclusion that the accident in question took place due to rash and negligent driving of the offending vehicle by respondent No.1. While assessing the compensation under issue No.2, the Tribunal found that the claimant had received 30% permanent disability in respect of his limb. The said disability was proved with reference to the disability certificate Ex.P-2 on record. The factum of injuries suffered by the claimant was proved on record with the statement of Dr. Himanshu Anand as PW-1 and Dr. Rajinder Parshad as PW-3.

[4]. The Tribunal assessed amount of Rs.1,50,000/- towards medical expenses of the claimant. An amount of Rs.60,000/- was assessed towards permanent disability on

account of permanent disability of 30% suffered by the claimant by considering Rs.2000/- per percentage. In addition to the aforesaid, an amount of Rs.15,000/- was assessed towards pain and suffering. In this way, total amount of compensation was assessed to be Rs.2,25,000/-.

[5]. Learned counsel for the appellant/claimant submitted that loss of income on account of permanent disability has to be appreciated by applying multiplier method. Learned counsel further submitted that nothing has been awarded towards transportation and special diet.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. In ***Govind Yadav vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817,*** the Hon'ble Apex Court after considering all pros and cons in detail assessed the compensation in case of permanent disability of the injured.

[8]. In ***K. Suresh vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312***, the Hon'ble Apex Court held that in case of permanent disability, the injured is entitled to grant of compensation towards permanent disability as well as loss of earning capacity. The determination of compensation for loss of earning capacity on the basis of

multiplier method was held to be proper. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective standards. There cannot be a flight in fancy. The award should correspondent to reasonableness and should be in consonance with conventional sum. The endeavour should be to award just compensation keeping in view the suffering of the injured person.

[9]. In ***S. Manickam vs. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696***, it was ruled by the Hon'ble Apex Court that the determination of just compensation cannot be equated to a bonanza. It has to be based on application of fair and equitable principles. Reasonable approach should be adopted. Compensation towards permanent disability and loss of earning capacity, both were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of earning capacity.

[10]. In ***G. Ravindranath @ R. Chowdary vs. E. Srinivas and another, 2013(3) RCR (Civil) 934***, the Hon'ble Apex in case of grievous injuries of the injured in pelvic region ruled that in case of nature of injury, rendering the injured to be impotent,

adequate compensation has to be awarded towards all heads like expenses incurred in treatment including hospitalization, future medical expenses towards hospitalization, medicines, attendant charges etc, pain suffering and trauma, loss of amenities, prospects of marriage, loss of expectation of life and loss of future earning. In aforesaid case, the Hon'ble Apex Court awarded a sum of Rs.20.20 lacs.

[11]. In case of ***Rekha Jain vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996***, the Hon'ble Apex Court in case of 30% disability of face of a film actress held that in the circumstances of the case, the disability should be treated to be 100% functional disability. Loss was assessed on multiplier method keeping in view the age of the victim. As against compensation of 2 lacs assessed by the Tribunal, the Apex Court assessed the compensation of Rs.42,50 lacs.

[12]. In case of ***Neerupam Mohan Mathur vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422***, it was held by the Hon'ble Apex Court that in case of permanent disability on account of amputation of limb, compensation towards non pecuniary damages has to be awarded. In the said case, on account of amputation of one arm, the services of the claimant were terminated by the employer. There was loss of 100% earning capacity of the claimant. The order of High Court

in assessing 70% loss of income was upheld by the Apex Court. An amount of Rs.1 lac towards pain, suffering and trauma was assessed. An amount of Rs.2 lacs was assessed towards loss of amenities and additional amount of Rs.1 lac was assessed towards loss of expectation of life i.e. shortening of the normal longevity.

[13]. In case of ***Yadava Kumar vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** the Hon'ble Apex Court highlighted that a distinction has to be drawn between the damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner, as if injury has not taken place. Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

[14]. Since the 30% permanent disability has not been opined towards the whole body, therefore, I deem it appropriate to convert the aforesaid permanent disability towards whole body, which would be 50% of the permanent disability so suffered by the claimant. In this way, 15% of the permanent disability can be applied for the purposes of future loss of income on account of disability of the claimant. Since no

evidence was led by the claimant in respect of his monthly income, I deem it appropriate to consider the claimant to be an unskilled daily wage labourer and his income can be assessed @ Rs.4000/- per month. 15% of the said amount on account permanent disability would come out to be Rs.600/- per month i.e. Rs.7200/- per anuum. Keeping in view the age of the injured, the multiplier of 17 would be just and appropriate in view of ratio laid down in ***Smt. Sarla Verma vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 77***. In this way, the total amount towards loss of future income on account of permanent disability of the claimant would come out to be Rs.1,22,400/- (7200 x 17).

[15]. Keeping in view the nature of injury received by the appellant/claimant, I deem it appropriate to award additional amount of Rs.1,00,000/- towards 'pain and suffering', Rs.20,000/- towards 'special diet', Rs.10,000/- towards 'transportation charges' and Rs.20,000/- towards 'attendant charges'. In this way, after computing the aforesaid amount to the amount assessed by this Court towards loss of future income on account of permanent disability, the total would come to Rs.2,72,400/- (1,22,400 + 1,00,000 + 20,000 + 10,000/- + 20,000/-).

[16]. The appellant/claimant is entitled to the aforesaid

enhanced amount i.e. Rs.2,72,400/- along with interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

[17]. In view of above, the appeal preferred by the claimant i.e. FAO No.108 of 2013 stands allowed with the aforementioned modification.

FAO No.4321 of 2012

[18]. This appeal has been preferred by the appellant-Insurance Company against the award dated 11.05.2012 passed by the Tribunal, whereby the the appellant was fastened upon the liability to pay the amount of compensation along with respondent Nos.2 and 3 jointly and severally.

[19]. The perusal of the record reveals that though the appellant/Insurance Company relied upon the verification report Ex.R-5, but could not prove the execution of the same by summoning the concerned official from the Licensing Authority, M.V. Deptt., Bulandshar (U.P.). The verification report Ex.R-5 in respect of licence in question was sought to be verified from the concerned Department. The driving licence Ex.R-2 was issued on 12.02.2000 by the Licensing Authority at Bulandshahr and the same was renewed from time to time upto 23.04.2011. Neither the Licensing Authority, nor any verification report from

the concerned dealing was examined by the Insurance Company to prove the authenticity of the verification report Ex.R-5. Even though the summoned witness were served or otherwise, the Court was competent enough to secure their presence by way of coercive method, but no such process was evolved or pressed into service by the appellant/Insurance Company during the trial of the claim petition.

[20]. In view of above, there is no scope for interference in the appeal filed by the Insurance Company i.e. FAO No.4321 of 2012 and the same is accordingly dismissed.

August 02, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

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