

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

-.-

Date of decision: 09.08.2017

FAO 1594 of 2013

Mukesh

.....Appellant

Versus

Ravinder and others

.....Respondents

FAO 1595 of 2013

V P Singh

.....Appellant

Versus

Ravinder and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Ms Bhavna Grewal, Advocate for
 Mr. S K Yadav, Advocate
 for the appellant

 Mr. Suvir Dewan, Advocate
 for respondent No. 3

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Rekha Mittal, J. (Oral)

This order will dispose of FAO Nos. 1594 and 1595 of 2013 as these have emerged out of the same award dated 21.09.2012 passed by the Motor Accidents Claims Tribunal, Narnaul whereby compensation has been awarded in respect of injury (ies) sustained by Mukesh appellant in FAO No. 1594 of 2013 and V P Singh appellant in FAO No. 1595 of 2013.

FAO No. 1594 of 2013

The Tribunal has awarded a sum of Rs.3,88,180/- under various heads, reproduced here-under:-

Medical Expenses	23,480
Pain and suffering	35,000
Special Diet	25,000
Transportation	15,000
Loss of future income	1,37,700
Loss of amenities	1,50,000
Loss of income	2,000.00
Total	3,88,180

Counsel for the appellant would submit that the injured suffered permanent disability of 50%, therefore, compensation for loss of future income is liable to be enhanced. For this purpose, it is argued that the Tribunal has assessed income of the injured at Rs.4,500/- per month by taking into consideration wages of a casual labour. According to counsel, in view of nature of disability as per disability certificate Ex PW5/A proved by Dr. Dinesh Podar, the appellant would no longer be fit to perform any job much less as a casual labour. In addition, it is argued that compensation awarded under other heads also needs enhancement.

The injured claimant did not adduce any tangible evidence on record to prove his avocation and income, therefore, the Tribunal has assessed his income on the basis of wage available to a daily labour. He has suffered disability of 50% on account of range of motion of right knee joint reduced by 80% with partial union right supra condylar femur with deep complication. The appellant has not examined the doctor under whose treatment he remained from 16.02.2011 to 28.02.2011 at PGIMS Rohtak.

The appellant examined Dr. Dinesh Podar to prove disability certificate Ex PW5/A but his testimony is silent as to what activity the injured can

perform despite his having suffered disability to the extent of 50% to one of his lower limbs. Under the circumstances, the Tribunal or for that matter this Court is left handicapped to examine the case in the light of observations recorded by Hon'ble the Supreme Court of India in ***Raj Kumar vs. Ajay Kumar and others, 2011 (2) RCR (Civil) 101*** wherein the Apex Court has laid down certain principles for assessment of compensation in injury cases both pecuniary and non-pecuniary. The Tribunal has assessed future loss of income by taking permanent functional disability to the extent of 15%.

Counsel for the appellant has not advanced any meaningful arguments to convince this Court that functional disability assessed by the Tribunal is on lower side and warrants increase. Under the circumstances, I find myself unable to find any error in findings of the Tribunal assessing loss of future income qua disability to the extent of 50% to a particular limb. The Tribunal has awarded adequate compensation under various other heads except loss of income during the period of treatment.

Taking into consideration the period of hospitalization, it would be in the interest of justice that the appellant is awarded an amount of Rs.4,500.00 qua loss of income for period of treatment and recovery. In this manner, the appellant shall be entitled to additional amount of **Rs.2,500.00**, payable with interest at the rate of 7.5% per annum from the date of petition till realization.

FAO 1595 of 2013

The Tribunal has awarded Rs.2,89,155.00, detailed herein

below:-

Medical Expenses	29,675.00
Pain and suffering	30,000.00
Special Diet	20,000.00
Transportation	15,000.00
Loss of future income	87,480.00
Loss of amenities	1,05,000.00
Loss of income	2,000.00
Total	2,89,155.00

The injured victim suffered disability to the extent of 35% on account of range of motion of right knee joint reduced by 30%, left knee joint and ankle joint also reduced by 40% and 30% respectively with mal-united fracture left Tibia and deep complication.

The claimant did not adduce any clear and cogent evidence on record as to what was the activity being performed by him before he met with an accident and what activity he is unable to perform owing to 35% disability assessed by the Medical Board of which Dr. Dinesh Podar was a member. The Tribunal assessed functional disability to the extent of 9% and accordingly assessed loss of future income of Rs.87,480.00. I do not find any error in findings of the Tribunal allowing compensation under various heads except qua loss of income during period of treatment and recovery. Additionally, no compensation has been awarded for loss of marriage prospects.

The injured remained hospitalized for a period of 6-7 days in PGI MS Rohtak. In view of period of hospitalization and nature of disability, the appellant is allowed an amount of Rs.4,500.00 qua loss of income during the period of treatment and recovery. He is awarded another sum of Rs.50,000.00 for loss to his matrimonial prospects. The additional amount of **Rs.52,500.00** shall be payable with interest at the rate of 7.5%

per annum from the date of petition till realization.

The appeals are partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

09.08.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No

