

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

**FAO No. 2225 of 2013 (O&M)
Date of Decision: March 14, 2017**

New India Assurance Co. Ltd.

.....Appellant

Versus

Mandeep Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Akash Sridhar, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Munish Mittal, Advocate
for respondent No.1.

None for respondent No. 2.

Mr. Vishal Kashyap, AAG Haryana
counsel for respondent Nos. 3 to 5.

ANITA CHAUDHRY, J.

This appeal is by the insurance company aggrieved by the award passed in favour of the claimant by the Motor Accidents Claims Tribunal, Kurukshetra.

Mandeep was just 16 years when he met with an accident, a part of the right ankle was amputated, which resulted in disability to the extent of 55%.

The claimant was stated to be brilliant and a certificate holder in Karate. He had cleared his matriculation examination and was doing a computer course and had done his basic with Grade-B. He had also received

a certificate of achievement for his participation in the Haryana Inter School Martial Art Championship, 2009. Considering this, the Tribunal took the income of the claimant to be Rs.7,200/- per month as that of a skilled worker in Haryana and added 30% as future increase in the income, which raised the income to be Rs. 9,360/- per month and applied the multiplier of 18 and allowed 55% of the amount for the disability i.e. Rs.11,11,968/-. He was also allowed a sum of Rs.60,000/- for pain and suffering, a sum of Rs.2,69,000/- as medical expenses and a sum of Rs.46,500/- for hospitalization, raising the total to Rs. 14,87,468/-.

The submission on behalf of the appellant-insurance company is that the accident occurred when the minor was boarding the bus and he was trying to get into a moving bus and fell down and sustained injury and it would be a case of contributory negligence. It was urged that the child was not earning and notional income could have been taken and the Tribunal had taken the minimum wages as Rs. 7,200/- per month while the minimum wages in that year were much lesser and stood at Rs. 4,500/- per month. It was urged that the increase towards future income could not have been made and the functional disability should have been assessed to find the loss.

On the other hand, the submission on behalf of the claimant is that it was not a case of contributory negligence as the driver had started the bus without any signal from the conductor and there was no contributory negligence on the part of the claimant and it was the conductor who had to ensure before signaling the driver that the passengers had boarded. It was urged that the claimant was entitled to the increase towards future prospects of the income even in the case of disability. Reliance was placed upon

Transport Corporation 2005 ACJ 1416 and V. Mekala versus M. Malathi and another 2014(11) SCC 178.

So far as the question of contributory negligence is concerned, there is no evidence that the bus was over crowded or that the claimant was forcing his entry in the bus. It is the duty of the conductor to ensure that all the passengers have boarded the bus before it signals the driver. The police had investigated the case and had filed challan against the driver. The mere fact that the bus was parked for half an hour would not be sufficient to hold the claimant guilty of contributory negligence. The argument made by the insurance company is rejected.

It is not in dispute that the claimant was a student and he had suffered disability to the extent of 55%. The claimant was 16 years old at the time of the accident. The injury was on the ankle and there was an amputation at the mid tarsal level. The Tribunal had taken the minimum wages to calculate the loss. The submission of the insurance company was that the notional income should have been taken as the claimant was a child and even otherwise the minimum wages stood at Rs. 4500/- and the Tribunal has added 30% as future increase in the income to calculate the loss which is on the higher side.

The minimum wages in 2011 in Haryana stood at Rs. 4502.98/-. With the amputation the victim would have to suffer for the rest of his life. The disability was assessed but the functional disability was not assessed. It would have some affect on his income. He would suffer from different kinds of handicaps and social stigma throughout his life. His marriage prospects would also be affected. He would suffer trauma for not being able

to do normal work. Therefore, the compensation has to be re-assessed but

taking the notional income to Rs. 4500/- (rounded off) as that was the minimum wages. I would not make any change with respect to the addition of future prospects as was granted by the Hon'ble Supreme Court in ***Rajan versus Soly Sebastian and others 2015 (10) SCC 506***. After adding 30% as future prospects, the addition would be Rs. 1350/- and the income can be taken at Rs. 5850/-. Assessing the functional disability at 30%, the amount would be Rs. 1755 x 12 x 18 = Rs. 3,79,080/-.

I would make the following award:-

	(In Rs.)
Disability	3,79,080.00
Pain and suffering	1,50,000.00
Medicines actually spent	2,69,000.00
Hospital charges	46,500.00
Attendant charges (2,000 x 4)	8,000.00
Loss of earning for four months (4500 x 4)	18,000.00
Loss of prospects of marriage	1,50,000.00
Special diet	25,000.00
Total	10,45,580.00

The award is modified. The above amount would be payable at the same rate of interest as was allowed by the Tribunal till the amount is actually paid.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

March 14, 2017
Gurpreet

Whether speaking/reasoned : Yes

Whether reportable : No