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

FAO No. 10592 of 2014 (O&M)

Decided on: 05.09.2017

Sumit Kumar @ Monu

.....Appellant

versus

Ashok Kumar and another

.....Respondents

Coram:

HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. R.S.Mamli, Advocate
for the appellant.

Mr. R.K.Bashamboo, Advocate
for respondent No. 3-Insurance Company

Rajbir Sehrawat, J.(Oral)

1. This is an appeal filed by the injured claimant against the award passed by Motor Accident Claims Tribunal, Jagadhri on the ground of insufficiency of the compensation awarded to him for 100% physical disability.
2. The brief facts as pleaded by the claimant before the Motor Accidents Claim Tribunal are that the appellant-claimant was employed as a Cleaner on the truck owned by respondent No. 1- Ashok Kumar bearing registration No. HR-58C-2806 on salary of ₹ 6,700/- per month. On the fateful day, the respondent/owner was transporting the plywood from Yamuna Nagar to Mumbai in the said truck and he himself was driving the truck. When the truck reached near Ambika Hotel, it turned turtle and had fallen in the ditches on the road side due to rash and negligent driving of the vehicle by

respondent No. 1. The claimant sustained multiple and grievous injuries. He was taken to Government Hospital, Bhilwara from where he was referred to PGI, Chandigarh. His both legs were amputated and he became 100% disabled. Therefore, the claim petition was filed.

3. Respondent No. 1 admitted the factum of the accident but denied the rash and negligent driving on his part. He pleaded that accident had occurred suddenly and unfortunately without any fault on his part. It was pleaded that the claimant was employed as Cleaner on salary of ₹ 3,000/- per month and the vehicle was insured with the Insurance Company-respondent No. 2. Respondent No. 2 did not deny the factum of the insurance but contested the claim petition on the ground that the driver was not holding a valid and effective driving license. It was further pleaded that the vehicle was being plied without fitness certificate and route permit. The Insurance Company also moved an application under Section 170 of the Motor Vehicles Act seeking permission to contest the petition on the grounds available to the driver and the owner of the truck and the said application was allowed by the Tribunal. Parties led their respective evidence.

4. After hearing the parties and perusing the record, the Tribunal held that the accident happened due to rash and negligent driving of respondent No. 1; while driving the offending vehicle.

5. While assessing the amount of compensation, the Tribunal held that the claimant was merely 18 years 8 months at the time of the

accident and his both legs has been amputated. Therefore, his matrimonial prospects would be badly effected. Hence, on account of loss of marriage prospects, ₹ 50,000/- were awarded by the Tribunal. Besides this, he was awarded ₹ 50,000/- on account of loss of enjoyment of life due to disability. Since, the claimant had asserted the salary of ₹ 6,700/- per month and the respondent No. 1 had averred that he was paying the claimant only ₹ 3,000/- per month; and no evidence was led regarding the exact salary, therefore, the Tribunal assessed the notional income of the claimant as per the minimum wages at the relevant time and assessed the income at ₹ 4,847/- per month. The Tribunal also awarded the future prospects in view of the case titled as ***Rajesh and others Vs. Rajbir Singh and others, 2013(2) Apex Court Judgments 245 (SC)***; at the rate of 50%. Keeping in view the age of the injured, multiplier of 18 was applied. Therefore, the loss of income assessed by the Tribunal was ₹ 15,70,536/- towards loss of future income. Besides, the Tribunal also awarded a compensation of ₹ 1,00,000/- for future medical expenses on the ground that the artificial leg would require replacement after every 2-3 years. Keeping in view the medical record and the nature of injuries, the Tribunal awarded ₹ 50,000/- on account of cost of treatment. Besides this, the amount of ₹ 5,000/- was awarded on account of transportation during the treatment. An amount of ₹ 3,000/- was awarded on account of special diet during the treatment of the injured. Likewise, the amount of ₹ 5,000/- was awarded on account of services from the attendant .

Hence, the total amount of ₹ 18,83,536/- was awarded by the Tribunal.

6. Learned counsel for the appellant has submitted that while assessing the compensation, the Tribunal has not awarded any amount on account of physical disability suffered by the appellant. Still further, it is submitted by him that nothing has been awarded to the appellant on account of pain and sufferings and that ₹ 50,000/-, at least, deserves to be awarded on this count. It is his further argument that both the legs of the appellant were amputated and, therefore, he would be requiring the assistance of an attendant through out his life, therefore, an amount of ₹ 50,000/- deserves to be awarded on that count also.

7. After hearing the learned counsel for the parties and going through the record; with the assistance of the learned counsel, this Court finds itself in agreement with the arguments of the learned counsel for the appellant. Although, the Tribunal has awarded compensation on account of future loss of income due to physical disability involved in the matter, however, it has not awarded any amount for the physical disability as such. The appellant in the case has suffered loss of limb, i.e., his both legs have been amputated. The disability assessed on account of this is 100% as proved by PW-2, Dr. Ved Pal Maan. Applying the normal formula of ₹ 2,000/- per percentum of disability, an amount of ₹ 2,00,000/- deserves to be allowed to the appellant in this case on account of his 100% physical disability resulting into loss of limb.

8. Besides, it is also very clear that since both of the legs of the appellant have been amputated, therefore, he would be requiring help of some attendant through out his life, may be the degree varies from time to time. However, for that assistance, he will have to spend some extra money. As a result, the claimant deserves to be awarded ₹ 50,000/- on account of service of the attendant for future. Besides this, this Court finds substance in the argument of counsel for the appellant that the appellant has suffered immense pain and sufferings during the accident and subsequently due to amputation of legs. Therefore, the amount of ₹ 50,000/- is awarded to the claimant on account of pain and sufferings.
9. The other findings recorded by the Tribunal are upheld.
10. Resultantly, beyond what is awarded by the Tribunal, an amount of ₹ 3,00,000/- is awarded additionally; as described above, i.e. ₹ 2,00,000/- (Compensation on account of physical disability), ₹ 50,000/- (future attendant charges) and ₹ 50,000/- (pain and sufferings). However, the interest on the amount of compensation is retained as was awarded by the Tribunal.
11. In view of the above, the findings and the Award of the Tribunal is modified in the above said terms. The amount of compensation is enhanced as mentioned above. The present appeal is allowed accordingly.

5th September, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes