

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

FAO No. 2450 of 2015 (O&M)
Date of Decision: 11.07.2017

Karnail Singh	Versus	... Appellant
Rustam and others		... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the appellant.
Mr. Suvir Dewan, Advocate
for respondent No.3-Insurance Co.

RAJIV NARAIN RAINA, J.(Oral)

CM No. 7614-CII-2015

For the reasons mentioned in the application, duly supported by an affidavit, delay of 1030 days in filing the present appeal is condoned.

CM stands disposed of.

FAO No. 2450 of 2015

There is no representation on behalf of the appellant despite notice and listing of the case in the cause list.

I have heard learned counsel for the Insurance Company on the petition presented under Section 163-A of the Motor Vehicles Act, 1988 and the impugned award of the Motor Accident Claims Tribunal, Panchkula (in short 'Tribunal'). There can be no gainsaying that the amounts awardable under aforesaid Section have to be in conformity with the Second Schedule but not with mathematical exactitude and arithmetical calculation. Counsel Mr. Dewan would point out that the

Tribunal has awarded not only the amounts in conformity with the Schedule but in excessive of it for which the insurance company is satisfied as it has not appealed against the award.

On facts, the claimant suffered injuries and multiple fractures on his left leg and thighs and suffered an amputation below one knee in an accident which occurred on 20.03.2007 at about 9.30 am. The claimant who is a labourer was travelling on a motor cycle along with one Subhash riding from Panchkula to Raipurrani and met with the self created accident near the road divider of Sectors 25-26 Panchkula. The claimant was initially taken to Civil Hospital, Panchkula but later on he was shifted to PGI, Chandigarh and then was again shifted to K.D. Sharma, Hospital, Ambala Cantt. For treatment. The amounts awarded by the Tribunal for the injuries are as follows:

- (i) Annual amount spent on treatment and purchase of medicines ₹3,29,171/-.*
- (ii) Loss of future earning ₹3, 16, 800/-.*
- (iii) Pain and suffering ₹25,000/-.*
- (iv) Special diet ₹20,000/-.*
- (v) Miscellaneous expenses including transportation etc. ₹20,000/-*
- Total: ₹4, 14, 717/-.*

Learned Tribunal to assess the disability in non-fatal case has followed the Second Schedule while assessing and accepting the assessment of the Medical Board indicating disability as 75% with reference to the lower limb. It has observed in the report that the extent of disability cannot be considered to be functional disability of the

body. The injury would result in corresponding loss of earning capacity. Injured would face difficulty in performing his daily chores. The functional disability has been reasonably assessed by the Tribunal at 50%. The claimant earned ₹3,300/- per month at the time of accident which makes his annual income touching about ₹ 39,600/- per year and the loss of earnings in a year have been calculated to 50% of the annual income i.e. ₹19,800/- per annum. The claimant was 33 years old when the accident occurred and the Tribunal applied the multiplier of 16 and determined the loss of future earning at ₹3,16, 800/-. The Tribunal has awarded a total sum of ₹ 4, 14, 717/- as compensation.

Learned counsel for the Insurance Company fairly submits that multiplier of 16 has to be replaced by multiplier of 17 in view of the Second Schedule to the Act. He further submits that amounts have to be restricted to be amounts specified in the schedule because claimant chose to approach the Tribunal under Section 163-A and not Section 166 of the Act. Further submits that ₹25,000/- awarded for pain and suffering is five times more than what is specified in the Schedule and is open to reduction. But the company is not in appeal.

I have considered the contentions of Mr. Dewan and find that even assuming that claimant had approached the Tribunal under Section 163-A, appeal court ought not to disturb the findings of the Tribunal and the discretion exercised which has not caused any substantial injustice to the Insurance Company. Reduction of amount awarded for pain and suffering would be unjustified. The Second

Schedule is not a hide-bound formula or a stubborn and intractable Euclid's theorem and any variation of compensation would depend on the facts and circumstances of a case and the nature of the injury and expansion within justifiable limits is permissible in law of accident compensation to serve the ends of justice and balance out what is adequate, just and reasonable compensation under different heads of claim.

It is held that the multiplier of 17 will be applied to the amounts of loss of future earning capacity and pain and suffering to which the amount of ₹ 39, 600/- will be added, increasing the compensation package to [₹ 4,14,717+₹39, 600 – ₹25,000 (the amount received from the owner)] which comes to a grand total of ₹ 4,29, 317/- with interest increased to 7.5% by this order as against 6% per annum awarded by the Tribunal, which higher rate of interest is in tune with the current interest rate payable on fixed deposits in nationalized banks. Similarly, I would not interfere with or increase the amounts awarded for special diet and miscellaneous expenses including on transportation.

Accordingly, with these observations, the appeal stands partially allowed and the award is modified as above.

(RAJIV NARAIN RAINA)
JUDGE

11.07.2017

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