

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

F.A.O No. 4924 of 2013 (O&M)

Date of Decision:- 10.11.2017

Hawa Singh

.... Appellant

Versus

Dheeraj & Ors.

.... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. B.K. Bagri, Advocate, for the appellant.

Mr. Radhey Shayam Sharma, Advocate, for the respondents.

AVNEESH JHINGAN, J. (Oral)

C.M No. 22378-CII of 2017

Applicant seeks restoration of the appeal, which was dismissed for non-prosecution vide order dated 07.10.2017.

Notice of this application.

On the asking of Court, Mr. Radhe Shayam Sharma, Advocate, accepts notice on behalf of respondent No.3 and submits that he has no objection if the appeal is restored to its original number.

After hearing learned counsel for the parties, instant application is allowed, as prayed for. Order dated 07.10.2017, whereby the appeal was dismissed for non-prosecution, is recalled. The appeal is restored to its original number and taken on board today itself for hearing with the consent of both parties.

F.A.O No. 4924 of 2013

The appellant has filed the present appeal for enhancement of compensation awarded for 90% disability suffered by him in an accident

occurred on 07.11.2009, by the Motor Accident Claims Tribunal, Narnaul, (for short, 'the Tribunal').

The appellant sustained injuries due to rash and negligent driving of vehicle bearing registration No. HR-66-2980 (for short, 'the offending vehicle'). As a result of the injuries, he was hospitalised, operated upon and his left arm was amputated. The disability certificate of 90% was proved by deposition of PW-4 Dr. Dinesh Podar. The Tribunal awarded a lump sum amount of Rs.2,50,000/- as compensation.

The Hon'ble Apex Court in case of **Sandeep Khanuja Vs. Atul Dande, 2017 (3) SCC 351** has held in para No.14 as under:-

“14. In the last few years, law in this aspect has been straightened by this Court by removing certain cobwebs that had been created because of some divergent views on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of compensation in the case of permanent/partial disablement has been exhaustively dealt with after referring to the relevant case law on the subject in the case of [Raj Kumar v. Ajay Kumar & Ors. 2011 \(2\) R.C.R. \(Civil\) 101: 2011\(1\) Recent Apex Judgments \(R.A.J\) 571: \(2011\) 1 SCC 343](#) in the following words:

“Assessment of future loss of earnings due to permanent disability

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation,

after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to

the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the

percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.”

In the above decision it has been held that multiplier method should be adopted for awarding compensation in a case of permanent disability also. It has further been held in the above decision that Court should take into consideration adverse effect on the earning capacity of the person. The Tribunal while awarding the compensation has not considered the various Heads.

Without expressing any opinion on the merits of the case, the matter is remitted back to the Tribunal to decide afresh, in accordance with law.

The parties are directed to appear before the Tribunal on 22.12.2017.

The parties be provided effective opportunities to support their case by producing additional evidence, if required.

It is, however, clarified that the amount already awarded would be subject to the outcome of the remand proceedings.

The appeal is accordingly disposed of.

November 10, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No