

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

FAO No. 6206 of 2014

DATE OF DECISION : 05.12.2017

Naresh Kumar

.... APPELLANT

Versus

Sompal Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ajit Kumar Sharma, Advocate, for
Mr. R.D. Yadav, Advocate,
for the appellant.

Mr. Rajbir Singh, Advocate,
for respondent No.3 – Insurance Company.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 23.01.2013 passed by the Motor Accident Claims Tribunal, Rewari (for short, 'the Tribunal').

The factual matrix of the present case are that on 08.11.2009, in a motor vehicular accident that occurred between Santro car bearing registration No. RJ 02CA-0694 and truck bearing registration No. HR 46A-7485 (for short, 'the offending vehicle'), Naresh Kumar, aged 34 years, suffered multiple injuries. FIR No. 84 dated 09.11.2009 was registered at Police Station Rohdai.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by Naresh Kumar.

The Tribunal, after appreciating the facts and considering the evidence produced, awarded a sum of ₹ 4,69,336/- along with interest at the rate of 9% per annum.

Aggrieved of the said award, the present appeal has been filed by the claimant for enhancement of the compensation amount.

I have heard learned counsel for the parties and perused the paper-book as well as the record.

Learned counsel for the appellant contends that there was 25% permanent disability qua the right lower limb. He submits that the disability was proved vide certificate Ex.PW3/A. The certificate was proved by the deposition of PW.3 Dr. Ashok Saini, Medical Officer, General Hospital, Rewari. The permanent disability of 25% was on account of restricted movement of right knee partial loss of stability with mild restricted painful movements of right upper limb. The grievance of the learned counsel is that a sum of ₹ 50,000/- has been awarded for permanent disability, but the Tribunal should have applied multiplier method. His further grievance is that no amount has been awarded for transportation.

Learned counsel for respondent No.3 – Insurance Company argued that it was not proved that what is the functional disability and hence, the amount awarded is just and equitable. He further argued that the income and occupation of the appellant was not proved. He defended the award and resisted any enhancement.

From a perusal of the record, it is evident that there was no

positive evidence produced on record proving the functional disability of the appellant. There was no evidence to show that what is the effect of 25% permanent disability qua limb with regard to the whole body. The income and occupation of the appellant has also not been proved. Be that as it may, the Hon'ble Supreme Court in **Sandeep Khanuja Vs. Atul Dande**, 2017 (3) SCC 351 has held that while awarding compensation for permanent disability, multiplier method should be adopted. In the said decision, it has been held 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.”

Further, when income of the appellant has not been established, the safest yardstick would be to rely upon the minimum wages prevalent at that time, which was ₹ 3,914/- per month. The same is rounded off to ₹ 3,900/-. Instead of remanding the matter at this stage to find out the functional disability of the appellant, guidance is taken from a decision of the Hon'ble Apex Court in **Raj Kumar Vs. Ajay Kumar & another**, 2011(1) SCC 343. In view of the said decision, the permanent disability of 25% qua limb is taken as 15% for the whole body. The compensation for disability is re-calculated as under :-

$$3900 \times 12 \times 15\% \times 16 = ₹ 1,12,320/-.$$

The contention raised by learned counsel for the appellant that no amount has been awarded for transportation deserves acceptance. It has come on record that the appellant suffered fracture and was hospitalized. The medical bills of ₹ 3,94,336/- are an indicator that he suffered grievous injuries and was under treatment for a long time. Further, the injury is on the leg which has resulted into permanent disability. This will show that the appellant would have been needing transportation during the period of treatment and thereafter also. Keeping in view these facts, an amount of ₹ 30,000/- is awarded for transportation.

The award dated 23.01.2013 is modified to the extent that the compensation of ₹ 4,69,336/- awarded by the Tribunal is enhanced to ₹ 5,61,656/-.

The appellant shall be entitled to the enhanced amount along

with interest at the rate of 6% per annum from the date of filing of the claim
petition till realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

December 05, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes