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

FAO No.5234 of 2015 (O&M)
Date of Decision: August 24, 2017

Naushad ...Appellant

Versus

M/s Rajinder & Company and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ashwani Arora, Advocate for the appellant.

Mr.Amardeep Singh, Advocate for Mr.ADS Sukhija, Advocate for respondent No.1

Mr.Amrinder Singh Sidhu, Advocate for respondent No.3 - insurer.

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HARINDER SINGH SIDHU, J.

For the reasons stated in the applications, the delay of 118 days in filing and 30 days in re-filing the appeal is condoned.

This is an appeal for enhancement of compensation.

On 26.01.2011, the appellant Naushad, aged about 33 years, was going from Chandigarh to Baltana on his motorcycle at slow speed on the left side of the road. When he reached ahead of Zirakpur barrier on Chandigarh-Ambala road, a JCB bearing registration No.CH-04L-8469 came from the opposite direction on the wrong side of the road and hit the motorcycle of the appellant. As a result of the accident, he fell on the road and sustained serious injuries. He was taken to GMCH, Sector-32, Chandigarh, whereafter, he was referred to PGI, Chandigarh. FIR No.30 of 2011, Police Station Zirakpur was registered with regard to the accident. In the accident, the appellant suffered fracture of left leg below knee at two places and other multiple injuries. He filed the claim petition for compensation.

The Ld. Tribunal on the basis of the evidence concluded that the accident was caused due to the fault of the driver of the JCB and accordingly, the appellant was held entitled to compensation.

To prove the injuries, PW2 Dr.Aditya Aggarwal, Additional Professor, Department of Orthopaedics, PGI, Chandigarh was examined. He proved Ex.P6, the certificate of disability dated 22.02.2013. The appellant was found to have fracture proximal tibia left side compound grade-III, for which above knee amputation lower one-third was done. It was certified that he was having disability of 80% with respect to left lower limb. The appellant was admitted in PGI on 26.1.2011. He was operated upon on 27.1.2011 for debridement and hybrid fixator and was discharged on 07.2.2011 and advised follow up. He required above knee limb prosthesis for walking.

Though, the appellant claimed that he had been working as Marketing Executive in Jaitley Fabrications, Thana Baddi and had been earning Rs.20,000/- per month, however, as no credible evidence of said employment was produced, the Tribunal assessed his income as that of an unskilled labourer, which as per the minimum rate of wages, was Rs.5500/- per month.

The appellant had claimed that as a result of the accident, he remained confined to bed for ten months, during which period, he required the services of an attendant, who was paid a monthly salary of Rs.4500/-. The appellant also claimed reimbursement for the medical expenses incurred by him. The Tribunal, having considered the appellant to be a daily wager and noticing that the loss of his lower limb had rendered him incapable to do labour work as he lost his mobility and ability to move around and that permanent disability would impair his earning capacity and he would be unable to do any manual work, calculated compensation for permanent disability as under:-

Annual income before the accident 5500x12	Rs.66,000/-
Add 50% towards future prospects	Rs.99,000/-
Loss of future earning capacity 80% of actual income	Rs.79200/-
Multiplier with reference to age (which was 33 years on the date of accident)	16
Loss of future earning	Rs.12,67,200/-

The appellant was held entitled to total compensation as under:-

(i)	Medical Treatment	Rs.2,34,927/-
(ii)	Transportation Charges	Rs.6,000/-
(iii)	Special diet	Rs.5,000/-
(iv)	Pain and suffering & loss of amenities of life	Rs.2,00,000/-
(v)	Attendant Charges	Rs.24,000/-
(vi)	Loss of future earning capacity	Rs.12,67,200/-
(vii)	Future expenditure on prosthesis	Rs.2,44,000/-
	TOTAL	Rs.19,81,127/-

Ld. counsel for the appellant has contended that the Ld. Tribunal has wrongly granted attendant charges only for six months, whereas, the appellant remained confined to bed for over ten months. He further contended that the Tribunal has erred in not awarding compensation for `loss of amenities of life' 'pain and sufferings' 'for permanent disability' and 'loss of future earnings' separately and distinctly from each other. In this context, he placed reliance on **Raj Kumar v. Ajay Kumar & Anr.,** (2011)1 SCC 343**,** **Subulaxmi vs. M.D.,Tamil Nadu State Transport Corporation and another**, 2012(10) SCC 177 and **Manickam vs. Metropolitan Transport Corp. Ltd.**, 2013 AIR (SC) 2629.

He further stated that as the Tribunal had treated him to be a daily wager, the loss of future earning capacity on account of the injury sustained by him, considering that he had been rendered incapable of doing any manual labour work, ought to have been assessed at 100%. Reliance was placed upon **Syed Sadiq v. United India Insurance Co. Ltd.,** (2014) 2 SCC 735.

He further argued that it had been stated by PW2 Dr.Aditya Aggarwal that the appellant had been advised to use prosthesis for his amputated leg. The cost of the custom made left through knee modulator artificial leg, which was being used by the appellant was Rs.1,22,000/-. The life of this artificial leg is approximately two years and it requires maintenance after every 3-6 months. The Tribunal has awarded an additional sum only of Rs.122000x2 = 2,44,000/-, holding that interest accruing on this amount would take care the expenses on prosthesis in later years. Ld. Counsel argued that this amount needs to be increased.

Ld. Counsel for the respondent - insurer, on the other hand, argued that the claim of the appellant on account of attendant is not justified, because once an artificial leg has been fitted, he would no longer require an attendant. He further argued that the compensation awarded by the Tribunal is more than adequate. There is no evidence that as a result of the injuries, the appellant would suffer 100% functional loss.

The Hon'ble Supreme Court has spelt out manner of ascertaining the effect of permanent disability on earning capacity in **Syed Sadiq v. United India Insurance Co. Ltd.,** (2014) 2 SCC 735, as under**:-**

> *"13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."*

Thus, as per the Hon'ble Supreme Court for awarding compensation for loss of earning capacity on account of permanent disability following three things are to be considered:-

(i) the activities that the claimant can carry on inspite of the disability and those he is disabled from carrying out due to the disability.

(ii) To ascertain his avocation, profession etc. before the accident and his age.

(iii) Whether as a result of the disability the claimant is totally disabled from earning any kind of livelihood or whether inspite of the disability he could carry on his earlier activities on a lesser scale or carry on any other kind of activity and continue to earn his livelihood.

In the present case, the appellant was 33 years old at the time of the accident. He has been taken to be working as casual labourer. His movements have been restricted due to amputation of the leg and he has been virtually rendered incapable of doing labour work. There can be no doubt that as a result of his present condition, he will certainly not be able to undertake the hard work of a labourer. In these circumstances, it is also doubtful if he would be able to do any other productive work to earn livelihood for himself and his family. Thus, in the light of the observations of the Hon'ble Supreme Court though his permanently disability has been assessed at 80% , his functional disability and the consequential loss of earning capacity is liable to be assessed at 100% .

Considering that it had come in evidence that the life of left through knee modulator artificial leg, is only about two years and it requires maintenance every 3-6 months it may be appropriate that compensation under this head be enhanced to provide for at least three future replacements instead for the cost for two such replacements as awarded by the Tribunal. The interest awarded on the amount as assessed by the Tribunal may not be sufficient to take care of the expenditure on prosthesis to be incurred in future years.

In view of the aforesaid the appellant is held entitled to compensation as under:-

(i)	Medical Treatment (as awarded by the Tribunal)	Rs.2,34,927/-
(ii)	Transportation Charges (as awarded by the Tribunal)	Rs.6,000/-
(iii)	Special diet (as awarded by the Tribunal)	Rs.5,000/-
(iv)	Pain and suffering	Rs.50,000/-
(v)	Loss of amenities of life (as awarded by the Tribunal)	Rs.2,00,000/-
(vi)	Attendant Charges (as awarded by the Tribunal)	Rs.24,000/-
(vii)	Loss of future earning capacity (100%) [99000x16=1584000]	Rs.15,84,000/-
(viii)	For permanent disability	Rs.1,60,000/-
(ix)	Future expenditure on prosthesis (1,22,000x3)	Rs.3,66,000/-
	TOTAL	Rs.26,29,927/-

Accordingly, the appeal is allowed and the Award of the Tribunal is modified to the extent that the appellant is held entitled to total compensation of Rs.26,29,927/-, that is, Rs.6,48,800/- (2629967-1981127) over and above the amount awarded by the Tribunal. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

August 24, 2017 **(HARINDER SINGH SIDHU)**
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No