

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

**FAO No. 761 of 2015
Date of decision:- 23.08.2017**

Dharmender ...Appellant

Versus

Pappu Chauhan & others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ram Bilas Gupta, Advocate
for the appellant.

Mr.R.N. Singal, Advocate for the Insurance Company

RITU BAHRI J.

The present appeal has been preferred by the injured-appellant (for short 'the appellant'), against award dated 17.10.2014 passed by the learned Motor Accident Claims Tribunal, Faridabad (for short, 'the Tribunal') to the tune of Rs.1,37,000/-.

FACTS NOT IN DISPUTE

On 25.01.2013, the claimant-appellant accompanied with his friend Vijay Partap alias Monu were going on motorcycle bearing No. HR-51AS-5478 from Chacha Chownk, NIT Faridabad to Jawahar Colony, Faridabad for taking dinner and the said motorcycle was being driven by the appellant himself. When they reached in front of Aggarwal Light House, then from front side, a three wheeler bearing registration No. HR-38P-5424 came from opposite side and hit the motorcycle of the claimant, as a result of which the claimant-appellant and his friend fell down on the road and sustained injuries on their persons. The driver of the offending vehicle fled away from the spot along with vehicle. The claimant was taken to B.K.

Hospital, Faridabad for treatment where he was given treatment but he was referred to Safdarjang Hospital, New Delhi but he was taken to Sarvodaya Hospital, Faridabad where he was got admitted as indoor patient on 26.01.2013 but after short period, he was taken to Safdarjang Hospital, New Delhi. F.I.R No. 58 dated 27.01.2013 under Sections 279/337 IPC was registered at P.S. Saran, Faridabad against respondent No. 1.

COMPENSATION ASSESSED BY MACT

<i>On account of disability</i>	<i>Rs.75,000/-</i>
<i>On account of Medical Treatment</i>	<i>Rs.22,000</i>
<i>Transportation</i>	<i>Rs.5,000/-</i>
<i>Loss of Income</i>	<i>Rs.15,000/-</i>
<i>Pain and suffering</i>	<i>Rs.20,000/-</i>

The learned counsel for the claimant-appellant contends that the compensation awarded by the learned Tribunal to the present appellant is on the lower side and deserves to be enhanced, in view of the judgment of this Court in a case of **Raj Kumar vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101** the Apex Court had laid down the principles for determining the loss and the affect of permanent disability on the actual earning capacity. It would be useful to refer to the relevant paragraphs:-

“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent

disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. 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 ability (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. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the

loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

Learned counsel for the appellant submits that the Tribunal awarded very less compensation on the head of loss of income due to multiple injury including fracture supra and enter condylar femur right with partial restricted range of moments with unable to squat, sit cross leg and kneel and short knee right lower limb by 3 inches (post road traffic accident) with 40% permanent disability, he is still unable to work properly

The fact of accident is admitted and proved. A reference can be made to the judgment of Hon'ble the Supreme Court of India in the case of

Syed Sadiq etc. vs. Divisional Manager, United India Ins. Co. 2014(1)

RCR (Civil) 765, where the accident victim was aged 24 years and was vegetable vendor. It was held that a vegetable vendor is reasonably capable of earning Rs.6500/- per month with 50% increment in the future prospect of income. Multiplier of 18 was applied for calculating the amount of compensation

In the facts of the present case, the fact which is not in dispute that the appellant was earning Rs.6000/- per month, as held by the Tribunal and further as per P.W.5 Dr. Ravi Shankar Gaur, the disability of the appellant was assessed at 40% on account of operated case of fracture supra and inter condylar femur right with partial restricted range of moments with unable to squat, sit cross leg and kneel and short knee right lower limb by 3 inches (post road traffic accident).

In view of the above mentioned judgment, the compensation is re-assessed as under:-

HEAD	COMPENSATION AMOUNT
Salary	Rs.6000 per month
Annual Salary	Rs.6000X12=72,000/-
Future Prospect 50%	Rs.72000 + Rs.36000 = Rs.1,08,000/-
Compensation after multiplier of 17	1,08,000X17=Rs.18,36,000/-
Loss on account of functional disability @ 20%	Rs.367200/-
Special Diet	Rs.20000/-
Pain and Suffering	Rs.20000/-
Loss of amenities	Rs.1,50,000/-
TOTAL COMPENSATION AWARDED:-	Rs.05,57,200/-
ENHANCED AMOUNT OF COMPENSATION	Rs.5,57,200-1,37,000=Rs.04,20,200/- rounded off to Rs.04,20,000/-

The enhanced amount of compensation of Rs.4,20,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition,

till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of *Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539*. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

23.08.2017

G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No