

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

FAO-7900-2015 (O&M)
Date of decision: 12.12.2017

Jitender Kumar

.... Appellant

Versus

Kuldeep and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. Subhash Goyal, Advocate
for respondent No.3.

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 18.05.2015 passed by Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as the 'Tribunal').

On 29.06.2013, Jitender Kumar, aged 25 years, suffered injuries in a motor vehicular accident. The offending vehicle in the accident was Tata 407 bearing registration No.PB-07Y-1347. As a result of the accident, the appellant suffered 22% permanent disability on account of restricted movement of left hip with partial loss of stability and pain. The said disability was proved by certificate Ex.PW4/A. The said certificate was supported by deposition of Dr.Ashok Saini (PW4).

The Tribunal awarded a sum of Rs.1,43,993/-along with interest @ 6% per annum in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988.

Learned counsel for the appellant has argued that there was permanent disability of 22% but the Tribunal has not applied a multiplier method. His further grievance is that no amount has been awarded for the attendant even when appellant was hospitalised from 29.06.2013 to 09.07.2013 and there was a follow up treatment. He further argued that the Tribunal while awarding the medical expenses has given the actual medical bills proved and has not considered that there was some follow up treatment. His further grievance is that no amount has been awarded for loss of amenities.

Learned counsel for the Insurance Company argued that no positive evidence was brought on record to show that what was the functional disability. He argued that the percentage of disability qua the limb as it is cannot be applied in the multiplier method. His contention that nothing has come on record that there was follow up treatment. He resisted any further enhancement.

A young boy of 25 years of age, working as a driver, suffered permanent disability which resulted into restricted hip movement and loss of stability, in such injury cases, multiplier method should be applied.

The Hon'ble Apex Court in **Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343** has held as under :-

“18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked

the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.”

The Hon'ble Apex Court held that percentage of disability qua limb should not be applied as it is taking it to be percentage of loss of earning. The Hon'ble Apex Court instead of remanding the matter back estimated 50% of the disability qua the limb as disability qua the whole

body.

In the present case, learned counsel for the appellant has submitted that the matter may not be remitted back rather should be decided at this stage following the decision of the Hon'ble Apex Court in **Raj Kumar's case (supra)**.

Learned counsel for Insurance Company could not raise any serious issue. The appellant was claimed to be a driver and since his earning has not been proved, minimum wages for a skilled labourer are being taken to calculate the permanent disability at Rs.5471/-per month. The same is rounded off to Rs.5500/-. Since there was 22% disability qua the limb, the same is assessed as 10% qua the whole body. The injured was 25 years of age, hence a multiplier of 18 is applied. Loss of dependency is recalculated as under :-

$$5500 \times 10\% \times 12 \times 18 = \text{Rs.}1,18,800/-$$

The contention raised by learned counsel for the appellant regarding awarding compensation for attendant deserves acceptance. The appellant was hospitalised from 29.06.2013 to 09.07.2013 and his injuries were such that his movements must have been restricted. In such circumstances, attendant would have been required during the period of hospitalisation and thereafter also. Accordingly, a sum of Rs.25,000/- is awarded for attendant.

Keeping in view the type of injuries and hospitalisation, the awarded amount of Rs.20,000/- for pain and suffering is enhanced to Rs.30,000/- and transportation charges are enhanced from Rs.10,000/- to

Rs.25,000/-

The award dated 18.05.2015 is modified to the extent that the amount awarded by the Tribunal of Rs.1,43,993/- is enhanced by Rs.1,24,800/-.

The claimant would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

12.12.2017
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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No