IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 9538 of 2014(O&M)
Date of Decision:- 21.11.2017

Suresh Kumar ....Appellant

Versus

Neeraj Kumar & Ors. ...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

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

Ms. Vandana Malhotra, Advocate, for respondent No.3.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 15.07.2014, passed by the Motor Accident Claims Tribunal, Pathankot (for short, 'the Tribunal').

Suresh Kumar, aged 40 years, met with a motor vehicular accident on 26.01.2013. He was driving motor cycle bearing registration No. PB-35-H-5886, which was hit by rashly and negligently driven bus bearing registration No. PB-10-DK-4833 (for short, 'the offending vehicle'). As a result of the accident, he suffered multiple injuries including grievous injuries on the leg. Ultimately, his left leg had to be amputated.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed. The Tribunal after considering the witnesses and evidence awarded a sum of Rs.6,33,000/-.

The present appeal has been filed for enhancement of the compensation already awarded.

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

There is no dispute by the parties with regard to the involvement of and rash and negligent driving of the offending vehicle. Even the percentage of permanent disability qua limb has not been disputed.

Learned counsel for the appellant contended that the Tribunal has awarded a sum of Rs.1,60,000/- for 80% permanent disability, multiplier method has not been applied. He further argued that no amount has been awarded for loss of amenities and for loss of social status. He further submitted that no interest has been awarded on the compensation. He further contended that the amount awarded under the various heads is on the lower side.

Learned counsel for the insurance company defended the award and argued that no positive evidence has been produced on record to show that how this disability qua the limb has effected functional abilities of the appellant. She further argued that claimant was a shop-keeper and even with the amputation of leg his working was not effected. She argued that the Tribunal had directed that if the payment is not made within one month then the interest would be awarded.

The contentions raised by learned counsel for the appellant deserve acceptance.

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.

From the perusal of the above decision it is evident that the Hon'ble Apex Court has held that so far as possible the compensation for permanent disability should be awarded by applying the multiplier.

In the present case there is no positive evidence on the record to show that what is the functional disability. There is nothing on record to show that what is percentage of disability qua the whole body. But the fact remains that the appellant has lost his left leg. Even the shop-keeping business would suffer to an extent because of amputation. The income of the claimant has also not been proved. In such circumstances, the safest yard-stick would be to rely upon minimum wages prevalent at that time in the State of Punjab. As per the minimum wages notification, during the relevant period the unskilled labour used to get Rs.4,268/- per month. The same is rounded off to Rs.4300/- per month.

Hon'ble Apex Court in ***Raj Kumar Vs. Ajay Kumar & Anothers, 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%."

In the above decision the Hon'ble Apex Court has taken 50% of the permanent disability qua the limb vis-a-vis qua whole body.

Relying upon the above decision and on the income assessed, the compensation for permanent disability is assessed as under:-

Rs.4300/- per month 40% = Rs. 1,720/-

applying the multiplier of 15 as the claimant was 40 years of age

1720 x 12 x 15 = Rs.3,09,600/-.

The Apex Court in case ***G. Ravindranath @ R. Chowdary Vs. E. Srinivas & Anr., 2013(2) SCC 455*** has held that in case of non-fatal injuries the pecuniary and non-pecuniary damages should be compensated.

In the present case the appellant has lost his leg because of which he has suffered loss of amenities of life and apart from physical pain and suffering he has also suffered loss of social status.

For the reasons mentioned above, Rs.50,000/- is awarded for loss of amenities of life and Rs.50,000/- for loss of social status.

While considering the compensation to be awarded under the head pain and suffering, it is to be kept in mind that pain and suffering does not include the physical pain and suffering only, it includes mental agony and the harassment the appellant had to undergo. It is further to be considered that the appellant has lost his leg because of no wrong done by him but he is a sufferer because of a wrong doer. Keeping in view this fact the pain and suffering amount awarded of Rs.50,000/- is enhanced to Rs.1 lac.

The Tribunal while awarding the amount should have awarded interest to the appellant as per the statutory provision under Section 171 of the Act. No reasons have been mentioned by the Tribunal for not awarding the interest. The Hon'ble Superme court in case ***Dharampal & Ors. Vs. U.P State Road Transport Corpn. 2008(12) SCC 208*** has held that awarding of interest should be specifically dealt with while deciding the claim petition.

Keeping in view the above decision of Hon'ble the Apex Court and the facts, the appellant is awarded interest @6% per annum from the date of the filing of the claim petition.

The award dated 15.07.2014 is modified to the extent that the amount awarded of Rs.6,33,000/- is enhanced to Rs.9,32,600/-.

The appellant would be entitled to interest on the entire amount including the enhanced amount from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed in the above said terms.

November 21, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

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