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

**F.A.O No. 5118 of 2017 (O&M)**
**Date of Decision:- 27.11.2017**

Chander Pal .... Appellant

Versus

Than Singh & Ors. .... Respondents

**CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN**

Present: Mr. Ashok Kaushik, Advocate, for the appellant.

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

**AVNEESH JHINGAN, J. (Oral)**

The present appeal is against award dated 21.02.2017 passed by the Motor Accident Claims Tribunal, Palwal (for short, 'the Tribunal').

Chander Pal, aged 48 years met with motor vehicular accident that occurred on 13.02.2016. The appellant was standing at the side of the road when a rashly and negligently driven truck bearing registration No. HR-33H-5150 hit him. As a result of the accident he suffered multiple injuries and ultimately his right leg was amputated below knee. FIR No. 76, dated 13.02.2016 was registered at Police Station Sadar Palwal.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed. The Tribunal after appreciating the facts and taking into consideration the evidence produced awarded a sum of Rs. 3,06,757/- along with interest @7.5% per annum.

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

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

Learned counsel for the appellant argued that the appellant was 48 years of age at the time of accident. He was working as a ticket-checker in Capital Bus Service Pvt. Ltd., Delhi. He further argued that though it was claimed that he was earning Rs.20,000/- per month, but it was proved on record that his monthly salary was Rs. 13,372/-. The salary was proved by Exhibit P/27. The said certificate was proved by deposition of PW/7 Sanjay Sharma, General Manager, Capital Bus Service Pvt. Ltd., Delhi before the Tribunal. He further contended that the Tribunal has not awarded disability compensation by applying the multiplier method. His grievance is that amounts awarded under the various heads are on the lower side. He further states that the Tribunal has not taken into consideration that after amputation artificial limb would be required to be fitted.

Learned counsel for the insurance company on the other hand stated that it has not come on record that because of amputation of his leg, the appellant has been removed from the employment. She has further stated that there is no positive evidence on record to show that 65% disability qua limb has effected. The functional disability has not been proved. She defended the award.

The contention raised by learned counsel for the appellant deserves acceptance. There is no quarrel on the proposition that in case of permanent disability the multiplier method should be adopted.

The Hon'ble Supreme Court in ***Sandeep Khanuja Vs. Atul Dande, 2017(3) SCC 351*** has held as under:-

> "*12. We may observe at the outset that it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier', has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident.*"

From the perusal of the above decision it is evident that the multiplier method is sound method to be adopted for awarding compensation for permanent disability. The Hon'ble Apex Court has held that it would not be appropriate to apply the percentage of permanent disability qua the limb as % of loss of earning capacity.

In the present case no positive evidence has come on record to show that what is the effect of 65% disability qua the right leg on the whole body. It was claimed that the appellant was a ticket checker. The salary certificate may not be mentioning his designation, but his monthly income has been proved by the deposition of General Manager of the bus service. In any case it cannot be expected that with an amputated leg he would be able to continue to work as a ticket checker. There may be a chance that he may be given a soft job, but it is only the assumption since he was in a private employment.

The salary of the appellant was proved to be Rs.13,372, which is rounded off to Rs.13000/-. In absence of any material on record to find out its functional disability instead of remanding the matter back, it will be appropriate to take guidance from the decision of the Hon'ble Apex Court in case of ***Raj Kumar Vs. Ajay Kumar & Anr., 2011(1) SCC 343***. The Hon'ble Apex Court has held as under:-

> *"8. 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, 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. What requires to be assessed by the Tribunal is the effect of the permanently 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 terns 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 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 (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567).*

*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 took almost 50% disability qua the limb as whole body disability. Similarly in the present case the 65% disability qua the right leg is taken as 35% permanent disability qua the whole body which further calculated to 30% loss of income. The compensation for disability is calculated as under:-

Rs. 13000 - 30% = Rs. 3,900/-

Rs. 3900 x 12 = Annual loss of future income = Rs. 46800/-

applying multiplier of 13 = Rs.46,800/- x 13 = Rs.6,08,400/-

The amounts awarded under the various heads by the Tribunal needs enhancement for the fact that the appellant was hospitalised for 7 days initially, thereafter there was amputation. The injuries suffered were such that there would have been a requirement for attendant and transportation not only during the period of treatment, but thereafter also. An amputated leg ensures that he would not be able to move around on a two wheeler or to drive a two wheeler. It would obviously result into need of transportation after the recovery also. In cases of amputation or such injuries, attendant is required after the discharge from the hospital also. The Tribunal has not considered that the leg was amputated below knee and hence some artificial limb or artificial support for movement must be required which should be compensated. The Tribunal has not awarded any compensation for pain and suffering. The pain and suffering includes the physical pain, trauma, mental agony and harassment faced not only by the appellant but by his family members also. The Tribunal has not awarded any amount for special diet which would have been recommended by the doctor for speedy recovery. The amounts awarded by the Tribunal are enhanced and the amounts not considered by the Tribunal are awarded as per table given below :-

| | ***Compensation awarded by the Tribunal*** | ***Compensation awarded by this Court*** |
|---|---|---|
| Disability compensation | 1,30,000/- | 6,08,400/- |
| Medical Bill | 1,31,757/- | 1,31,757/- |
| Loss of income | 10,000/- | 10,000/- |
| Future loss of income | 20,000/- | 20,000/- |
| Attendant | 5,000/- | 25,000/- |

| | ***Compensation awarded by the Tribunal*** | ***Compensation awarded by this Court*** |
|---|---|---|
| Transportation | 5,000/- | 20,000/- |
| Future operation | 5,000/- | 5,000/- |
| Amount of prosthesis of artificial support | -- | 50,000/- |
| Special diet | -- | 20,000/- |
| Pain and suffering | -- | 25,000/- |
| Total | 3,06,757/- | 9,15,157/- |

Accordingly, the award dated 21.02.2017 is modified to the extent that amount awarded of ₹3,06,757/- is enhanced to ₹9,15,157/-. The appellant shall be entitled to the enhanced amount along with interest @6% per annum from the date of filing of the claim petition till realisation.

The appeal is partly allowed in the aforesaid terms.

**November 27, 2017** **(AVNEESH JHINGAN)**
**tripti** **JUDGE**

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