

115.

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

FAO-627-2017 (O&M)

Date of decision:31.01.2017

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD ... Appellant

versus

MURSALEEM @ MURSLIN & ORS Respondents

II. FAO-642-2017 (O&M)

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD ... Appellant

versus

MUKEEM & ORS Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.Rajneesh Malhotra, Advocate,
for the appellant.

HARI PAL VERMA, J.

This order shall dispose of two appeals i.e. FAO-627-2017 and FAO-642-2017, arising out of the same accident.

The claimants-Mursaleem @ Murslin and Mukeem (herein respondent No.1 in both the cases) have filed claim petitions under Section 166 of the Motor Vehicles Act, 1988, for the injuries suffered by them in a motor vehicular accident. As per the claim petitions, on 25.09.2015, when the petitioners were going to Pingwan from Mamlika on the motorcycle bearing registration No.HR-28E-6473, being driven

by Mursaleem @ Murslin in a slow and moderate speed on the left hand side of the road, and reached near Village Nasirpuri in the area of Police Station Punhana, a truck bearing registration No.RJ-14GG-1178, being driven by respondent No.3 (herein) in a rash and negligent manner, struck with the claimants' motorcycle, resulting serious and multiple injuries on their persons. The driver (respondent No.3 herein) fled away from the spot after leaving the offending vehicle. For the injuries suffered by the claimants, they have become permanent disable and unable to do any work or earn anything. Resultantly, the claimants as well as their family members have suffered great financial loss as they were the only bread earner of their respective families.

The Tribunal has passed the award dated 01.11.2016, awarding compensation to the claimants in the following manner:-

- (i) In MACT petition bearing CIS No.422 of 2016- Mursaleem @ Murslin Versus Jan Mohammed and others, the Tribunal has awarded compensation to the tune of ₹6,58,200/- along with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization.
- (ii) In MACT petition bearing CIS No.421 of 2016- Mukim Versus Jan Mohammed and others, the Tribunal has awarded compensation to the tune of ₹2,25,610/- along with interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization.

In FAO-627-2017-Bajaj Allianz General Insurance Company Limited Versus Mursaleem @ Murslin and others, learned counsel for the appellant has argued that the Tribunal has wrongly awarded a sum of ₹5,83,200/- on account of permanent disability and has erroneously taken the earning of respondent No.1-Mursaleem @ Murslin as ₹6,000/- per month without there being any documentary evidence. He was a student of 10+2 and thus, had no income at the time of accident. He further states that no compensation on account of future prospects was liable to be paid. The Tribunal has assessed 30% of the income as loss i.e. ₹32,400/- per annum. The multiplier applied is also wrong. He has argued that the Tribunal has erroneously granted compensation on account of future prospect to the extent of 50% while calculating the loss, whereas no such evidence has been led by the respondent No.1-claimant that he was earning anything or that he was disabled to have any future loss of income.

Similarly in FAO-642-2017-Bajaj Allianz General Insurance Company Limited Versus Mukeem and others, learned counsel for the appellant has argued that the Tribunal has granted excessive compensation by ignoring the fact that the respondent No.1-claimant-Mukeem was not entitled to any future prospects as no evidence was led by the respondent No.1-claimant that there has been any loss with regard to the future prospects or that he is bed ridden and would not be able to earn in future. The disability was assessed at 10%. However, the same was not a functional disability causing future

loss to the tune of 10%. The multiplier adopted in the case is also wrong.

I have heard learned counsel for the appellant.

Respondent No.1-claimant has examined Dr. Naseem Ahmed as PW1, who deposed that he along with other members of the Medical Board, examined respondent No.1-Mursaleem on 01.06.2016 and has assessed his disability as 30% which was on account of post-traumatic operated case of fracture of shaft of right femur with fracture of shaft of right humerus with fracture of bilateral clavicles with mild restriction of movements at right shoulder joint, right hip joint and right knee joint. The disability certificate was filed as Ex.PW1/A. Respondent No.1-Mursalim in affidavit Ex.PW5/A tendered by him, in his examination-in-chief has deposed that his study was discontinued as he was a student of 10+2 and was also doing labour work prior to the alleged accident, earning ₹ 500/- per day. No suggestion has been put to PW5-Mursaleem by the respondents that he was not doing labour work before the accident, in question. Therefore, the plea/statement of respondent No.1-Mursaleem was established on record. On the date of accident, he (Mursaleem) was 20 years of age and the MACT, instead of considering his income as ₹500/- per day, has considered the monthly income as ₹6,000/-, which is on lower side. Since PW1-Dr. Naseem Ahmed has stated that the earning capacity of the claimant-Mursaleem has been reduced to the extent of 30% on account of permanent disability because of the injuries suffered by him

in the accident and at the time of accident, he was 20 years of age, the compensation awarded is in consonance to the injuries suffered by respondent No.1-claimant-Mursaleem.

So far as the award of compensation to the other respondent No.1-claimant-Mukeem is concerned, he was about 17 years of age and the Tribunal has assessed his monthly income as ₹6,000/- and awarded ₹1,94,400/- under the head 'Permanent Disability' and the total compensation awarded is ₹2,25,610/- with interest @ 7.5% per annum from the date of filing of petition till realization of the amount.

Learned counsel for the appellant has referred to the judgment of the Hon'ble Supreme Court rendered in **Raj Kumar Versus Ajay Kumar and another-2001(1) SCC 343** to contend that future loss of earning not to be assessed. However, in the case in hand, the claimants are young persons and the doctors have certified their disability as permanent in nature. Therefore, the plea that future loss cannot be assessed does not apply to the facts and circumstances of the present case.

Since nothing substantial has been brought by the appellants before this Court, I find no illegality in the award passed by the Tribunal.

Accordingly, both the appeals stand dismissed.

(HARI PAL VERMA)
JUDGE

31.01.2017

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Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No