

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2428 of 2003

Date of Decision: 01.03.2018

Rajbir

.....Appellant

Vs.

Narender Singh and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Pankaj Midha, Advocate, for the appellant.

Mr.R.N.Singal, Advocate, for
respondent No.2/Insurance Company.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimant-appellant(for short 'the appellant'), against award dated 30.09.2002, passed by the learned Commissioner Workman's Compensation Act 1923, Bhiwani (for short, 'the Tribunal') vide which in a claim petition filed under Section 20 of the Workman's Compensation Act 1923, he has been awarded compensation to the tune of Rs.2,34,927/- after suffering 55 % disability as per disability certificate Ex.A-7 in an accident which took place on 24.01.2001.

FACTS NOT IN DISPUTE

The claimant was employed with respondent No.1 Narender Singh on his truck bearing No.HR-46/2796 as driver. On 24.01.2001, while he was driving the alleged truck and was going from Surat Port to Calcutta, after loading Paper Rolls and when he reached near Fauji Dhaba Tikwasra turning point between Shri Nagar and Kashigarh a Trailler No.RJ-19/G-56 came from opposite site with rash and negligence manner and struck into the alleged truck of the applicant and due to this impact the alleged truck become totally damaged and the applicant received the serious injuries on his both legs and his left leg badly fractured and was admitted into JLN Medical College, Ajmer and then the respondent No.1 brought him to Jind and admitted in jain Dharamarth Hospital, Jind.

The parties are not in dispute with the findings on issue No.1 that

the accident took place as applicant (AW-1) who is the employee of the respondent No.2 produced the file of accident claim on damage alleged truck No.HR-46/2796 and admitted that alleged truck was totally damaged due to said accident and damage claim has been paid to the respondent No.1 by the respondent No.2 and it was admitted that applicant received the injuries while he was driving the alleged truck and conductor has been died in the accident.

COMPENSATION ASSESSED BY MACT

The compensation has been assessed by taking into account the disability certificate Ex.A7 which was to the extent of 55% and age of the applicant/appellant was 27 years at the time of accident. The compensation has been assessed as under:

Sr.No.	Heads of compensation	Amount
1	Compensation	Rs.2,34,927/-
2	Interest @ 12% p.a from 24.01.2001 to 30.09.2002	Rs.46,980/--
3.	Expenses	Rs.2,000/-
	Total	Rs.2,83,907/-

Learned counsel for the claimant-appellant contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced. On the other hand, the learned counsel for the respondent/Insurance Company has vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

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

As per record Annexure A-7 i.e. the disability certificate, the disability of the applicant/appellant has been assessed as 55% and Dr.Dhan Kumar has proved the same while appearing as AW-3 and stated tha ton account of this injuries, the applicant/appellant cannot do any work and he has to walk with the help of stick but in future with the practice of exercise it can be made some improvement. In the present case claimant was driver on account of disability and disability should be taken 100% as the claimant has lost his earning capacity to work as a driver. A reference can be made at this stage to the judgment passed by Hon'ble Supreme Court in the case of

S.Suresh vs. Oriental Insurance Company Ltd. And anr. 2010(13)SCC 777 wherein, it has been held that claimant was lorry driver and he met with an accident while driving the vehicle and his right leg has been amputated below knee. The insurance company pleaded that under Workman's Compensation Act loss of a leg on amputation amounted to a 50% reduction in the earning capacity. The Supreme Court upheld the compensation awarded by the Commissioner considering the disability as 100% for his loss of earning capacity as driver and set aside the judgment of the High Court whereby it had reduced the compensation to 50% by referring the part-II of Schedule I of Workman's Compensation Act, 1993. Thereafter the judgment is followed in the case of National India Assurance Company Limited, Chandigarh Vs. Ajay and Another 2017 AAC 1112, where, the claimant had suffered 20% disability and he was unable to left weight with the left upper limb as he was found to have suffered crush injuries on the left elbow where operation of the fracture of left humerus radius and ulna was observed with stiffness of elbow. The claimant was granted the benefit of 100% disability on the ground that applicant has suffered 100% fictional disability as well as loss of earning capacity for the reason that he could not perform the work of cleaner any more because of the disability suffered by him in the accident. The order of the Commissioner was upheld by this court and appeal filed by the Insurance Company was dismissed. However, the Court proceeded to examine the large question whether the claimant can be entitled to compensation treating him to a 100% even if his physical disability assessed by treated to be less. A judgment can also be referred which has been passed by Hon'ble Supreme Court in the case of Partap Narain Singh Deo Vs. Shrinivas Sabata and Another, 1976 AIR (SC) 222, where a personal injury is caused to a workman in the course of employment, rendering him incapable of performing his duty in the said capacity on the job on which he was working, the disablement has to be assessed as total, entitling the workman the benefit of 100% disability and accordingly loss of earning capacity. A reference has also been made to the judgment of Andhra Pradesh High Court reported as N.Sree ramulu v. B.Lakshmi Narayana and another 2014 AAC 1180 wherein it is held that loss of earning capacity arising from permanent disability may be different

from the percentage of permanent disability and the opinion of the medical practitioner is to the percentage of loss of earning capacity , which would, normally, be accepted by the Court, where permanent partial disability results from an injury not specified in Schedule I and the workman would be entitled to such percentage of compensation, which would be payable in case of permanent total disability, proportionate to the loss of earning capacity.

Applying the ratio of the abovesaid judgment in the facts of the present case and since the claimant was driver and on account of injuries and as per disability certificate Ex.A-7 and as per statement of AW-3 that he is unable to do physical work in future and no improvement can be made in future, the disability qua the working capacity of claimant/appellant is assessed as 100%. As per Section 4(b) of Workmen Compensation Act “where permanent total disablement results from the injury it is held that an amount equal to 60% of the monthly wages of the injured (employee) multiplied by the relevant factor”. Accordingly, the compensation is reassessed as under as per above said act:

Sr.No.	Heads of compensation	Amount
1	Compensation Rs.2400/- X 213.57=	Rs.5,12,568/-
2.	Expenses	Rs.2,000/-
	Total	Rs.5,14,568/-
	Enhanced amount of compensation	Rs.5,14,568/- ---- Rs. 2,36,927/- =2,75,641/-

Resultantly, the enhanced amount of compensation of **Rs.2,75,641/-** 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 @ 12% per annum from the date of filing of the claim petition. Adjustment of interest shall be made by the learned Commissioner. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

01.03.2018
anil