

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

FAO 909-2002(O&M)

Date of Decision: 30.05.2018

Mohinder Singh and anr.

...Appellant

Vs.

Raghbir Singh and ors.

..Respondents

CORAM: HON'BLE MS.JUSTICE RITU BAHRI

Present: Mr. Sandeep Kotla, Advocate for the appellant.

Mr. Suvir Dewan, Advocate for respondent No.3.

RITU BAHRI, J.

The claimant has come up in appeal against the award of the Tribunal dated 13.12.2000 whereby compensation of Rs.1,28,650/- has been awarded on account of injuries suffered by appellant No. 1 in a road side accident on 09.06.1998.

FACTS NOT IN DISPUTE

On 09.06.1998, appellant Mahender Singh was driving TATA-407 truck bearing No. HR-39/3928 and his son Sunty @ Vikas, brother-in-law Satbir and Ram Niwas Saini were sitting with him. When their truck reached near Bhanu Industries in the area of village Satrod Khurd, a truck bearing registration No. HR-46A-1778 being driven by respondent No. 1 carelessly and in zig zag manner came and hit against the a jeep bearing registration No. HR-21/077 which was going ahead of the truck of the appellant No. 1, as a result of this impact, the appellants received grievous injuries. They were shifted to Chawla Nursing Home, Hissar. Appellant No.

1 sustained cuts and fractures on various parts of the body.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal assessed the compensation as under:

<i>Sr.No.</i>	<i>Head</i>	<i>Amount (₹)</i>
1	Special Diet, Transportation charges and attendant	₹5,000/-
2	Compensation for pain and suffering	₹15,000/-
3	Compensation for permanent disability	₹70,000/-
4	Medical Bills	₹38,650/-
	Total	₹1,28,650/

Counsel for the claimant-appellant has referred to disability certificate Ex.P10 vide which permanent disability of the claimant-appellant was found to be 45%. He has referred to the statement of PW3 Dr. Parveen Chawla who stated that the appellant No. 1 was diagnosed of multiple injuries with shock, he had haemonpumo thorax on left side, monteggia fracture dislocation right side, fracture shaft femur with fracture neck of the femur of the same size wound over right thigh and leg, fracture of pelvis, fracture of patella right side and multiple fractures left side.

Counsel for the respondent-Insurance Company has submitted that the compensation awarded by the Tribunal is adequate and no interference is required.

It is not in dispute that there is disability of 45% which is permanent in nature and appellant No. 1 was the driver by profession. Thus, it would not be possible for him to drive the vehicle. He would not be able to earn the same amount which he was getting earlier.\

Reference at this stage can be made to a judgment of this court

in a case of ***Parveen v. Vikram and others, 2016(2) RCR (Civil) 717*** whereby this Court in a case of driver who suffered 70% disability took his disability to be 100% and while referring to the various judgments has observed as under:-

In a judgment by Hon'ble the Supreme Court of India in the case of ***Sanjay Kumar vs. Ashok Kumar and another 2014(1) RCR (Civil) 875***, wherein the claimant who was earning Rs.4500/- per month suffered 70% permanent disability in motor accident, it was held that '*Loss of future prospects' should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment. In that case keeping in mind the young age of victim he was held entitled to 50% of his income as future increase in income.*

In another judgment by Hon'ble the Supreme Court of India in the case of ***Rajan vs. Soly Sebastian and others, 2015(3) RCR (Civil) 962***, wherein the victim was a professional driver, the Tribunal assessed his notional income at Rs.2000/- p.m. It was held that income was not correctly assessed. Income should have been assessed after taking into consideration the relevant Minimum Wages fixed by Government. Income be taken at Rs.3500/- p.m to work out compensation. Victim though suffered 60% bodily disability, but suffered 100% permanent disability with regard to his earning capacity. After considering 50% enhancement for future prospects, the compensation for permanent disability was calculated at (Rs.3500/-+ Rs. 1750/-)x12x17=Rs. 10,71,000/-.

In the case of ***Kavita vs. Deepak and others, 2012 (4) RCR***

(Civil) 273, Victim suffered 100% permanent disability. She lost her

capacity for hearing, understanding, speaking and establishing interaction. The victim required an attendant at all times and continued physiotherapy. Victim was 30 years of age earning Rs.2000/- p.m. Multiplier of 17 was applied. She was also awarded Rs.2000 per month as attendant charges for 25 years. Victim was awarded compensation of Rs.34,38,747/-.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of **Raj Kumar vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101** wherein the Apex Court had laid down the principles for determining the loss and the affect of permanent disability on the actual earning capacity. It would be useful to refer to the relevant paragraphs:-

“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of

earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

Since the appellant in the present case is a driver and will face difficulty in now doing his work, his monthly income can be taken at Rs.3000/- per month for determining the compensation. Further the age of

appellant No. 1 has nowhere mentioned in the grounds of appeal but keeping in view the fact that he was having one son, whose age is 10 yeas, his age can be taken at 35 years. Applying the ratio of the above mentioned judgments, the compensation is re-assessed as under:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount (₹)</i>
1	Loss of income by multiplier method	(3000 X 12 X 40% future prospects 16) X 100% qua whole body=8,06,400/-
2	Special Diet, Transportation charges and attendant charges	Rs.15,000/-
3	Loss of amenities in life	Rs.1,00,000/-
4	Pain and suffering	Rs.1,00,000/-
5	Medical Bills	Rs.38,650/-
	Total compensation awarded	Rs.10,60,050/-
	Enhanced amount of compensation	1060050-128650=Rs.931400/- rounded off to Rs.9,32,000/-

The enhanced amount of compensation of Rs.9,32,000/- 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 @ 7.5% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of *Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others, passed in Civil Appeal No. 448-2018., decided on 19.01.2018.* The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

30.05.2018

G Arora

(RITU BAHRI)
JUDGE