

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

**FAO No.722 of 2001 (O&M)
Date of decision: 15.01.2018**

Vishavnath

....Appellant

Versus

Mahabir Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jitender Dhanda, Advocate,
for the appellant.

Mr. S.S. Sahu, Advocate,
for respondent Nos. 1 and 2.

Mr. V. Ram Swaroop, Advocate,
for respondent No.3-National Insurance Company.

Mr. Pardeep Goyal, Advocate,
for respondent No.6-New India Assurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') vide award dated 22.12.1999, on account of injuries received by him in a motor vehicular accident which took place on 09.05.1997.

Brief facts of the case are that on 09.05.1997, claimant-appellant (Vishavnath) along with Manohar Lal and Vinod was travelling a jeep bearing registration No.HR-20-C-4325 from Bhattu Kalan to village Ramsara as member of a marriage party. The said jeep was being driven by Subhash Chand son of Sh. Ramji Lal. When they reached near village Doomsara, a truck bearing registration No.HNH-3437 being driven by

Mahabir Singh-respondent No.1 in a rash and negligent manner came from the opposite side and hit the rear side of jeep, as a result of which, claimant-appellant along with other occupants of the jeep received injuries. Claimant was taken to General Hospital, Bhadra. With regard to the accident, FIR No.152 dated 09.05.1997 was registered at Police Station, Bhadra against respondent No.1. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle i.e. truck bearing registration No. HNH-3437 by its driver-respondent No.1 and thus, returned finding on issue no.1 in favour of the claimant. This finding was rightly given on the basis of deposition of claimant-appellant himself. Moreover, an FIR was also registered against driver-respondent No.1, in which he was facing a criminal trial. The compensation was awarded as under:-

Sr. No.	Heads	Amount
1.	Compensation for pain and sufferings	Rs.60,000/-
2.	Compensation for expenditure incurred on treatment, purchasing medicines, special diet and attendants	Rs.80,000/-
3	Loss of income	Rs.1500 x 12 x 17 = Rs.3,06,000/-
	Total	Rs.4,46,000/-

Ultimately, the claimant was found entitled to a total compensation of Rs.4,46,000/-. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

Learned counsel for the appellant has referred to the disability certificate and contended that there was shortening of right lower limb (leg)

of claimant to the extent of 7.5 cm. He had suffered 35% disability. He further argued that compensation for disability should have been granted after applying the method of income criteria.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. Parties are not in dispute with regard to finding given by the Tribunal on issue No.1 to the effect that the accident had taken place on account of rash and negligent driving of the offending bus by its driver.

Hon'ble the Supreme Court in **Sayed Mehaboob vs. New India Assurance Co. Ltd.**, 2012 (8) RCR (Civil) 721 had examined a case, where the claimant had suffered 86% disability on account of shortening of leg by 2.5 inches. In that case, the appellant was unable to use both his legs for driving. The Tribunal had assessed the functional loss of future earning capacity of the appellant to the extent of 100% and awarded compensation accordingly. On appeal, the High assessed the total bodily disability at 30% and reduced the compensation, which was awarded by the Tribunal. Hon'ble the Supreme Court, after taking into consideration the relevant factors, upheld the award passed by the Tribunal and set aside the judgment of the High Court being arbitrary in nature.

In the present case, before this accident, the claimant was employed as driver on a tractor in M/s Shiv Shanker Pawan Kumar and was getting salary of Rs.2000/- per month. Sh. Sushil Kumar from the aforesaid firm had appeared as PW-3 and deposed that the claimant was employed by them for driving their tractor and he remained in their employment for three months before the accident. They used to pay Rs.2000/- per month as salary and Rs.30/- per day on account of expenses to claimant-appellant. As per

disability certificate (Ex.P1), claimant-appellant has suffered 35% permanent disability and his right lower limb has been shortened by 7.5 cm. He was 20-21 years of age at the time of accident and was unmarried. Because of this disability, he cannot do proper day to day working. He cannot do the work with his right leg. Moreover, he is unable to do his previous job as a driver. Therefore, keeping in view the nature of disabilities suffered by the appellant and in view of the judgment passed in **Sayed Mehaboob's case** (supra), the functional loss of future earning capacity of appellant is being estimated at 100%. Compensation, in this case, has to be awarded by applying the method of income criteria in view of the judgment passed by Hon'ble the Supreme Court in **Sanjay Kumar vs. Ashok Kumar and another**, 2014 (1) RCR (Civil) 875. The accident had taken place on 09.05.1997 and income of injured-appellant is assessed as Rs.2000/- per month i.e. Rs.24,000/- per annum. In this income, 40% addition has to be made on account of future prospects, which comes to Rs.33,600/- (Rs.24,000 + 9600). After applying the multiplier of 18, loss of income due to permanent disability comes to Rs.33,600 x 18 = 6,04,800/-. Compensation under the other heads has rightly been awarded by the Tribunal. Hence, keeping in view the peculiar circumstances, in which the injured-claimant had been put, the compensation is hereby re-assessed as under:-

Sr. No.	Heads	Amount (Rs.)
1	Compensation for pain and sufferings	Rs.60,000/-
2	Compensation for expenditure incurred on treatment, purchasing medicines, special diet and attendants	Rs.80,000/-
3	Compensation for damages to lower limb (loss of earnings on account of permanent disability)	Rs.6,04,800/-

4	TOTAL AWARDED	COMPENSATION Rs.7,44,800/-
	Enhanced amount of compensation	Rs.7,44,800 – 4,46,000 = Rs.2,98,800/-

The enhanced amount of compensation of **Rs.2,98,800/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

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

(RITU BAHRI)
JUDGE

15.01.2018
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No