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

**FAO No.394 of 2004
Date of Decision: 22.05.2018**

Gurcharan Singh .....Appellant

Vs

Sukhraj Singh and others ....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. G.S. Bawa, Advocate
for the appellant.

Mr. Suman Jain, Advocate
for respondent No.3.

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RAJ MOHAN SINGH, J.

[1]. Claimant has preferred this appeal against inadequacy of amount of compensation awarded vide award dated 08.10.2003 passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal').

[2]. Brief facts are that the accident in question took place on 21.08.2000, when the claimant was travelling in a tractor-trolley being driven by respondent No.1. Respondents contested the claim petition. Respondents No.1 and 2 admitted the factum of accident, however they claimed that the said accident took place due to mechanical fault in engine of the vehicle. They

denied responsibility of respondent No.1. Insurance Company stated that respondent No.1 was not holding a valid driving licence at the time of accident and the vehicle was being driven against the conditions of insurance policy.

[3]. On the basis of pleadings of the parties, the Tribunal framed the following issues:-

> *"1. Whether the petitioner sustained injuries due to rash and negligent driving of tractor No.HR-24-B/1126 by the respondent no.1? OPP*
>
> *2. Whether the petitioner is entitled to compensation? If so, how much and from whom? OPP.*
>
> *3. Whether the respondent No.1 was not possessing a valid and effective driving licence at the time of accident? If so, its effect? OPD."*

[4]. Both the parties led their respective evidence in order to prove their case.

[5]. The Tribunal considered issues No.,1, 2 and 3 jointly. Under issue No.1, the Tribunal held that the accident in question took place due to rash and negligent driving of respondent No.1. Driver was found holding valid driving licence. The Tribunal determined the quantum of compensation on the basis of material on record. An amount of Rs.1,46,000/- was awarded by the Tribunal towards medical expenses. An amount of

Rs.5,000/- was assessed towards pain and suffering and an amount of Rs.1,28,000/- was assessed towards loss of income on account of permanent disability after finding 70% disability on the person of injured. Further an amount of Rs.25,000/- was awarded towards grievous injury. In this way, the Tribunal awarded a total amount of Rs.3,04,000/- as compensation.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. Grievance of the appellant is inadequacy of compensation awarded by the Tribunal under different heads. The Tribunal assessed the compensation towards earning capacity only on the basis of reduction to the tune of 33%. From the record, it can be seen that while appearing as PW-1, the claimant/appellant has stated that he was working as an agriculturist and was maintaining buffaloes for sale of milk. He claimed Rs.2.25 lakhs per annum as savings. He was having 17/18 acres of his own land besides 7/8 acres of land taken by him on lease for cultivation. He was having a tractor and used to drive the tractor of his own. After the accident, he has sold the tractor. His elder son was about 7 years of age. He has left cultivating the land as he became permanent disabled due to injuries suffered by him in the accident.

[8]. Dr. Ramesh Kumar, Orthopedic Surgeon was examined as PW-5. He has stated that on 09.10.2002, he was the member of medical board. The permanent disability was assessed to be 70% on account of post-traumatic operated case for right compound fracture femur with limitation of hip and knee movement and was a case of jejunoilieal anastmosis with unstable gait.

[9]. Dr. Jaspal Singh, Reader and Consultant Surgeon, DMCH, Ludhiana was examined as PW-6, who has testified that the claimant/appellant was admitted in DMCH Ludhiana from 22.08.2000 to 18.09.2000. He was operated for blunt-trauma abdomen and fracture and right femur fracture. He underwent two surgeries during his admission. He was again admitted on 20.10.2000 upto 30.10.2000. He underwent third operation of colostomy closura during second admission. The Doctor, further stated that two operations were very serious in nature. The claimant had injuries to abdomen and right thigh. The cross-examination of the aforesaid witnesses at instance of respondents No.1 and 2 went nil. Nothing could be extracted in the cross-examination done by respondent No.3.

[10]. From the aforesaid testimonies of PW-5 and PW-6 coupled with the testimony of the claimant, it can be appreciated that the appellant was operated thrice. Out of which, two

operations were of very serious nature. Permanent disability was assessed to the extent of 70% on account of post-traumatic operated for right compound fracture femur right with limitation of hip and knee movement. The injuries were found on the abdomen and right thigh. He was operated for blunt-trauma abdomen and for fractured right femur. It appears that most of the parts of body were involved in the operations. There was compound fracture in femur. Limitation of hip was also involved besides knee movement. The injury to the extent of 70% disability was assessed by the Board of Doctors.

[11]. In view of law laid down in ***Govind Yadav vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817; K. Suresh vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312; S. Manickam vs. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696; G. Ravindranath @ R. Chowdary vs. E. Srinivas and another, 2013(3) RCR (Civil) 934; Rekha Jain vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996; Neerupam Mohan Mathur vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422*** and ***Yadava Kumar vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** a distinction has to be drawn between the damages and the compensation.

Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner as if, injury is not taken place. The Court should be liberal in deciding quantum of compensation to be paid to the victim towards future loss of income.

[12]. In view of ***Raj Kumar vs. Ajay Kumar and another, 2011 ACJ 1***, it can be noticed that all injuries do not result in loss of earning capacity, however it depends upon case to case. The percentage of permanent disability with reference to whole body of a person, cannot be assumed to be the percentage of loss of earning capacity i.e. the percentage of loss of earning capacity is not the same as percentage of permanent disability (except in few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

[13]. The aforesaid phenomenon has to be tested with reference to nature of injuries received by the injured, his avocation and the prevailing state of health with reference to medical record. The loss of earning capacity has to be assessed by the Tribunal with reference to the evidence in entirety. The extent of permanent disability may result in different percentage of loss of earning capacity depending upon nature of avocation,

the profession, age, education and other factors. Some guess work is to be done in the aforesaid determination.

[14]. Taking into consideration, the medical opinion as given by PW-5 and PW-6, it can be appreciated that the claimant has faced rigor of serious operations *qua* abdomen and femur. He was operated thrice. As per his own statement, he has left his avocation in which he was earlier engaged. The disability as observed by Board of Doctors to the extent of 70% can be reduced to 50% towards whole body for the purposes of assessing loss due to permanent disability. In view of aforecited precedents, the compensation towards the heading of permanent disability has to be assessed independently. The claimant would be entitled to Rs.2000/- per percentage in respect of permanent disability in the present circumstances, wherein he has suffered permanent disability towards his body on account of repeated operations. In this way as against the 50% permanent disability, an amount of Rs.1,00,000/- would be just and appropriate to meet out this head.

[15]. Secondly, loss of future income on account of permanent disability has to be separately assessed by multiplier method. Income of the injured was assessed to be Rs.2,000/- per month by the Tribunal. The loss of future income due to permanent disability to the extent of 50% would come to

Rs.1,000/- per month. In view of age of the claimant, multiplier of 16 was applied. Therefore, loss of future income on account of permanent disability to the tune of 50% would come out to be Rs.1,92,000/- (1000 x 12 x 16). In this way, the total amount under the permanent disability and loss of future income on account of permanent disability would come to Rs.2,92,000/- (1,00,000 + 1,92,000).

[16]. So far as an amount of Rs.1,46,000/- towards medical expenses is concerned, this Court is of the opinion that the award is based on material produced by the claimant. The finding qua the aforesaid head are affirmed.

[17]. The Tribunal has granted an amount of Rs.25,000/- towards grievous injuries and Rs.5,000/- under the head of pain and suffering undergone by the claimant. In my considered opinion, the aforesaid amount of Rs.30,000/- towards grievous injuries and pain and suffering on account of injuries and the agony of hospitalization besides undergoing repeated operations is on lower side. I am of the view that the amount under the aforesaid two heads needs to be enhanced to Rs.50,000/-.

[18]. Taking into consideration, period of hospitalization and nature of injuries with which the appellant was suffering and

repeated operations conducted on his person, this Court deems it appropriate to award an amount of Rs.20,000/- towards attendant charges besides awarding Rs.20,000/- towards special diet and Rs.10,000/- towards transportation charges.

[19]. In view of aforesaid re-assessment, a comparative chart can be prepared in the following manner:-

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in Appeal	Difference
1	Permanent disability & Loss of future income on account of 50%permanent disability	Rs.1,28,000/-	Rs.2,92,000/- (1,00,000 + 1,92,000)	Rs.1,64,000/-
2	Medical expenses	Rs.1,46,000/-	Rs.1,46,000/-	Nil
3	Grievous injuries, Pain and sufferings	Rs.30,000/- (25,000 + 5,000)	Rs.50,000/-	Rs.20,000/-
4	Attendant charges	Nil	Rs.20,000/-	Rs.20,000/-
5	Special Diet	Nil	Rs.20,000/-	Rs.20,000/-
6	Transportation charges	Nil	Rs.10,000/-	Rs.10,000/-
Total compensation		Rs.3,04,000/-	Rs.5,38,000/-	Rs.2,34,000/-

[20]. In this way the total amount of enhanced compensation would come out to be Rs.2,34,000/-. The same would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the same. The liability to pay the

enhanced amount would be same as ordered by the Tribunal.

[21]. In view of aforesaid, the award is modified. Appeal stands disposed of.

May 22, 2018 **(RAJ MOHAN SINGH)**

Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No