

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

FAO No.2538 of 2011 (O&M)

Date of decision: 29.05.2018

Roshan Lal

.... Appellant

Versus

Harnek Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sanjeev Kodan, Advocate
for the appellant.

Mr. D.P.Gupta, Advocate
for respondent No.3.

Avneesh Jhingan, J.

The present appeal has been filed against award dated 03.12.2010 passed by Motor Accidents Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as 'the Tribunal').

The appellant met with a motor vehicular accident that took place on 10.12.2008. He was driving a scooter bearing registration No.PB-12-C-8527. On his way, the scooter was hit by a Maruti Car bearing registration No.CH-01-A-9558 (for short, 'the offending vehicle'). As a result of the accident, he suffered multiple injuries and was admitted in PGIMER, Chandigarh. FIR No.429 dated 11.12.2008 was registered at Police Station Kharar.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed.

The Tribunal held that accident occurred due to rash and

negligent driving of the offending vehicle. It was proved on record that the appellant suffered 73% permanent disability because of amputation of left leg below knee. He was hospitalised from 11.12.2008 to 01.01.2009 and was operated upon for amputation of the left leg. The Tribunal awarded a sum of Rs.3,65,650/-as compensation along with interest @ 7% per annum.

The present appeal has been filed for enhancement of compensation.

Learned counsel for the appellant contended that it was proved on record that the appellant was working as Foreman/Mechanic in Massy Fergushan Tractor Agency, Morinda and his salary was proved as Rs.5200/- per month but no multiplier method was applied. The Tribunal erred in not awarding any expenses for transportation. His grievance is that amounts awarded under various heads are on the lower side and some of heads have not been considered for awarding compensation.

Learned counsel for the insurer of the offending vehicle argued that it has not come on record that the appellant lost his job after the accident. He contends that taxi bills produced were not proved. The contention is that the Tribunal has already considered and awarded compensation for disability and on account of loss of future prospects. He vehemently challenged the salary assessed by the Tribunal.

The aim of awarding compensation is that so far as possible a person suffering by a wrongful act of another person is placed in a position, in which he would have been had the harm not been done. Endeavour is that sufferer receives full compensation, no more but certainly no less. The compensation can only be awarded for the harm which money can redress.

There are certain losses which cannot be compensated by any amount of money. The duty of court would be to arrive at just and equitable compensation.

One of the logical and reliable methods is to rely upon multiplier method to arrive at compensation to be awarded. The Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, has provided a table for multiplier to be applied as per the age of the sufferer. Generally, the multiplier reflects the normal life expectancy of the victim. Since the multiplier to be applied has been tabulated by the Supreme Court keeping in view the age of the sufferer and the appellant was 45 years at the time of the accident, a multiplier of 14 has to be applied.

The appellant was 45 years of age at the time of the accident. His left leg was amputated below knee. He was working as a Foreman/Mechanic in Massey Fergushan Tractor Agency, Morinda. He suffered 73% permanent disability qua the limb. There cannot be any doubt that the occupation as a Foreman/Mechanic would have suffered due to said disability. Albeit, it has not come on record that what was the effect on his functional ability but at this stage, it would not be appropriate to remand the matter back for said purpose.

Having due regard to the decision of Supreme Court in **Raj Kumar vs. Ajay Kumar and another, 2011 (1) SCC, 343** the compensation would be calculated taking the whole body disability as 35%.

There was an effort made by learned counsel for the insurer to challenge the monthly earning assessed by the Tribunal but the said challenge was not well founded. Salary of the appellant was proved by salary certificate Ex.PJ. There were incentive bonus + labour incentive along with Rs.4600/-

salary per month. In such circumstances, no fault can be found in the monthly earning assessed by the Tribunal.

The Tribunal while awarding the compensation has not considered the period of hospitalisation and the fact that left leg of the appellant was amputated which itself is an indicator that transportation would have been required not only during the period of treatment but thereafter also.

The appellant had produced the taxi bills amounting to Rs.21,900/- which were rejected on the ground that nobody deposed from the taxi stand from where the bills were issued. In the facts and circumstances of the case, not only amount of Rs.21,900/- should be reimbursed but the future transportation required should also be considered.

The law is well settled that in case of non fatal injuries, the endeavour is to put the sufferer back to his original position so far as money can. It is not only the pecuniary heads, which have to be considered but also non-pecuniary heads.

The Tribunal has not taken into consideration that after amputation of leg, prosthetic limb would have been required which further needs replacement after some period.

A consolidated amount of Rs.50,000/- for pain and suffering, special diet and gratuitous services has been awarded which is on the lower side keeping in view the injury and agony suffered.

The Tribunal has not considered the pain and suffering which the appellant will have to suffer for the rest of life and the social stigma he would be facing. His life would be full of challenges without a limb, this, itself would result in shortening the expectancy of life.

While considering the compensation for permanent disability, since the deceased was 45 years of age, 25% future prospects would also be added so that the loss of future income is also considered. The nature of injury suffered is such that an attendant would have been required not only during the treatment but thereafter also because without a lower limb he would not have been able to move freely.

The Tribunal reimbursed the medical bills produced worth Rs.90,641/- but it has to be considered that in such accident it is not always possible to vouch for each penny spent, hence medical expenses beyond Rs.90,641/- are to be reimbursed.

The compensation is recalculated as under :-

Monthly income	Rs.5200/-
35% permanent disability qua whole body	Rs.1820/-
25% future prospects	Rs.455/-
Total income	Rs.2275/-
Applying multiplier of 14	Rs.3,82,200/-
transportation expenses	Rs.50,000/-
Pain and suffering	Rs.50,000/-
Special diet	Rs.25,000/-
Attendant	Rs.25,000/-
Shortening of life expectancy	Rs.1,00,000/-
Artificial limb	Rs.1,50,000/-
Medical expenses	Rs.1,00,000/-
Total	Rs.8,82,200/-

The award dated 03.12.2010 is modified to the extent that the amount awarded by the Tribunal of Rs.3,65,650/- is enhanced to Rs.8,82,200/-.

The claimant would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the

realisation of the amount.

Learned counsel for the insurer contended that no interest should be awarded for the amount awarded for fixing of artificial limb as same is yet to be purchased. The contention raised cannot be accepted. Had the said amount been awarded at the time when claim petition was decided he would have not only utilised the money but the prosthetic limb also. Moreover, the said amount has been utilised by the insurer for the said period. No case is made out for not awarding interest on the said amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

29.05.2018
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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No