

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 5801 of 2011 (O&M)

Date of Decision: 01.05.2018

Dr. Manoj Garg

.....Appellant

Versus

Mukesh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Monika Singh, Advocate for
Mr. Amit Kumar Jain, Advocate
for the appellant.

Mr. Sandeep Lather, Advocate for
Mr. Anil Rathee, Advocate
for respondent No.3.

Ms. Vandana Malhotra, Advocate and
Ms. Monika Jangra, Advocate
for respondent No.4.

AVNEESH JHINGAN, J.(oral)

The appellant is aggrieved of quantum of compensation awarded by Motor Accident Claims Tribunal, Jind (for short 'the Tribunal') vide award dated 02.06.2011.

The appellant is a Doctor by profession. He had gone to attend a conference in China. On his return back he was picked up from Delhi Air Port by one Kuldeep, Medical Representative of Nicholas Piramal Company for going to Jind. A car bearing registration No.CH03P-4728 was arranged.

The said car was being driven by Mukesh. On 29.1.2009 at about 6:00 a.m

on Jind Rohtak Road near Fauji Dhaba, an accident took place because of rash and negligent driving of the driver of the Car. The car struck the rear portion of the Truck going ahead. As a result of impact, the appellant suffered fracture of upper part left femur which was broken into two pieces and he suffered other injuries also.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed. The Tribunal awarded a sum of Rs. 3,80,100/- along with interest at the rate of 7% per annum.

In the present appeal respondent No.1 is the driver of the car and respondents No. 2 and 3 are the alleged purchaser and earlier owner of offending car and respondent No.4 is the insurer of the offending vehicle. The appeal has been filed for enhancement of compensation.

The Tribunal held that the accident was caused due to rash and negligent driving of the car. The appellant suffered 25% permanent disability qua the lower limb with the restriction of movement of left hip and knee joint. The disability certificate was exhibited as Ex.P5. Certificate was proved by examination of Dr. Dhan Kumar, Deputy Civil Surgeon (M) Jind.

The appellant proved by examination of Doctor Manoj Kumar Garg that he was operated upon in City Hospital, Delhi, on 29.01.2009 and was advised to come up for follow up treatment. Dr. Virender Garg, Physiotherapist proved that the appellant underwent physiotherapy for five months and he charged Rs.200/- per visit. Admission of the appellant in City Hospital affiliated with Sir Ganga Ram Hospital, Delhi, was proved by deposition of Surinder Kumar, Assistant Medical Record Department of City Hospital. It was proved that he was admitted from 29.01.2009 to

02.02.2009.

Dr. Ashwani Mai Chand, Consultant Orthopedic City Hospital, Delhi, appeared as PW7. He deposed that the appellant was operated upon for interlocking nail left femur on 29.01.2009. He proved the final bill of Rs. 1,06,099/-. It was stated that the appellant will have to undergo another operation for removal of interlocking. The claimant himself appeared as PW1 and claimed that he remained bed ridden for five months and went for getting up follow up treatment and he spent Rs.2 lacs on treatment and Rs.20,000/- each on transportation and special diet. He claimed that as per his income tax return filed for the assessment year 2008-09 his income was Rs.20,00,000/-. He made a statement that he still cannot discharge his duties. It was claimed that after the accident his income reduced from Rs.20,00,000/- to Rs. 14,00,000/- per annum.

The grievance of the appellant is that Rs.50,000/- for permanent disability has been awarded without applying the multiplier method; the amounts awarded under various heads are on the lower side; while awarding the medical expenses, future treatment has not been taken into consideration and loss of income awarded is also very meager.

There can be no dispute on the proposition that while awarding the compensation for disability, the multiplier method is to be applied.

Supreme Court in **Sandeep Khanuja Versus Atul Dande and another** 2017(3) SCC 351 has held as under:

"14. In the last few years, law in this aspect has been straightened by this Court by removing certain cobwebs that had been created because of some divergent view on certain aspects. It is not even necessary to refer to all these cases. We find that the principle of determination of compensation in the case of permanent/partial

disablement has been exhaustively dealt with after referring to the relevant case law on the subject in the case of **Raj Kumar v. Ajay Kumar and others 2011(2) RCR (Civil) 101.....**”

XX

XX

XX

XX

15. The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any adverse effect on the earning capacity of the injured.....”

The appellant has not proved the effect of 25% permanent disability qua the limb vis-a-vis the effect on his earning capacity. Apart from bald statement made by him that he is unable to discharge his duties no other proof was adduced.

This is a case where limb movement of a professional has been restricted. It is not a case where the Tribunal should have awarded compensation for permanent disability in lump-sum. Even the loss of income calculated by the Tribunal relies upon a figure of Rs.20,00,000/- and Rs.14,00,000/- and the relevant period taken for calculating the loss of income is August 2008 and July 2009, the relevance of which is not clear from the record. The Tribunal while awarding the compensation has not considered that the appellant had to undergo future treatment also.

In order to apply the multiplier method for awarding the compensation for permanent disability it would be important to prove on record the effect of permanent disability qua the functional ability. The appellant was running his own hospital. His restriction movement would have affected his professional skill but his management aspect also.

Keeping in view the facts and circumstances of the case, it would be appropriate to remit the matter back to the Tribunal to decide the issue of enhancement afresh after taking into consideration the effect of disability. The parties would be entitled to adduce fresh evidence in support

of their claims.

Ordered accordingly.

Parties are directed to appear before the Tribunal on
30.05.2018.

01.05.2018
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No