

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

FAO No.6971 of 2011 (O&M)

Date of decision: 11.01.2018

National Insurance Company

...Appellant

Versus

Dharam Pal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Harsh Aggarwal, Advocate
for the appellant.

None for respondent No.1.

REKHA MITTAL, J.

The present appeal directs challenge against award dated 08.06.2011 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been awarded in respect of injuries sustained by Dharam Pal in a motor vehicular accident that took place on 03.07.2009.

The Tribunal has awarded compensation to the tune of Rs.4,93,066/-, detailed hereunder:-

1. Hospitalization & pain and sufferings	Rs.10,000/-
2. Special diet	Rs.5,000/-
3. Transportation charges	Rs.3,000/-
4. Treatment expenses	Rs.85,557/-
5. Loss of earning	Rs.3,79,509/-
6. Attendant charges	Rs.10,000/-

Counsel for the appellant has submitted that compensation awarded by the Tribunal is on higher side and liable to be reduced. To bring home his contention, he has mainly challenged findings of the Tribunal allowing compensation to the tune of Rs.3,79,509/- qua future loss of income by taking into consideration income of the victim at Rs.9731/- per month and functional disability to the extent of 25% and multiplier of 13. It is argued with vehemence that the injured victim was working as a sweeper in a school and did not suffer loss of job because of disability to the extent of 75% to a particular limb. It is further argued that compensation awarded under other heads also needs reduction.

There is no representation on behalf of the claimant/respondent No.1, earlier being represented by a counsel.

Before adverting to the submissions made by counsel for the insurance company in the light of materials available on record, it is pertinent to note that records have been destroyed in a fire incident, therefore, oral and documentary evidence produced before the Tribunal and referred to in the award is not available for consideration and appreciation.

The Tribunal in paras 17 and 18 of the award has noticed facts deposed by Dharam Pal, the injured. As per testimony of the victim, he suffered grievous injuries and remained admitted in PGI from 06.07.2009 to 09.07.2009. He suffered multiple fractures of both bones of right leg, head injuries and multiple fractures of neck bone i.e. C-6, C-7, vertebrae of vertebrae column. He was operated upon twice in PGI, Chandigarh. An iron

rod was inserted in his leg and two iron plates were inserted in the neck.

The injured examined Dr. Umesh Modi PW4 to prove disability assessed by a medical board that issued disability certificate Ex.P39. He has testified that the injured was examined on 15.09.2010 and found to be an operated case of cervical spine injury with quadriparesis. His physical disability was assessed at 75%, permanent in nature. Due to disability, patient will have difficulty in carrying out his day to day activities and would suffer from restriction of neck movements (forward and backward bending and rotation also). However, there is no opinion by the medical board with regard to extent of functional disability caused because of 75% disability assessed by the medical board.

Indisputably, claimant was working as a sweeper in a school at gross salary of Rs.12,436/- per month. Chander Has, Clerk PW5 brought the record to prove that the claimant availed 53 days medical leave and 106 days leave was deducted from his account. As per testimony of claimant Dharam Pal, he joined duty after 3-4 months from the date of accident and is getting full salary.

The question for consideration is whether the claimant is entitled to future loss of income even though he continued to be an employee of the school.

Perusal of the award passed by the Tribunal does not make it clear as to what would be the age of superannuation for the injured. As has been noticed hereinbefore, counsel for the claimant did not appear to say

something with regard to grant of compensation qua loss of future earning.

The Tribunal in the opening lines of para 25 had stated that *“he is getting full salary and also continuing on his job as such, it is safe to conclude that the permanent disability has not affected the earning capacity of claimant Dharam Pal. At the same time keeping in view the nature of permanent disability suffered by the claimant, I deem it appropriate to assess the functional disability of claimant Dharam Pal to be only 25%.”*

The Tribunal has recorded contradictory findings by allowing compensation qua loss of future earning though held that permanent disability has not affected earning capacity of Dharam Pal. Under the circumstances, I find merit in contention of the appellant that the claimant is not entitled to loss of future income due to disability. In this view of the matter, finding of the Tribunal allowing future loss of income to the tune of Rs.3,79,509/- is set aside.

The Tribunal has awarded compensation of Rs.29,193/-, equivalent to salary of three months as loss of income during the leave period. The injured availed leave of 106 days out of which he was given full pay leave from 04.07.2009 to 25.07.2009. The remaining leave period comes to 84 days i.e. about three months. The Tribunal has taken into consideration net salary of claimant at Rs.9731/- per month for computing loss of income during leave period. However, it has been proved that gross salary of the victim was Rs.12,436/- per month. There is nothing on record suggestive of the fact that any deduction from his salary was statutory in

nature. Taking into consideration gross salary of the victim, he shall be entitled to loss of salary of leave period for a period of three months to the tune of Rs.37,308/-(Rs.12,436 x 3). In this manner, claimant shall be entitled to additional amount of Rs.8115/- (37,308 – 29,193) qua loss of income during the leave period.

The Tribunal has awarded an amount of Rs.85,557/- towards medical expenses based upon documents marked as exhibits. The medical expenses reimbursed by the Tribunal are liable to be affirmed and ordered accordingly.

The Tribunal has awarded a sum of Rs.10,000/- qua hospitalization, pain and sufferings. In para 22 of the award, the Tribunal has held that the claimant suffered multiple fractures of right leg, head injury, multiple fractures of neck bone etc. There is no challenge to testimony of the victim that he was operated upon twice for implant in his leg and neck. He remained on leave for a period of 53 days (commuted as 106 days). In view of nature of injuries sustained, treatment given in the PGI and number of days he remained away from the work, interest of justice would be served if the claimant is awarded an amount of Rs.20,000/- for pain and sufferings. In this manner, claimant shall be entitled to additional amount of Rs.10,000/- under this head. The Tribunal has awarded an amount of Rs.10,000/- qua services of an attendant. Gurmail son of Banarasi Dass PW2 was examined to prove that the claimant availed his services at cost of Rs.3500/- per month for about 10

months. As per testimony of Gurmail, he provided services to the injured from 10.07.2009 till the end of April, 2010. He has deposed that after four months of the accident, when claimant started going to his office he used to accompany him to his place of work and discharged duties of peon for about 10 months. The claimant remained on medical leave for a period of 53 days, meaning thereby that thereafter he resumed his duty. Statement of Gurmail that he had been performing duties of peon in place of the claimant for a period of about 10 months becomes suspicious in the light of testimony of Chander Has, Clerk PW5 who deposed that injured used to work as a sweeper in their school. Under the circumstances, compensation allowed by the Tribunal for services of an attendant does not warrant intervention.

The Tribunal has awarded an amount of Rs.5,000/- for special diet and Rs.3,000/- qua transportation charges. In view of the discussion made hereinabove, claimant is awarded an amount of Rs.15,000/- in all under the aforesaid two heads. The additional amount of compensation under the heads comes to Rs.7000/- (15,000 – 8000).

The claimant has suffered permanent disability to the extent of 75% as deposed by Dr. Umesh Modi. It has been opined by the doctor that due to disability, patient will have difficulty in carrying out his day to day activities. The Tribunal has not awarded any compensation for loss of amenities of life. Taking a reasonable view in the face of extent of disability suffered and clue from the various judgments on the issue particularly the

land mark judgment of Hon'ble the Supreme Court **Raj Kumar Vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101**, an amount of Rs.1 lakh is awarded qua loss of amenities of life. In this manner, compensation payable to the claimant comes to Rs.2,67,865/-, detailed hereinbelow:-

1. Hospitalization, pain and sufferings	Rs.20,000/-
2. Special diet and transportation charges	Rs.15,000/-
3. Medical expenses	Rs.85,557/-
4. Loss of earning during leave period	Rs.37,308/-
5. Attendant charges	Rs.10,000/-
6. Loss of amenities of life	Rs.1,00,000/-

Compensation awarded by the Tribunal is reduced to the extent of Rs.2,25,201/- (4,93,066 – 2,67,865). The excess amount, if already paid by the insurance company may be recovered by filing an application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

11.01.2018
ashok

(REKHA MITTAL)
JUDGE

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