

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

FAO No.6374 of 2012 (O&M).

Decided on:-April 20, 2018.

Narender.

.....Appellant.

Versus

Ram Parkash and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sandeep Kumar Yadav, Advocate
for the appellant.

None for respondent No.3-insurance company.

HARI PAL VERMA, J. (Oral)

CM-30638-CII-2012

Prayer in this application filed under Section 149 CPC is for making good the deficiency of the court fee.

Since the deficiency of the court fee has already been made good, the present application has become infructuous and is disposed of as such.

FAO No.6374 of 2012

The appellant-claimant has filed the present appeal seeking enhancement of compensation over and above the amount awarded by the Motor Accidents Claims Tribunal, Narnaul (for short, the Tribunal) vide award dated 14.02.2012.

Briefly stated, in a claim petition filed by the appellant-claimant under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), the

Tribunal has awarded compensation of Rs.4,35,000/- along with interest @ 6% per annum to the appellant-claimant from the date of filing of the claim petition till its recovery, for the injuries suffered by him in a motor vehicular accident, which took place on 01.11.2009.

Learned counsel for the appellant-claimant has argued that the appellant, who got injured in the accident, was employed as a driver with Sanjay Arora (PW2). The appellant was working as driver on the Maruti Van on the relevant date i.e. 01.11.2009, when the accident had occurred. In the said accident, the appellant had suffered 25% permanent disability and he had become incapable to work as a driver as he suffered injuries on both legs. With the injuries so suffered, he is not able to drive any vehicle.

He has relied upon the judgment of Hon'ble Supreme Court in ***Jakir Hussein Versus Sabir and others 2015(2) RCR (Civil) 141*** and the judgment of this Court in ***FAO No.749 of 2011*** titled as ***Kapoor Chand Versus Rajbir and others*** decided on 22.01.2014 to contend that on account of permanent disability when a victim is unable to work as a driver, even if his disability is 25%, the disability has to be treated as 100% as the victim will never be able to work as a driver again. In the case in hand, the appellant was earning his livelihood by driving only and to support his contention, he has referred to the statement of Sanjay Arora (PW2).

On the previous date of hearing i.e. April 18, 2018, the case was adjourned on the request of proxy counsel as the arguing counsel for respondent No.3-insurance company was out of station. Thus, the appeal was adjourned for today and was ordered to be listed in the urgent list. But nobody

is present on behalf of the respondent No.3-insurance company despite the case being passed over thrice.

I have heard learned counsel for the appellant-claimant.

No one is present on behalf of the respondents to dispute the accident and liability to pay the amount of compensation. The only question to be determined through the instant appeal is quantum of compensation admissible to the appellant-claimant, who was earning his livelihood while working as driver. For having suffered 25% permanent disability in the accident, the Tribunal has awarded total compensation of Rs.4,35,000/- to the claimant in the following manner:

Expenses on treatment including medicines etc.	Rs.3,13,000/-
Disability 25%	Rs.50,000/-
Loss of income	Rs.30,000/-
Pain and suffering Transportation	Rs.30,000/-
Attendant & special diet etc.	Rs.12,000/-
Total	Rs.4,35,000/-

It is the pleaded case of the appellant-claimant that the appellant was working as a driver and this fact has been supported by Sanjay Arora (PW2) as well. The injured-appellant was working with PW2 at the time of accident. In the absence of any argument put forward by the respondent No.3-insurance company, it remained un rebutted that the appellant-claimant was working as driver on the date of accident and he suffered 25% permanent disability. In *Jakir Hussein’s case (supra)*, Hon’ble Supreme Court has held

that permanent disability in case of the driver of a vehicle be treated as 100% as he will never be able to work as a driver again and the contention on behalf of the insurance company that the claimant could take up any other alternative employment is no justification to avoid their vicarious liability. The relevant paragraph No.15 of the said judgment is reproduced as under:

“15. Further, with respect to the permanent disablement suffered by the appellant, Mr. K. Parameshwar, the learned amicus curiae, has rightly submitted that the appellant was examined by Dr. P.K. Upadhyay in order to prove his medical condition and the percentage of permanent disability. The doctor who has treated him stated that the appellant has one long injury from his arm up to the wrist. Due to this injury, the doctor has stated that the appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalised for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55% respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact namely that the appellant is a driver and driving the motor vehicle is the only

*means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed. In the case of **Raj Kumar v. Ajay Kumar and another 2011(2) RCR (Civil) 101**, this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs.54,000/- per annum. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in the case of **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another 2009(3) RCR (Civil) 77**, the total loss of future earnings of the appellant will be at Rs.54,000 X 16 = Rs.8,64,000/-.”*

Therefore, having recourse to the judgment passed by Hon’ble Supreme Court in **Jakir Hussein’s case (supra)**, this Court finds that the claimant who suffered 25% permanent disability in the accident would not be able to earn his livelihood by way of driving a vehicle. Thus, the permanent disability to the extent of 25% suffered by the claimant in the accident has to be treated as 100%.

Considering the minimum wages prevalent in the State of Haryana at the relevant time and the fact that the appellant-claimant was

about 32 years of age at the time of accident, this Court finds that the appellant-claimant is entitled to the compensation in the following manner:

Monthly income		Rs.4,304/-
Annual income	(4304 x 12)	Rs.51,648/-
Loss of income	100% due to disability.	Rs.51,648/-
Multiplier	‘16’	
Total future loss of income	(51,648 x 16)	Rs.8,26,368/-
Medical expenses.		Rs.3,13,000/-
Pain and suffering and transportation		Rs.30,000/-
Special diet and attendant		Rs.12,000/-
Total amount of compensation	(826368+313000+30000+12000)	Rs.11,81,368/-
Amount already awarded		Rs.4,35,000/-
Enhancement		Rs.7,46,368/-

Accordingly, the present appeal is allowed and the impugned award dated 14.02.2012 passed by the Tribunal is modified to the aforesaid extent. Consequently, the appellant-claimant is awarded total amount of compensation of Rs.11,81,368/- (Rupees eleven lakhs, eighty one thousand, three hundred and sixty eight) instead of Rs.4,35,000/-, as awarded by the Tribunal. The aforesaid amount of compensation shall carry interest @ 6% per annum, as awarded by the Tribunal, from the date of filing of the claim petition till its realization.

April 20, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: No