

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

XOBJC-63-CII-2015 in/and
FAO No.1695 of 2013 (O&M)

Date of decision: 17.02.2018

The New India Assurance Co. Ltd.

... Appellant

Versus

Deepak Chibber and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajesh K. Sharma, Advocate
for the appellant.

Mr. Anil K. Spehia, Advocate
for respondent No.1/Cross-objector.

Mr. Om Pal Sharma, Advocate
for respondent No.2.

REKHA MITTAL, J. (Oral)

Disability certificate dated 16.10.2015 filed in Court today, is
taken on record.

This order will dispose of FAO No.1695 of 2013 and Cross-
objections No.63-CII of 2015 as these have emerged out of the same award
dated 13.02.2013 passed by the Motor Accidents Claims Tribunal,
Chandigarh whereby compensation has been awarded on account of
injuries sustained by Deepak Chibber in a motor vehicular accident that
took place on 23.04.2008.

The Tribunal has awarded compensation of Rs.14,57,400/-,
detailed hereunder:-

1. Medical charges	Rs.20,000/-
2. Transportation charges	Rs.5000/-
3. Services of an attendant	Rs.5000/-
4. Special diet	Rs.5000/-
5. Pain and sufferings	Rs.10,000/-
6. Loss of enjoyment	Rs.10,000/-
7. Permanent disability	Rs.13,82,400/-
8. Loss of studies for one year	Rs.20,000/-

FAO No.1695 of 2013 has been filed by the insurance company whereas cross-objections have been preferred by the claimant seeking enhancement of compensation.

Counsel for the insurance company has fairly informed that the appeal has been preferred to challenge findings of the Tribunal on two counts. The first submission made by counsel is that as driver of the offending vehicle was holding a licence to drive light motor vehicle but he was driving three wheeler bearing No.CH-03-P-5225, he was not competent to drive the vehicle in question on the basis of licence possessed by him.

To assail quantum of compensation, it is argued that at the time of occurrence the injured was doing Diploma in Mechanical Engineering in CCET, Sector 26, Chandigarh. It is argued that income of the victim assessed by the Tribunal @ Rs.20,000/- per month is on higher side and liable to be reduced. In addition, it is argued that the Tribunal has assessed

loss of income on disability of 32% though the said disability is qua a particular limb and not of the whole body.

Counsel representing the claimant has supported assessment of compensation for disability with the submission that the same is liable to be enhanced on the basis of latest assessment of disability by a medical board of PGI, Chandigarh whereby disability to the extent of 40% has been assessed, reflected in the certificate dated 16.10.2015. He has further argued that compensation awarded under various other heads such as transportation charges, attendant charges, special diet, pain and sufferings and loss of enjoyment etc. is liable to be enhanced. In addition, claimant is entitled to compensation for loss of matrimonial prospects.

Counsel representing the driver-cum-owner of the vehicle in question has supported findings of the Tribunal with regard to liability of the insurance company to pay compensation to the claimant but without any right of recovery. It is argued that as gross vehicle weight is less than 7500 kgs. and the vehicle falls within the definition of Light Motor Vehicle under Section 2(21) of the Motor Vehicles Act, 1988 (in short 'the Act'), driver was competent to drive the vehicle in question even if there was no endorsement of transport on his driving licence. In this context, reference has been made to latest judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731.**

I have heard counsel for the parties, perused the paper book and the records.

Before adverting to the submissions with regard to quantum of compensation payable to the injured victim, I would like to deal with the issue of competency of the driver to drive the vehicle in question on the basis of licence possessed by him. Indisputably, gross vehicle weight of three wheeler driven by Kuldeep Sood is less than 7500 kgs., therefore, it falls within the purview of Light Motor Vehicle defined in the Act. When the facts and circumstances of the present case are examined in the light of latest judgment of Hon'ble the Supreme Court **Mukund Dewangan's case** (supra), contention raised by the insurance company with regard to competency of the driver to drive the vehicle in question is not meritorious and ordered to be rejected.

This brings the Court to assessment of compensation made by the Tribunal. The Tribunal has reimbursed medical charges of Rs.20,000/- and the same is affirmed. The injured victim remained hospitalised in PGI, Chandigarh from 23.04.2008 to 22.05.2008 i.e. for one month. The claimant has placed on record documents with regard to his treatment in PGI, Chandigarh but he has not examined the treating doctor. The documents placed on record did not give a clear picture with regard to the number and nature of injuries sustained by him. However, from the statement of Dr. Aditya Aggarwal, examined to prove disability, it can be made out that the injured suffered fracture tibia with neuro vascular injury that rendered him disable to the extent of 32% assessed by the earlier disability board and 40% as per the assessment made on 16.10.2015. The

injured suffered one surgery during his treatment in PGI, Chandigarh. The Tribunal has awarded Rs.10,000/- for pain and sufferings. In view of nature of injuries sustained coupled with period of treatment as an indoor patient and the factum that the injured suffered fracture and was operated upon, claimant shall be entitled to an amount of Rs.25,000/- for pain and sufferings (additional amount Rs.15,000/-). Compensation awarded by the Tribunal for transportation charges, services of an attendant, special diet to the tune of Rs.15,000/- is enhanced to Rs.25,000/- (additional amount Rs.10,000/-).

The Tribunal has allowed an amount of Rs.13,82,400/- for loss of future income qua disability suffered by the victim. Dr. Aditya Aggarwal, Additional Professor, Department of Orthopedics, PGI, Chandigarh was examined to prove disability to the extent of 32% and the disability certificate Ex.C5. In his cross-examination, he has deposed that it is not possible to comment on the disability in relation to whole body without consulting the disability manual. It will be less than the percent one. In response to Court questions, the witness has deposed, reproduced hereinbelow for ready reference:-

“Q. What are the reasons for arriving at the conclusion that there is 32% permanent disability?”

Ans. Patient when examined at the time of the appointment for issuing the disability had following clinical features and findings:-

- 1. Foot drop.*
- 2. Restriction of knee movements.*

3. Restriction of ankle range of movements i.e. partial ankylosis. The dorsiflexion of ankle was nil and plantar flexion was 0-20 degree.

4. Varus deformity of left knee 10 degree.

Q. Whether the knee and ankle restrictions are liable to improve with passage of time keeping in view the age of the patient?

Ans. As sufficient time has lapsed after vigorous physiotherapy and other treatment, it is highly unlikely that patient may improve in terms of range of movement at ankle and knee?

Q. Can you comment about the functional disability which the patient had suffered?

Ans. It may affect his athletic activities and other functions required in terms of the jobs or the occupation as these restrictions may cause early degenerative arthritis of the neighbouring joint. If the patient is involved in doing desk jobs which require only sitting there may be no functional disability but if he will be involved in doing jobs in travelling, walking, physical labour then the disability will be enormous i.e. more than 32% as assessed by the disability board."

The injured victim initially did Diploma in Mechanical Engineering and later he did B.Tech in Mechanical Engineering from Kurukshetra University. Dr. Aditya Aggarwal in answer to last question by the Court had deposed that if the patient is involved in doing desk jobs which require only sitting there may be no functional disability but if he will do job involving travelling, walking, physical labour then the disability will be enormous i.e. more than 32% as assessed by the disability board. On the basis of aforesaid opinion of the doctor, interest of justice would be served if 40% disability is taken into account for assessing loss of income.

The injured was a student of Diploma in Mechanical

Engineering at the time of occurrence in the year 2008. His income is assessed at Rs.10,000/- per month. He is allowed benefit of future prospects @ 40%. After applying multiplier of 18 and functional disability @ 40%, future loss of income comes to Rs.12,09,600/- (Rs.10,000 x 12 x 18) + (40% future prospects) x (functional disability @ 40%).

The Tribunal has allowed an amount of Rs.10,000/- for loss of enjoyment of life. The injured appeared before the Court and he does not appear to be independent in his walking. He is awarded an amount of Rs.50,000/- for loss of amenities of life. Another sum of Rs.50,000/- is awarded for loss of matrimonial prospects. Compensation of Rs.20,000/- awarded by the Tribunal for loss of studies for one year is affirmed. In this manner, total compensation is Rs.13,99,600/- and compensation awarded by the Tribunal is reduced to the extent of Rs.57,800/- (14,57,400 – 13,99,600).

The appeal and cross-objections are disposed of in the aforesaid terms.

17.02.2018
ashok

(REKHA MITTAL)
JUDGE

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