IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-20-2013 (O&M)
Date of Decision: 05.11.2018

Naveen Kumar --Appellant

Versus

Mahender Pal & another --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Jagjit Gill, Advocate for the appellant.

Mr. Sanjeev Kodan, Advocate for respondent/Insurance Co.

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TEJINDER SINGH DHINDSA.J (Oral)

Naveen Kumar, the injured victim is in appeal seeking enhancement of compensation in respect of injuries suffered by him in a motor vehicle accident dated 15.1.2011 due to rash and negligent driving of Canter Truck bearing registration no. HR-38K-7051.

The Motor Accident Claims Tribunal, Sirsa vide award dated 18.9.2012 has held the claimant/appellant entitled to a compensation amount of Rs.4,89,000/-. The compensation amount has been computed by the Tribunal as follows:-

Sr. No.	Head	Amount awarded
1	Medical bills/treatment	Rs.2,79,976/-
2	Pain & suffering/mental agony	Rs.25,000/-
3	Loss of income for six months	Rs.24,000/-
4	Permanent disability	Rs.1,60,000/-
	Total	Rs.4,88,976/-
	Rounded off by Tribunal	Rs.4,89,000/-

Counsel for the appellant has contended that the compensation amount awarded by the Tribunal is grossly inadequate against the backdrop of injuries suffered as also the disability element which had been duly proved on record. It is urged that the compensation awarded under the heads noticed herein above would need to be substantially enhanced besides the appellant being entitled to be awarded compensation under additional heads.

Counsel for the contesting insurance company has to the contrary supported the award passed by the Tribunal.

It may be stated at the outset that the Tribunal had recorded a specific finding that the accident had taken place due to rash and negligent driving of the offending/insured vehicle and which had hit the motorcycle being driven by the claimant/appellant and on account of which injuries had been sustained. Insurance company has not challenged such findings of the Tribunal and as such, this aspect has attained finality. Furthermore, the liability to pay the compensation amount was held to be joint and several and as such, it is the respondent-insurance company which would be the contesting party herein.

The principles for determination of compensation in the case of permanent/partial disablement have been exhaustively laid down by the Apex Court in ***Raj Kumar Vs. Ajay Kumar and another, 2011 (2) R.C.R (Civil), 101.*** The relevant paragraphs from such judgement are extracted hereunder:-

> *"6. The heads under which compensation is awarded in personal injury cases are the following:*
>
> *Pecuniary damages (Special damages)*
>
> *(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.*
>
> *(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:*
>
> *(a) Loss of earning during the period of treatment;*
>
> *(b) Loss of future earnings on account of*

permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses Item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of nonpecuniary damages Items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability Item (ii)(a).

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a *human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.*

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the *right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.*

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result *of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."*

In the facts of the present case the Tribunal has taken note of two Disability Certificates adduced by the claimant and proved on record i.e. Ex. P-1 and Ex. P-2 which reflected a disability to the extent of 50% of the right limb/leg and 30% disability in vision respectively and has awarded amounts of Rs.1 lakh and Rs.60,000/- on account of the permanent disability reflected in the certificates at Ex. P-1 and Ex. P-2. By taking the monthly earnings of the claimant/injured to be Rs.4,000/-, an amount of Rs.24,000/- has been awarded towards loss of income over a period of six months on account of the accident and the consequent hospitalization/recuperation. A total amount of Rs.25,000/- has been awarded by the Tribunal for the pain and suffering as also agony endured by the claimant/appellant.

In the considered view of this Court the compensation amount would require to be revisited and reassessed in the light of dictum laid down by the Apex Court in ***Raj Kumar's*** case (supra).

The Tribunal in its award dated 18.9.2012 and while computing the compensation amount has mechanically awarded a sum of Rs.2,000/- for each percent of disability i.e. Rs.1 lakh in lieu of 50% disability element reflected in Ex. P-1 and Rs.60,000/- towards 30% disability reflected in Ex. P-2.

It is by now well settled that in awarding compensation the multiplier method is logically sound and legally well established. The Tribunal ought to have assessed the effect of the permanent disability on the earning capacity of the injured/claimant and after assessing the loss of earning capacity in terms of percentage of the income, it ought to be quantified in terms of money to arrive at the future loss of earning by applying the standard multiplier method employed to determine loss of dependency. Such aspect has been completely overlooked and ignored by the Tribunal.

The claim petition had been filed seeking a compensation to the tune of Rs.50 lakh. Claimant/injured had asserted that he was 20 years of age as on the date of accident, was able bodied and was pursuing his studies. It was further averred that he also used to indulge in agricultural work and was earning Rs.4,000/- per month. Claimant had filed his affidavit Ex. P-6/A deposing therein that immediately after the accident he was removed to Civil Hospital, Sirsa but on account of the serious and grievous injuries suffered, he had been referred to Jindal Hospital, Hisar and wherein he had been admitted for three different spells i.e. from 15.1.2011 to 11.2.2011, 21.2.2011 to 3.3.2011 and 29.6.2011 to 5.7.2011. During such period of hospitalization he had undergone repeated surgical procedures. Claimant had examined Dr. Pawan Kumar, Medical Officer as PW-1 and who deposed that he was a Member of the Board of Doctors/Handicap Board and who had examined Naveen Kumar on 23.11.2011 and had assessed the disability element to the extent of 50% on account of decreased range of motion of right knee and right hip due to fracture of right thigh and leg and malunion of right tibia bone. The Disability Certificate in such regard was duly proved as Ex. P-1. Furthermore, claimant had examined Dr. Rajesh Chaudhary, Eye Surgeon as PW-2 and who had deposed that he was also a Member of the Handicap

Board and had examined the claimant on 23.11.2011 and assessed his visual disability to the extent of 30% on account of using a prosthetic eye (right eye). Disability Certificate in this regard was duly proved as Ex. P-2. That apart, claimant had examined Satyawan, Record Keeper as PW-3 and who proved medical bills Ex. P-3 and Ex. P-4. Gaurav, Computer Operator was examined as PW-4 and who proved medical bills Ex. P-5 to Ex. P-51. Claimant had further tendered in evidence medical bills at Ex. P-61 to P-197 and medical reimbursement forms as Ex. P-57 to Ex. P-60 as also copy of MLR Mark-A. The total of such medical bills was Rs.2,79,976/- which have been accepted and the requisite amount has been awarded by the Tribunal.

The appellant/claimant had himself asserted his age to be 20 years as on the date of accident and had claimed to be pursuing his studies. Even though, he had asserted that he was earning a sum of Rs.4,000/- per month from engaging in agricultural work but no evidence had been adduced to substantiate such plea. Under such circumstances and to compute compensation towards the head of loss of future earning on account of permanent disability, it would be imperative to assess the notional income. Counsel for the parties are *ad idem* that as on the date of accident, the minimum wages admissible to an unskilled worker as per Haryana Govt. Notification were Rs.4340/- per month. The notional monthly income of the claimant, as such, is assessed as Rs.4340/- By applying the parameters laid down by the Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil), 1009*** this Court would award 40% addition in income towards future prospects. A multiplier of 18 would be applied keeping in view the age of the appellant as on the date of accident and as per guidelines furnished in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation & another, 2009 (3) R.C.R (Civil), 77***.

There is no dispute as regards the appellant having suffered a permanent disability to the extent of 50% on the right leg in the nature of a decreased range of motion of the right knee and malunion of the right tibia bone. Furthermore, the appellant has lost his right eye in the accident and is using a prosthetic eye. His visual disability in this regard has been assessed to be 30%. What clearly emerges is that even though, appellant was 20 years as on the date of accident but in the future he would be barred from exploring such avenues of employment which would require complete physical fitness as also a keen vision in both eyes. At the same time it is observed that it would be open for the appellant to explore an avocation for earning his livelihood or to enter into employment wherein the job work etc. is sedentary in nature.

In the light of the injuries suffered by the appellant and coupled with the physical disability element and the same being examined in the light of the principles laid down in ***Raj Kumar's*** case (supra), in my considered view the ends of justice would be served, if, compensation for loss of future earnings is assessed by taking loss of earning capacity to the extent of 40%. In this manner the compensation payable to the appellant under the head of pecuniary damages and loss of future earnings on account of permanent disability would be computed as follows:-

Sr. No.	Head	Amount
1	Notional income per month	Rs.4340/-
2	40% increase towards future prospects	Rs.4340+1736=6076/-
3	Annual income	6076x12=Rs.72,912/-
4	Income after applying multiplier of 18	72,912x18=13,12,416/-
5	40% of the total income assessed towards loss of future earnings	Rs.5,24,966/-

The evidence had been led by the claimant/appellant towards medical bills/hospital treatment to the extent of Rs.2,79,976/-. Tribunal has accepted such amount and has awarded the same. Such amount, as such, does not require any variation.

Tribunal has awarded a sum of Rs.24,000/- towards loss of income for six months on account of hospitalization/recuperation by accepting the monthly earnings of the appellant to be Rs.4,000/-. Such amount cannot sustain. Claimant had asserted himself to be 20 years of age on the date of accident and was pursuing his studies. Even though, he claimed to be earning Rs.4,000/- by doing agricultural work but such plea was not substantiated by leading any evidence. As such, the appellant could not have been treated as a earning hand as on the date of accident.

This Court finds that the Tribunal has awarded a very meager amount of Rs.25,000/- under the head of pain and suffering/mental agony. Such amount would stand enhanced to Rs.1,50,000/- keeping in view the nature of injuries, the period of hospitalization as also the surgical procedures that the appellant has endured. An amount of Rs.20,000/- is awarded towards services of an attendant and another amount of Rs.10,000/- for expenses on transportation etc.

In view of the above, the compensation amount is reassessed and calculated as follows:-

Sr. No.	Head	Amount
1	Loss of future earnings on account of permanent disability	Rs.5,24,966/-
2	Medical bills/treatment charges	Rs.2,79,976/-
3	Pain & suffering/mental agony	Rs.1,50,000/-
4	Attendant charges	Rs.20,000/-
5	Transportation charges	Rs.10,000/-
6	Total	Rs.9,84,942/-

The afore-calculated enhanced compensation amount be released in favour of the appellant along with interest @ 6% per annum from the date of filing of the instant appeal till actual realization.

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

05.11.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No