

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

FAO No.1590 of 2014 (O&M)

Date of decision: 14.05.2018

Lakha Ram

Versus

.... Appellant

Hans Raj and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.S.K.Yadav, Advocate
for the appellant.

None for respondent No.1.

Mr.R.N.Singhal, Advocate
for respondent No.2-Insurance Company.

Avneesh Jhingan, J.

The present appeal has been filed against award dated 27.05.2013 passed by Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal').

On 26.04.2011, Lakha Ram, aged 35 years, was going on a motorcycle bearing registration No.HR-35D-2994. The said motorcycle was struck by a rashly and negligently driven Bolero bearing registration No.HR-35C-7981 (for short, 'the offending vehicle'). FIR No.96 dated 25.05.2011 was registered at Police Station Nangal Chaudhary.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed.

The Tribunal held that accident occurred due to rash and negligent driving of the offending vehicle. The Tribunal awarded a sum of Rs.4,78,100/- along with interest @ 7.5% per annum. The amount awarded

included Rs.1,40,000/- for permanent disability.

The present appeal has been filed for enhancement of compensation.

Learned counsel for the appellant contended that the Tribunal erred in not applying the multiplier method for awarding compensation for disability. He contends that the amounts awarded under the various heads are on the lower side.

Learned counsel for the insurer contended that the claimant failed to prove that he was an agriculturist and nothing has come on record that how the disability effected his functional ability.

The fact that the left leg below knee of the appellant was amputated has not been disputed. The disability certificate Ex.PW5/A was duly proved by the deposition of Dr.R.P.Saini. The appellant remained hospitalised for one month. He was operated twice. Assuming that it was not proved that he was an agriculturalist, even then without a lower limb his functional ability is bound to be effected.

The Supreme Court in **Raj Kumar vs. Ajay Kumar, 2011 (1) SCC 343** has held as under :-

“18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be

assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.”

It has been held that every effort should be made to award adequate compensation not only for the physical injury and treatment but also for loss of earning and inability to lead normal life. It was further held that percentage of permanent disability qua the limb should not be adopted as it is as multiplier for calculating the compensation.

There is nothing on record to prove the functional disability. Learned counsel for the appellant states that there has already been a long drawn litigation and the matter should not be remitted back. In such circumstances, in consonance with the decision of Supreme Court in **Raj Kumar's case (supra)**, the compensation for permanent disability would be awarded taking 70% disability qua limb as 35% permanent disability qua whole body. The minimum wages prevalent in the State of Haryana at the time of accident for an unskilled labourer was Rs.4643/-. The same is rounded off to Rs.4800/-. The compensation for permanent disability is calculated as under :-

Monthly income	Rs.4800/-
35% permanent disability	Rs.1680/-
Applying multiplier of 16	Rs.3,22,560/-

The Tribunal while awarding the compensation has not considered that prosthetic limb would be required to be fitted as the left leg below knee has been amputated. In such circumstances, Rs.1,00,000/- is awarded for prosthetic limb and its replacement. The appellant would have to lead rest of his life with pain and suffering and with stigma of being handicapped. His social status will be effected and even effect longevity of life, an amount of Rs.1,00,000/- is awarded for loss of social status and shortening of expectancy of life. The amount awarded for special diet and attendant and transportation awarded by the Tribunal is on the lower side. The attendant and transportation would have been required not only during the period of hospitalisation but for rest of life also. Rest of the heads as awarded by the Tribunal are maintained as it is.

The compensation is awarded as under :-

<i>Sr. No.</i>	<i>Heads</i>	<i>Amount earlier awarded by the Tribunal</i>	<i>Now awarded</i>
1	For pain and suffering	Rs.25,000/-	Rs.25,000/-
2	Special diet, attendant and transportation	Rs.10,000/-	Rs.25,000/- Rs.50,000/-
3	Medical bills	Rs.3,03,100/-	Rs.3,03,100/-
4	Permanent disability	Rs.1,40,000/-	Rs.3,22,560/-
5	For prosthetic limb and its replacement and	NIL	Rs.1,00,000/-
6	Loss of social status, shortening of expectancy of life	NIL	Rs.1,00,000/-
	Total	Rs.4,78,100/-	Rs.9,25,660/-

The award dated 27.05.2013 is modified to the extent that the amount awarded by the Tribunal of Rs.4,78,100/- is enhanced to Rs.9,25,660/-.

The claimant would be entitled to enhanced amount along with interest @ 6% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

14.05.2018

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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No