IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.2123 of 2014 (O&M)
Date of Decision: 01.12.2018

Sunil Kumar

.......Appellant

Versus

Krishan Kumar and another

........Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr.R.A. Sheoran, Advocate for the appellant.

Mr. Jainainder Saini, Advocate for respondent No.1.

Mr. Rajbir Singh, Advocate for the Insurance Company-respondent No.2.

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TEJINDER SINGH DHINDSA J.

Sunil Kumar, the injured-victim is in appeal seeking enhancement of compensation in respect of injuries suffered by him in a motor vehicle accident dated 30.11.2011 due to the rash and negligent driving of Tempo bearing Registration No.HR-54J-1374.

The Motor Accident Claims Tribunal, Hissar vide award dated 11.11.2013 has held the claimant-appellant entitled to a compensation amount of Rs.3,73,200/-.

Learned 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 proved on record. It is urged that the compensation awarded under the different heads would need to be substantially enhanced besides the appellant being entitled to be awarded compensation under additional heads.

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

It may be noticed at the outset that the Tribunal has 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 fastened upon the insurance company 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:*
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> *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 the disability element suffered by the appellant to the extent of 26 per cent in the right upper limb and left lower limb and while accepting his monthly salary as Rs.5,000/- has assessed the loss of future earnings by applying the multiplier of 17. Such amount has been computed as Rs.2,65,200/-. An amount of Rs.25,000/- has been awarded towards loss of income for a period of five months on account of hospitalization and inability to perform work. A like amount of Rs.25,000/- has been awarded for pain, suffering and agony. Rs.11,000/- has been awarded towards expenses for future treatment. Rs.11,000/- for special diet has been awarded and a sum of Rs.11,000/-as attendant charges. Claimant was further awarded transportation charges of Rs.25,000/-. The total compensation amount awarded by the Tribunal is Rs.3,73,200/-.

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).***

It is by now well settled that in awarding the 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.

The claim petition had been filed seeking a compensation to the tune of Rs.15,00,000/-. Claimant/injured had asserted that he was 30 years of age as on the date of accident. Since there was no rebuttal to the same, Tribunal has rightfully accepted the age of the claimant to be 30 years.

Accident had taken place on 30.11.2011. Learned counsel for the parties do not dispute that the minimum wages admissible to a daily wager in relation to the date of accident would be Rs.5000/- approximately. Under such circumstances, the assessment of monthly income of the claimant-appellant as Rs.5,000/- is accepted. The Tribunal has however completely overlooked the aspect as regards granting addition in income towards further prospects. 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 further prospects keeping in view the age factor of the claimant/appellant as also the conceded factual premise that he was not in a permanent job. The multiplier of 17 would be applied as per guidelines furnished in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation & another, 2009 (3) R.C.R. (Civil), 77***.

Claimant/appellant had examined Dr. Reena Jain, Jindal Hospital, Hissar as PW-5 and who had dully proved the disability certificate Ex.P6 reflecting disability element of 26% in the right upper limb and left lower limb. Appellant who was 30 years as on the date of the accident, would in future be barred from exploring such avenues of employment which would require complete physical fitness. However, it would certainly 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 physical disability element of 26% 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 20%. 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.5000/-
2.	40% increase towards future prospects	Rs.5000+2000=7000/-
3.	Annual income	7000x12=Rs.84,000/-
4.	Income after applying multiplier of 17	Rs.84,000x17=14,28,000/-
5.	20% of the total income assessed towards loss of future earnings	Rs.2,85,600/-

The appellant had led evidence towards medical bills/hospital treatment. Tribunal in the award dated 11.11.2013 has noticed that such amount towards medical bills etc. has already been received by him from ESI (Employee State Insurance). Learned counsel representing the appellant concedes such position during the course of hearing before this Court as well.

This Court finds that the Tribunal has awarded a very meager amount of Rs.25,000/- under the head of pain and suffering/agony. Claimant had examined Dr. Vikram Jain, Jindal Hospital, Hissar as PW3 and who proved that on account of the injuries suffered, appellant was admitted in Jindal Hospital, Hissar on 30.11.2011 and there were three fractures on his body. PW3 had deposed that the claimant/appellant was discharged on 31.12.2011 and later on admitted on 12.01.2012 and discharged on 23.01.2012. Thereafter, he was again admitted on 31.03.2012 and discharged on 09.04.2012. The discharge cards Exhibit P4 and Exhibit P5 were duly proved on record. Dr. Vikram Jain, PW3 deposed that an amount of Rs.1,98,241/- had been charged for treatment of the injuries. Keeping in view the injuries suffered, period of hospitalization and the treatment undergone the amount of Rs.25,000/- awarded by the Tribunal under the head of pain and suffering/agony would now stand enhanced to Rs.1,25,000/-. The Tribunal has not awarded any amount to the claimant towards loss of amenities/loss of prospects of marriage. Against the backdrop of the injuries as also permanent physical disability suffered to the extent of 26%, an amount of Rs.1,00,000/- is awarded towards loss of amenities. The amount awarded by the Tribunal for loss of income for five months and under the different heads i.e. future treatment, special diet, attendant charges and transportation charges would remain intact.

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.2,85,600/-
2.	Pain and suffering/mental agony	Rs.1,25,000/-
3.	Loss of amenities	Rs.1,00,000/-
4.	Loss of income for five months	Rs.25,000/-
5.	Future treatment	Rs.11,000/-
6.	Special diet	Rs.11,000/-
7.	Attendant charges	Rs.11,000/-
8.	Transportation charges	Rs.25,000/-
	Total	**Rs.5,93,600/-**

The afore-calculated enhanced compensation amount be released in favour of the appellant alongwith 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

December 01, 2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No