

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 2091 of 2015(O&M)

Date of Decision: December 03 , 2018.

Mahesh Kumar @ Chunnu

..... APPELLANT (s)

Versus

Choudhary Ram and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

**Present: Mr. Navkesh Singh Goraya, Advocate
for the appellant.**

**Mr. Darshan Gulati, Advocate
for respondents No.1 and 2.**

**Ms. Vikas Chaudhary, Advocate for
Mr. R.K.Bashamboo, Advocate
for respondent No.3 – Insurance Company.**

LISA GILL, J.

This appeal has been filed by the claimant seeking enhancement of compensation awarded to him by the learned Motor Accident Claims Tribunal, Panchkula (for short, the 'Tribunal') vide impugned award dated 05.11.2014 on account of the injuries and disability suffered by him in a motor vehicle accident.

Brief facts necessary for adjudication of the case are that, a petition under Section 166 of Motor Vehicles Act (for short, the 'Act') was preferred by the appellant seeking compensation on account of the injuries and disability suffered by him in a motor vehicle accident, which took place on 19.04.2013.

FIR No.38 dated 19.04.2013, under Sections 279/337/338/304A IPC, Police Station Raipur Rani was lodged against respondent No.1-Choudhary Ram. The learned Tribunal on consideration of the facts, circumstances and evidence on record held that the accident in question took place due to the rash and negligent driving of tractor bearing No. HR-03-L-4722 by respondent No.1 – Choudhary Ram. Finding of the learned Tribunal in this respect has attained finality.

The learned Tribunal concluded that the appellant sustained injuries in this accident leading to 30% permanent disability. Appellant was aged 22 years at the time of the accident. ₹50,000/- was awarded on account of disability. A consolidated sum of ₹15,000/- on account of pain and suffering, special diet and loss of amenities was awarded. ₹7,000/- was awarded for loss of income, besides, ₹1,21,000/- on account of actual medical expenses. The learned Tribunal awarded a total compensation of ₹1,93,000/-. The present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellant submits that loss of income has not been correctly assessed by the learned Tribunal. Meagre compensation has been afforded to the claimant, who was running a shop under the name and style of 'Mahesh Tyre Puncture'. The claimant was unmarried and permanent disability to the extent of 30% has been suffered by him. It is thus prayed that compensation awarded to the appellant be enhanced.

Learned counsel for respondent No.3 – Insurance Company however submits that the compensation awarded by the learned Tribunal is reasonable and as per the evidence on record. It is contended that disability of 30% though permanent, is only in relation to the lower limb and not qua the whole body.

I have heard learned counsel for the parties and have gone through the file.

Liability of the Insurance Company in this case is not in dispute and neither is there a dispute regarding injuries caused to the claimant/appellant in the motor vehicle accident which occurred on 19.04.2013 due to the rash and negligent driving of respondent No.1 – Choudhary Ram. The appellant was taken to Civil Hospital, Raipur Rani and then to PGI, Chandigarh where he was operated upon. As per the PGI Discharge and Follow-up Card (Ex.P40), the appellant was admitted on 19.04.2013 and discharged on 11.05.2013. He remained under treatment at PGI, Chandigarh till January 2014. As per the medical record of PGI (Ex.P40), the appellant was subsequently given treatment for removal of external fixator of left leg. Disability Certificate (Ex.P41) was proved by PW3 Dr. K.K.Bansal. He specifically stated that the claimant was operated as a case of fracture of the shaft of femur and fracture of bone leg left side (compound) treated by external fixator at PGI in April 2013. Bending of the left knee was not possible and weight bearing on the left lower limb was partial. Disability of the appellant-claimant was assessed to be 30% as per the Disability Certificate dated 14.05.2014 (Ex.P41) issued by the Civil Surgeon, Panchkula. Permanent disability of 30% in relation to the lower limb is duly proved on record.

Even while accepting that no specific evidence was led by the appellant to prove that he was running a shop for repair/tyre puncture, as averred, at the same time income of the appellant cannot be assessed to be less than even the minimum wage of an unskilled labourer in the State of Haryana at the

relevant time i.e., ₹5,212/- per month. Therefore, income of the appellant/claimant is assessed as ₹5,212/- per month.

Compensation to the appellant is thus required to be reworked in terms of the guidelines laid down by the Hon'ble Supreme Court in Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765. The appellant/claimant was admittedly 22/23 years old at the time of the accident. Functional disability of the appellant cannot be assessed to be less than 20% in this case. Therefore, loss of income is assessed as ₹1,042/- per month (5212x20%).

Increase in income on account of future prospects in terms of Syed Sadiq's (supra) at the rate of 40% has to be afforded taking the amount to [(1042 + (1042 x 40%)] = ₹1459/- per month i.e., ₹17,508/- per annum. Age of the appellant was 22/23 years at the relevant time, therefore, multiplier of 18 is to be applied. Loss of earnings is, thus, assessed as ₹3,15,144/- [17,508 x 18].

The appellant is entitled to sum of ₹50,000/- on account of pain and sufferings and ₹35,000/- for loss of amenities and marriage prospects, besides, ₹5,000/- each on account of special diet, attendant charges and transportation. ₹1,21,000/- awarded by the learned Tribunal on account of medical and hospital expenses is maintained. ₹7,000/- awarded on account of loss of income during the period the appellant remained under treatment is maintained.

Appellant is, thus, entitled to compensation detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of earnings	₹3,15,144
2.	Pain and sufferings	₹50,000

3.	Loss of amenities and marriage prospects	₹35,000
4.	Medical expenses	₹1,21,000
5.	Attendant charges	₹5,000
6.	Special diet	₹5,000
7.	Transportation	₹5,000
8.	Loss of income during the period of hospitalization	₹7,000
Grand Total		₹5,43,144/-

Amount already awarded by the Tribunal to the appellant/claimant under various heads shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the entire amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

December 03 , 2018.
'om'

(LISA GILL)
JUDGE

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