IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4295 of 2014(O&M)
Date of Decision: 23.05.2018

Rattan **......Appellant**

Vs

Harjinder Singh and others **.....Respondents**

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. J.S. Chatrath, Advocate
for the appellant.

Mr. R.K. Bushamboo, Advocate
for respondent No.3.

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RAJ MOHAN SINGH, J.

[1]. Claimant/appellant has preferred this appeal against the inadequacy of the award of compensation awarded by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal') vide order dated 10.05.2013.

[2]. The accident took place on 15.02.2011 in which the claimant/appellant received serious injuries. Complainant was a cleaner by profession and was doing the job with his physical capacity. In the said accident, his left leg was amputated and second leg was crushed.

[3]. The Tribunal held that the accident in question took

place due to rash and negligent driving of respondent No.1. The vehicle was found to be fully insured. While assessing the compensation to be paid to the claimant/appellant, the Tribunal calculated the compensation in the following manner:-

a) For loss of future earning : Rs.4,60,800/-

b) Pain and suffering : Rs.50,000/-

c) Medical expenses: Rs.82,837/-

d) Replacement of artificial leg : Rs.1,00,000/-

e) Diminishment of marriage prospects : Rs.50,000/-

f) Loss of enjoyment of future life : Rs.50,000/-

g) Attendant charges : Rs.20,000/-

h) Transportation expenses : Rs.12,000/-

i) Special diet : Rs.2000/-

j) Loss of earning during treatment : Rs.12,800/-

[4]. The computation was accordingly made to the extent of awarding an amount of Rs.8,40,437/- to be paid by the respondents jointly and severally along with interest @ 7.5 % per annum from the date of institution of claim petition till final realization of the amount. Additional directions were also issued in respect of deposit of Rs.1,00,000/- to meet future medical expenses for replacement of artificial leg and the amount was ordered to be deposited in long term fixed deposit scheme of a nationalized bank so as to meet recurring medical expenses.

50% of the amount was to be paid in cash to the claimant and remaining 50% of the amount was to be deposited in some fixed deposit scheme of nationalized bank.

[5]. During course of arguments, learned counsel for the appellant only assailed the amount of compensation assessed for the loss of future earnings on account of permanent disability. In addition to the aforesaid, the amount is also claimed for permanent disability of 75% and towards attendant charges and special diet.

[6]. Perusal of the record would show that the claimant/appellant suffered permanent disability to the tune of 75 % as his one leg was amputated and second leg received crushed injury for which intensity of injury can be appreciated from the statement of Dr. Dipender Sindhu (PW 4). The gravity of the injury can also be appreciated from the statements of PW 1 Sandeep Gupta and PW 2 Gian Parkash. The claimant had undergone an operation in Astha Hospital, Jagadhri for removal of fixator which was applied on his right leg in PGI Chandigarh. 75% permanent disability was opined vide disability certificate Ex.P15 issued by the Medical Board after examination of the claimant on 29.08.2012. The said permanent disability was on account of crush injury with mid-thigh amputation of left lower limb. Doctor also opined that chances

for getting the job of cleaner were very bleak. The salary of the claimant was assessed to be Rs.3200/- per month. The impact of permanent disability to the extent of 75% would adversely affect the earning capacity of the claimant to almost same level i.e. 75%.

[7]. In ***Govind Yadav Vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817,*** the Hon'ble Apex Court after considering all pros and cons in detail assessed the compensation in case of permanent disability of the injured.

[8]. In ***K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312***, the Hon'ble Apex Court held that in case of permanent disability, the injured is entitled to grant of compensation towards permanent disability as well as loss of earning capacity. The determination of compensation for loss of earning capacity on the basis of multiplier method was held to be proper. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective standards. There cannot be a flight in fancy. The award should correspondent to reasonableness and should be in consonance with conventional sum. The endeavour should be to award just compensation keeping in view the suffering of the injured

person.

[9]. In ***S. Manickam s. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696***, it was ruled by the Hon'ble Apex Court that the determination of just compensation cannot be equated to a bonanza. It has to be based on application of fair and equitable principles. Reasonable approach should be adopted. Compensation towards permanent disability and loss of earning capacity, both were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of earning capacity.

[10] In ***G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another, 2013(3) RCR (Civil) 934***, the Hon'ble Apex in case of grievous injuries of the injured in pelvic region ruled that in case of nature of injury, rendering the injured to be impotent, adequate compensation has to be awarded towards all heads like expenses incurred in treatment including hospitalization, future medical expenses towards hospitalization, medicines, attendant charges etc, pain suffering and trauma, loss of amenities, prospects of marriage, loss of expectation of life and loss of future earning. In aforesaid case, the Hon'ble Apex Court awarded a sum of Rs.20.20 lacs.

[11]. In case of ***Rekha Jain Vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996***, the Hon'ble Apex

Court in case of 30% disability of face of a film actress held that in the circumstances of the case, the disability should be treated to be 100% functional disability. Loss was assessed on multiplier method keeping in view the age of the victim. As against compensation of 2 lacs assessed by the Tribunal, the Apex Court assessed the compensation of Rs.42,50 lacs.

[12]. In case of ***Neerupam Mohan Mathur Vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422***, it was held by the Hon'ble Apex Court that in case of permanent disability on account of amputation of limb, compensation towards non pecuniary damages has to be awarded. In the said case, on account of amputation of one arm, the services of the claimant were terminated by the employer. There was loss of 100% earning capacity of the claimant. The order of High Court in assessing 70% loss of income was upheld by the Apex Court. An amount of Rs.1 lac towards pain, suffering and trauma was assessed. An amount of Rs.2 lacs was assessed towards loss of amenities and additional amount of Rs.1 lac was assessed towards loss of expectation of life i.e. shortening of the normal longevity.

[13]. In case of ***Yadava Kumar Vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** the Hon'ble Apex Court highlighted that a distinction has to be drawn between the damages and

compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner, as if injury has not taken place. Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

[14]. As per schedule applicable w.e.f. 01.01.2011 issued by the Labour Commissioner, Haryana to all the district headquarters, the monthly wage of an unskilled labour can be assessed as Rs.4500/-. Since the accident took place during the relevant period, therefore, I deem it appropriate to assess the monthly income of the claimant as 4500/- to which future prospects to the extent of 40% can be added, thereby making monthly salary of the claimant/appellant as Rs.4500+1800=6300/-. Annual income of the claimant/appellant would come out to be Rs.75,600/-. The Tribunal has applied multiplier of only 16. The age of the claimant/appellant was 20 years at the time of accident, therefore, in view of ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77,*** multiplier of 18 has to be applied. After applying multiplier of 18, the total compensation under this head would come out to be Rs.13,60,800/-. On the basis of 75% permanent disability, loss of income can be

assessed as Rs.10,20,600/- (13,60,800 X 75 /100 =10,20,600/-). The aforesaid amount would suffice to meet the head of loss of income on account of permanent disability.

[15]. It is a settled principle of law that loss of future income on account of permanent disability and the permanent disability @ Rs.2000/- per percent are two distinct assessments which are to be made simultaneously in case of injury. Compensation for 75% permanent disability would come out to be Rs.1,50,000/- (75 X 2000 = 1,50,000/-).

[16]. Keeping in view the injuries received by the claimant/appellant, the amount of Rs.20,000/- awarded by the Tribunal towards attendant charges is totally on the lower side. In view of medical record, it would be just and appropriate to award an amount of Rs.1,00,000/- towards attendant charges. So far as, special diet is concerned, the Tribunal has awarded only a sum of Rs.2000/- towards special diet, which needs to be enhanced in view of prolonged confinement of the claimant/appellant with the aforesaid intensity of injury on his person. In my considered opinion, there was 100% functional permanent disability qua whole body as the vocation of cleaner had to be stopped. The claimant could not do any work according to his physical capacity. The amount incurred towards special diet has to be increased to the tune of Rs.50,000/-

keeping in view the intensity of injuries suffered by the claimant/appellant.

[17]. In view of above, the amount of compensation is worked out as under:-

Sr. No.	Heads	Assessed by the Tribunal	Assessed by the High Court	Difference
1.	Loss of future earning on account of permanent disability	4,60,800/-	10,20,600/-	5,59,800/-
2.	Permanent disability @2000 per per cent	Nil	1,50,000/-	1,50,000/-
3.	Pain and suffering	50,000/-	50,000/-	Nil
4.	Medical expenses	82,837/-	82,837/-	Nil
5.	Replacement of artificial leg	1,00,000/-	1,00,000/-	Nil
6.	Diminishment of marriage prospects	50,000/-	50,000/-	Nil
7.	Loss of enjoyment of future life	50,000/-	50,000/-	Nil
8.	Attendant charges	20,000/-	1,00,000/-	80,000/-
9.	Transportation charges	12,000/-	12,000/-	Nil
10.	Special diet	2000/-	50,000/-	48,000/-
11.	Loss of earning during treatment	12,800/-	12,800/-	Nil
	Total	8,40,437/-	16,78,237/-	8,37,800/-

[18]. The enhanced amount i.e. Rs.8,37,800/- shall carry interest @ 7.5 % per annum from the date of filing of the claim petition till final realization of the amount.

[19]. With the aforesaid modification, the present appeal stands disposed of.

May 23, 2018. **(RAJ MOHAN SINGH)**
Prince **JUDGE**

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