

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

FAO No. 4414 of 2015

DECIDED ON: NOVEMBER 12, 2018

SARABJEET SINGH THROUGH LR SUNITA RANI & ORS

.....APPELLANTS

VERSUS

HOSHIAR SINGH & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Ishan Cooner, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. Rajesh Verma, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (ORAL)

The present appeal has been filed against the award dated 14.08.2014 passed by Motor Accident Claims Tribunal, Panchkula (for short 'the Tribunal'). This appeal has been filed for the enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

2. The claimant through legal heirs are the appellants. The driver of car bearing registration No. HR-04-C-2828 (hereinafter referred to as 'offending vehicle'); owner and insurer of the offending vehicle, have been arrayed as respondents No.1 to 3 respectively in the appeal.

3. The brief facts of the case are that on 18.08.2013, Sarabjeet Singh along with his son, Gotinder Singh was going to Gurudwara Bindrakh (Ropar) on motorcycle bearing registration No. HR-03-P-5503. On their way near T-Point Devi Nagar, Panchkula their motor cycle was hit by rashly and negligently driven offending vehicle. As a result of the impact, Sarabjeet Singh suffered grievous injuries. He was taken to General Hospital, Sector 6, Panchkula. FIR No. 418, dated 21.08.2013, under Sections 279 and 337 of the Indian Penal Code was registered at Police Station Sector 5, Panchkula.

4. The claim petition under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') was filed before the Tribunal. The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation to the tune of ₹50,000/- alongwith interest @7.5% per annum.

5. Heard learned counsel for the parties.

6. Learned counsel for the appellants contended that Sarabjeet Singh had fractured volar barton. He was operated upon and T-plate was inserted, which resulted into restricted and painful wrist movements. There was 10% disability qua limb and certificate Ex.P-9 was produced in this regard. Disability certificate was proved by the deposition of Dr. K.K. Bansal, who appeared as PW-3. The grievance of learned counsel for the appellants is that the Tribunal has not applied multiplier method for determining the amount of compensation

for permanent disability. He further contended that the amount awarded under the various conventional heads are on lower side. No other issue has been raised.

7. Learned counsel for respondent No.3 defended the award and argued that there was 10% disability qua limb only and not for the whole body.

8. The contention raised by learned counsel for the appellants deserves acceptance.

9. There is no dispute that there was 10% disability qua limb only. The Tribunal considered the same as 5% disability qua whole body and awarded an amount of ₹3000/- only on account of loss of amenities. It was proved before the Tribunal that the claimant-Sarabjeet Singh was a driver in Gurukul, Panchkula and was drawing a salary of ₹10,160/-.

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

“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%. “

11. Having due regard to the decision of the Supreme Court quoted above, the compensation qua permanent disability is to be awarded by applying the multiplier method. The age of the claimant Sarabjeet Singh was 47 years at the time of accident. Accordingly, multiplier of 13 is applied.

12. Keeping in view the fact that the claimant-Sarabjeet Singh was hospitalized and was operated upon, a sum of ₹10,000/- is awarded for attendant charges. There was a T-plate inserted, it ensures that certain medical expenses would have been incurred later on also and a sum of ₹10,000/- is awarded for future medical expenses.

13. In view of afore-said discussion, the enhanced compensation is as under:

	Head	Compensation awarded
(i)	Income	₹10,160/- per month
(ii)	5% disability qua whole body	₹508/-
(iii)	Multiplier	13
(iv)	Total	₹508/-x12x13=₹79,248/-
(v)	Attendant charges	₹10,000/-
(vi)	Medical expenses	₹10,000/-
	Total compensation awarded	₹99,248/-

14. The award dated 14.08.2014 is modified to the extent that amount awarded of ₹50,000/- is enhanced by ₹99,248/-. The appellants shall be entitled to enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till realization of amount.

15. The appeal is partly allowed in the afore-said terms.

NOVEMBER 12, 2018
sham

(AVNEESH JHINGAN)
JUDGE

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