IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-4647-2015 (O&M)
Reserved on:03.10.2018
Date of Decision:15.11.2018

Rishav Saini @ Rishav ... Appellant

Versus

Shammy & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ashwani Arora, Advocate for the appellant.

Mr. D.S. Adlakha, Advocate for respondent No.3.

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TEJINDER SINGH DHINDSA, J. (ORAL).

Rishav Saini has filed the instant appeal seeking enhancement of compensation in respect of injuries sustained by him in a motor vehicle accident.

2. Briefly noticed a petition under Section 166 of the Motor Vehicles Act was filed before the Motor Accident Claims Tribunal, Chandigarh seeking compensation to the tune of Rs.50 lakhs on account of injuries suffered by the claimant/appellant in a motor vehicle accident that took place on 10.06.2013. It was asserted that the claimant was pillion riding on a motorcycle and proceeding towards Sector 23, Chandigarh when a car bearing registration No.CH-01-AM-0802 being driven in a rash and negligent manner came from the opposite side and struck against the motorcycle. As a result, the claimant as also the person driving the motorcycle sustained grievous injuries. Claimant was taken to PGI,

Chandigarh for treatment. His right leg below the knee was amputated. Further injuries were suffered on the right arm and other parts of the body. Claimant stated himself to be 19 years of age at the time of accident and having qualified the 10+2 examination as also IELTS Examination and having received a letter from Cardiff Metropolitan University, United Kingdom to pursue higher studies.

3. The claim petition having been contested, following issues were framed by the Tribunal:

> *"1. Whether claimant suffered injuries in an accident which took place on the dividing road of Sector 9-B and 9-C, Chandigarh on 10.06.2013 at about 11.30 pm on account of rash and negligent driving of vehicle no.CH-01-AM-0802 by its driver? OPP*
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> *2. Whether the claimant is entitled to any compensation on account of injuries caused to him in an accident as alleged, if so to what extent and by whom? OPP*
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> *3. Whether the driver of offending vehicle was not holding a valid & effective driving license on the date of accident and the vehicle was being driven in violation of terms and conditions of the Insurance Policy? OPR 3*
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> *4. Relief."*

4. Insofar as issue No.1 is concerned, findings were returned in favour of the claimant and it was held that he had suffered injuries in the accident that took place on 10.06.2013 involving the offending/insured car and on account of rash and negligent driving by respondent No.1.

5. The Tribunal on issue No.2, pertaining to quantum of compensation, has held the claimant entitled to a compensation amount of Rs.22,72,800/- and calculated as follows:

1.	Medical expenditure including medical bills,	Rs.1,76,000/-

	attendant charges, special diet, transportation charges:	
2.	Pain and agony:	Rs.1,50,000/-
3.	Loss of future income:	Rs.12,96,000/-
4.	Loss of amenities:	Rs.2,50,000/-
5.	Loss of marriage prospects:	Rs.1,50,000/-
6.	Future medical expenses including expenses of artificial limb:	Rs.2,50,000/-
7.	Total:	Rs.22,72,800/-

6. The liability to pay the compensation amount has been fastened upon the Insurance Company.

7. Counsel for the appellant has submitted that the compensation amount awarded by the Tribunal is inadequate. It is urged that the compensation awarded under the various heads would require suitable enhancement. Counsel would emphasise as regards the notional income assessed by the Tribunal at Rs.8000/- per month to be on the lower side and further argues that even the sum of Rs.2.50 lakhs under the heads of 'future medical expenses including expenses of artificial limb' is grossly inadequate.

8. Counsel for the contesting Insurance Company on the contrary has supported the award passed by the Tribunal.

9. I have heard counsel for the parties and have gone through the records of the case that had been requisitioned.

10. At the very outset, it may be observed that findings have been recorded by the Tribunal with regard to injuries having been suffered by the claimant/appellant on account of rash and negligent driving of the offending/ insured car. Such findings have not been assailed by the Insurance Company. Such aspect, as such, had attained finality.

11. The principles for determination of compensation in the case of

permanent/partial disablement were exhaustively dealt with by the Apex Court in the case of **Raj Kumar Vs. Ajay Kumar & another, 2011 (2) RCR (Civil) 101** and it was held as follows:

> ***"Assessment of future loss of earnings due to permanent disability***
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> *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.*
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> *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.*
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> *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."*

12. Adverting to the facts of the present case, the claimant/appellant had examined PW3, Dr. Sudesh Pebam and who had deposed that the claimant had been admitted in PGI (Emergency Ward) on 10.06.2013 with history of roadside accident and had suffered crushed injury of the right foot, fracture of femur of right side and injuries on right forearm. Claimant was operated on 11.06.2013 for fracture femur with nail and for crushed injuries below knee, amputation was done. An operation was conducted on 19.06.2013 for amputation of right leg and he was discharged on 03.07.2013. As per deposition of PW3, the kind of injuries suffered by the claimant would require high protein diet and the patient would require the service of an attendant and the recovery period would be almost 9 months. PW3, Dr. Sudesh Pebam further deposed that the claimant had been examined for assessment of permanent physical disability on 22.11.2013 and which was assessed to be 70% in relation to right lower limb. Furthermore, the disability element was opined to be permanent and functional in nature

and not likely to improve with passage of time. In cross examination, the doctor deposed that after fitting an artificial limb, the claimant can perform routine household work and can do sitting job.

13. The Tribunal has taken note of the factual position that the claimant had qualified 10+2 examination and was in the process of proceeding abroad for higher studies and that he was 19 years of age at the time of accident. A notional income of Rs.8000/- per month has been assessed and 50% increase in income has been granted towards future prospects. Keeping in view the deposition of PW3, Dr. Sudesh Pebam and the disability certificate, Ex.P40 reflecting a permanent disability of 70% of the right lower limb, the Tribunal has taken a view that the claimant would still be able to pursue his studies and can do a desk job and has assessed his functional disability at 50%. A multiplier of 18 has been applied. The amount has been calculated as Rs.12,000 x 12 x 18 = 25,92,000/- and 50% of which come to Rs.12,96,000/-. As such, claimant has been held entitled to a sum of Rs.12,96,000/- on account of loss of future income after assessing a functional disability of 50% due to amputation of leg. In addition, Tribunal has awarded the claimant a sum of Rs.1.50 lakhs towards loss of amenities and sum of Rs.2 lakhs on account of loss of marriage prospects. A total sum of Rs.2.50 lakhs has been awarded towards expenses of artificial limb and for future medical expenses.

14. That apart, claimant has been held entitled to Rs.86,800/- on account of medicines/hospital treatment on the basis of medical bills, Ex. P-37 and P-48 to P-52 that had been duly proved on record. Claimant has further been held entitled to a sum of Rs.1.50 lakhs on account of pain and

agony, a sum of Rs.35,000/- towards special diet, Rs.45,000/- for availing the services of an attendant and further sum of Rs.10,000/- on account of transport expenses.

15. In the considered view of this Court and as per dictum laid down in **Raj Kumar's case (supra)**, it was imperative upon the Tribunal to have assessed the affect of permanent disability on the earning capacity of the injured and after assessing the loss of earning capacity in terms of percentage of the income, it had to be quantified in terms of money to arrive at the rate of future loss of earning by applying the standard multiplier method used to determine loss of dependency. In the present case, the competent Authority has assessed the permanent disability of the claimant/appellant as 70% in relation to the right leg. In the deposition recorded of the doctor as PW3, it has come forth that the appellant would be able to undertake routine household chores after fitment of an artificial leg and may be able to pursue a desk job. The Tribunal has assessed the functional disability, as such, to be 50%. No intervention in this regard would be required. Be that as it may, while assessing the loss of earning capacity, the notional income per month assessed by the Tribunal as Rs.8000/- is slightly on the lower side. The Apex Court in **V. Mekala Vs. M. Malathi & another, 2014 (2) SCC 178**, wherein the victim was a student and bones of her both legs were fractured in the motor vehicle accident and had assessed her monthly notional income as Rs.10,000/- and awarded 50% towards future prospects. In the present case, appellant was stated to be 19 years of age on the date of accident and had qualified the 10+2 examination as also IELTS examination and was preparing to proceed

abroad for future studies. It can well be presumed that the petitioner had a bright future and it is only on account of the accident and the disability suffered that his studies have been disrupted and avenues of employment/job have become restricted. The notional monthly income of the appellant as such is assessed at Rs.10,000/-. By awarding an addition in income @ 50% towards future prospects, the same would come to Rs.15,000/-. Keeping in view the age bracket and as per guidelines in **Sarla Verma & others Vs. Delhi Transport Corporation & another, 2009 (3) RCR (Civil) 77,** multiplier of 18 is to be applied. As such, the total amount would work out to be Rs.15,000 x 12 x 18 = 32,40,000/-. 50% of such amount would be Rs.16,20,000/-. The appellant, as such, is held entitled to a sum of Rs.16,20,000/- under the head of loss of future income on account of his functional disability having been assessed as 50% on account of amputation of the right leg.

16. Even the amount of Rs.2.50 lakhs awarded by the Tribunal towards future medical expenses including expenses of artificial limb would require to be re-assessed and enhanced. Records of the case would show that the claimant had examined PW4, Karanvir, who was the Centre Incharge, Deep Artificial Limb Centre, Industrial Area, Chandigarh and who had stated that the cost of a below knee prosthetic limb would be Rs.5,04,000/- and the average life span of such a limb is 5-6 years. He had further deposed that the prosthesis would require regular maintenance involving a cost of Rs.15,000/- to 20,000/- per year. However, in his cross examination, PW4 had conceded that below knee prosthetic limbs were available at lower/cheaper rates. The Apex Court in **Dinesh Singh Vs. Bajaj Allianze**

General Insurance Company Limited (Civil Appeal Nos.8215-8216 of 2009 decided on 23.04.2014) had awarded a sum of Rs.5.50 lakhs towards future medical expenses in favour of the injured, who had also undergone amputation of the left leg. In the present case also, the ends of justice would be met upon enhancing the amount of Rs.2.50 lakhs under the heads of future medical expenses including expenses of artificial limb from Rs.2.50 lakhs to Rs.5.50 lakhs. It is so directed.

17. The Tribunal has awarded a sum of Rs.1.50 lakhs towards pain and agony. It is a case where the appellant was admitted in PGI on 11.06.2013 and discharged on 03.07.2013. The right leg was amputated below the knee. Even for the upper portion, a nail had to be inserted. Appellant had suffered injuries even on the right arm. PW3, Dr. Sudesh Pebam had deposed and indicated a time frame of 9 months towards recovery. Appellant would have also undergone strenuous physiotherapy sessions to facilitate recovery against the backdrop of the injuries. The amount of Rs.1.50 lakhs awarded by the Tribunal under the head of plain and agony is enhanced to Rs.2 lakhs.

18. Tribunal has awarded a sum of Rs.45,000/- for availing services of an attendant. Against the backdrop of the injury as also permanent disability element, such amount would now stand enhanced to Rs.1 lakh.

19. In view of the discussion herein above, the compensation amount is re-assessed and calculated as follows:

Sr. No.	Computation/Heads	Revised calculations
1.	Loss of future income i.e. 50% of the total income assessed.	15,000 x 12 x 18 = 32,40,000/- 32,40,000 – 16,20,000 = Rs.16,20,000/-

2.	Future medical expenses including expenses of artificial limb	Rs.5.50 lakhs
3.	Medical expenditure towards medical bills etc.	Rs.86,800/-
4.	Pain and agony	Rs.2 lakhs
5.	Special diet	Rs.35,000/-
6.	Services of an attendant	Rs. 1 lakh
7.	Loss of amenities	Rs.2 lakhs
8.	Loss of marriage prospects	Rs.1.50 lakhs
9.	Transportation expenses	Rs.10,000/-
10.	Total	Rs.29,51,800/-

20. The afore calculated enhanced compensation amount be released in favour of the claimant along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

21. Appeal is disposed of in the aforesaid terms.

15.11.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No