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

**FAO No.5274 of 2015 (O&M)**
**Date of Decision : 12.10.2018**

**GANI @ ABDUL GANI**

**....APPELLANT**

**VERSUS**

**VIKAS JASUJA AND ANOTHER**

**....RESPONDENTS**

**CORAM : HON'BLE MR. JUSTICE B.S. WALIA**

Present: Mr. Barjinder Singh, Advocate for
Mr. Ashish Gupta, Advocate
for the appellant.

Mr. Amit Kumar Goyal, Advocate
for respondent No.2/*Insurance Company*.
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**B.S. WALIA, JUDGE (ORAL)**

[1] Appeal has been filed, seeking enhancement of compensation of Rs.1,28,000/- awarded in a motor vehicular accident which took place on 05.07.2011, in which the appellant sustained injuries, i.e. fracture on his right hand and left leg for which he was admitted to Sai Hospital and Trauma Centre, Badshahpur. Appellant remained admitted there but claimed to have become permanently disabled as he could not get cured properly, therefore, he took '*Deshi treatment*' for six months but to no avail.

[2] The learned Motor Accidents Claims Tribunal, Gurugram (hereinafter referred to as the 'Tribunal'), examined PW-1, Dr. Mohd. Faruq, Orthopedic Surgeon, Al Afia Civil Hospital, Mandikhera, who

tendered his affidavit (Ex. PW1/A) and deposed that on examination by Members of the Board, the appellant was found to be a case of post traumatic moderate painful restriction of movement of left knee & left ankle following compound fracture both on left leg with moderate restriction of right wrist following fracture of lower end right radius and was assessed with permanent disability of 35%. On the basis of the same, the learned Tribunal treated loss for future income to the petitioner to be half of the permanent disability, i.e. 18% and taking into account the earning of the appellant at Rs.3000/- per month and by applying multiplier of '11' assessed loss of future income at Rs.71,280/-.

[3] Learned counsel for the appellant contended that the 'Tribunal' assessed the income of the appellant as an unskilled labourer at Rs.3000/-, whereas as per the notification issued by the Government of Haryana, Department of Labour dated 05.09.2011, monthly income of a Daily Wager during the relevant period was Rs.4643.89/-, in other words, Rs.4644/-. Copy of the notification referred to above, duly signed by counsel for the appellant is taken on record as <u>Mark 'A'</u>. The same has not been disputed by learned counsel for the respondent-*Insurance Company*. Accordingly, the income of the appellant is taken at Rs.4644/- per month.

[4] The appellant sustained compound fractures on the left leg as also the right hand and as held by the Tribunal that the appellant would not have been able to work properly at least for a period of three months, for which he was awarded a sum of Rs.9000/- and transportation charges of Rs.3000/-. However, in view of the income of the appellant being taken as Rs.4644/- p.m. as against Rs.3000/- p.m. assessed by the

Tribunal, I am of the view that the loss of income has to be computed accordingly, therefore, a sum of Rs.4644/- x 3 is payable on account of loss of income for three months i.e. Rs.13,932/-.

[5] However, no amount has been awarded on account of attendant charges. Since the appellant was under plaster for a period of six weeks and was found by the Tribunal to have not been able to work properly at least for a period of three months, therefore, the appellant is allowed attendant charges @ Rs.3000/- per month for a period of three months, i.e. Rs.9000/-. Only a sum of Rs.3000/- has been awarded towards special diet. However, the same is inadequate and is accordingly enhanced to Rs.3000/- per month for a period of three months, i.e. Rs.9000/-. Since, the appellant remained under plaster for minimum of six weeks besides could not work for a period of three months on account of pain & suffering, therefore, a sum of Rs.20000/- awarded on account of pain & suffering is also inadequate and is therefore enhanced to Rs.30,000/-. Loss of future income has been worked out on earning of appellant at Rs.3000/-, whereas the same has to be worked out at Rs.4644/- per month. Accordingly, sum payable on account of loss of future income works out to Rs.4644x18%=835.9 i.e. Rs.836/-x12x11 (multiplier). Accordingly, loss of future income comes to Rs.1,10,352/-. Accordingly as against the compensation of Rs.1,28,000/- awarded to the appellant, the appellant is held entitled to award of loss of income Rs.4644x3=13,932/- + transportation charges Rs.9000/- + special diet Rs.9000/- + attendant charges Rs.9000/- + Rs.11,0352/- loss of future income + pain & suffering Rs.30,000/- + medical expenses Rs.6524/- =

Rs.1,87,808/-).

[6] Accordingly, the appeal is allowed, award dated 15.04.2015 is modified and appellant is held entitled to Rs.1,87,808/- alongwith interest @ 7.5% per annum from the date of filing of the claim petition, till date of payment, less payment if any, already made as against compensation of Rs.1,28,000/- awarded by the Tribunal.

**( B.S. WALIA )**
**JUDGE**

**October 12, 2018**
rajneesh

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