

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

FAO No. 7770 of 2014(O&M)

Date of Decision: September 28 , 2018.

Baldev Singh APPELLANT (s)

Versus

Gurmukh Singh and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. M.K.Bhatnagar, Advocate
for the appellant.

Mr. K.S.Lakhanpal, Advocate
for respondent No.2.

Mr. G.D.Gupta, 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, Rupnagar (for short, the 'Tribunal') vide impugned award dated 06.12.2013 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 28.10.2012. FIR No.5 dated 07.01.2013 (Ex.P1) was registered at Police Station Bassi Pathana against respondent No.1-Gurmukh Singh. The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to

the rash and negligent driving of truck bearing No.PB-02-BG-9888 by respondent No.1 – Gurmukh Singh. The 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 80% disability in respect to a particular limb. Loss of income on account of disability was assessed to be 25%. Appellant was aged 55 years at the time of the accident, working as a mason, earning ₹8,000/- per month. Loss of income was thus assessed as ₹2,000/- per month. Multiplier of 11 was applied. ₹2,00,000/- was awarded on account of artificial limb and future replacement, besides, ₹50,000/- on account of loss of life, pain and suffering. The learned Tribunal awarded a total compensation of ₹5,37,176/-. The present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellant argues that the appellant was a mason, earning ₹15,000/- per month. The appellant's left leg was amputated and his right leg was also fractured due to the injuries suffered by him. It is submitted that the appellant suffered 80% disability. Therefore, the learned Tribunal has erred in awarding a meagre amount of compensation. No amount on account of future prospects has been awarded. 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 excessive and needs to be reduced.

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

Argument by learned counsel for respondent-Insurance company that deduction of 1/3rd on account of personal expenses should be deducted is untenable and rejected. This is so, especially, keeping in view the observations of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765** wherein it is specifically held that there should be no deduction in cases related to compensation on account of injuries suffered by the claimant. Another contention raised by learned counsel for the respondent-Insurance company is that it is a case where the injured and two others were riding on a motorcycle, which is a clear-cut violation of the provisions of the Act, therefore, the claimant is not entitled to any compensation or at least there should be deduction keeping in view the factor of contributory negligence on their part. This argument is rejected being devoid of any merit as it is not disputed that triple riding, though a violation of traffic rules, by itself cannot be a factor to effect deduction in the compensation dispensed to the claimant. There is nothing on record to indicate that it is due to triple riding that the accident in question took place. It has been held by the learned Tribunal that the accident took place due to the rash and negligent driving of the truck bearing No.PB-02-BG-9888 by respondent No.1 – Gurmukh Singh. No appeal has been filed by the Insurance company.

It is further contended by learned counsel for respondent-Insurance company that excessive amount for the artificial limb and future replacement has been awarded. It is apt to reiterate that the respondent-Insurance company has not preferred any appeal against the impugned award dated 06.12.2013. Be that as it may, I do not find any ground whatsoever to vary the amount of ₹2,00,000/- afforded for the artificial limb as well as its future replacement. It is not in dispute

that the claimant's left leg above the knee was amputated. His right leg was also fractured. It is relevant to note that this amount is inclusive of future medical expenses. There is no justification for reduction of the compensation on this count. This is not a case of unjust enrichment.

Liability of the Insurance Company in this case is not in dispute and neither is there a dispute regarding the accident being caused by the rash and negligent act of respondent No.1 – Gurmukh Singh. The appellant is averred to be a mason, earning ₹1,5000/- per month. However, there is no evidence on record in this respect except a bald statement of the appellant himself. In this situation, the income of the appellant has been rightly assessed as ₹8,000/- per month. As per the Disability certificate (Ex.P44), permanent disability of the appellant-claimant was assessed as 80% in relation to a particular limb. PW2 Dr. Navtej Pal has proved the disability certificate (Ex.P44). Compensation to the appellant-Baldev Singh is required to be worked out 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**. Disability suffered by the claimant is proved to be 80% in relation to the limb and the disability is permanent. Functional disability of the appellant-Baldev Singh is, thus, assessed as 50%. Therefore, loss of income is assessed as ₹4,000/- per month.

While affording an increase of 10% in income of the appellant on account of loss of future income, the amount comes to $[(4000 + (4000 \times 10\%)] = ₹4,400/-$ per month i.e., ₹52,800/- per annum. Age of the injured/appellant was 55 years as on the date of the accident, therefore, multiplier of 9 is to be applied.

Loss of earnings is, thus, assessed as **₹4,75,200/-** $[52,800 \times 9]$.

The appellant is held entitled to a sum of ₹50,000/- each on account of pain and sufferings as well as loss of amenities. Actual medical expenses of ₹23,175/-, besides, ₹2,00,000/- for artificial limb and future replacement as awarded by the learned Tribunal are maintained. ₹20,000/- is awarded on account of attendant charges/special diet and transportation.

The appellant-Baldev Singh is, thus, entitled to compensation detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of earnings	₹4,31,440
2.	Pain and sufferings	₹50,000
3.	Loss of amenities	₹50,000
4.	Actual medical expenses	₹23,176
5.	Artificial limb and future replacement	₹2,00,000
6.	Attendant charges/special diet and transportation	₹20,000
Grand Total		₹7,74,616/-

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 enhanced amount from the date of filing of petition till realization.

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

September 28 , 2018.
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(LISA GILL)
JUDGE

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