

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

CM No.20446-CII of 2015 in/and
FAO No.6544 of 2015
Date of Decision : 27.08.2018

Hari Chand

...Appellant

versus

Daya Ram and others

....Respondents

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

Present: Mr. Jangvir S. Hooda, Advocate for the appellant.

Mr. Ashish Grewal, Advocate for
Mr. Sanjeev Kumar Panwar, Advocate for respondent No.2.

Mr. Deepak Suri, Advocate for respondent No.3.

B.S.WALIA, J. (Oral)

CM No.20446-CII of 2015

For the reasons as are mentioned in the application, the same is allowed and delay of 55 days in late filing of the appeal is condoned, subject to all just exceptions.

FAO No.6544 of 2015

1. Appeal has been filed by the appellant-claimant seeking enhancement of compensation awarded by the learned Motor Accidents Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal') vide award dated 24.03.2015 on account of amputation of leg below the left knee.

2. The Tribunal while taking into account permanent disability of the appellant to the extent of 65%, occupation of dairy farming and

agriculturist treated functional disability at 30% and by taking into account the monthly income of the appellant at ₹5200/- awarded compensation of ₹7,90,838/- as per details given hereinunder:

i)	Monthly income of Hari Chand at the time of his injury	₹5200/-
ii)	Annual income for the purpose of compensation	₹5200x12= ₹62,400/-
iii)	After applying the multiplier of ‘18’ the compensation amount comes to	62,400/-x18= ₹11,23,200/-
iv)	Functional disability is taken @ 30%	₹3,36,960/-
v)	Transport charges	₹10,000/-
vi)	Attendant Charges	₹10,000/-
vii)	Special Diet	₹10,000/-
viii)	Loss of enjoyment and immunity	₹10,000/-
ix)	Physical pain and mental agony	₹10,000/-
x)	Loss of income	₹5200/-
xi)	Medical Bills	₹3,98,678/-

3. Learned counsel for the appellant has confined his submissions qua treating of the functional disability only @ 30% despite the appellant having suffered permanent disability of 65% and of award of meager amount on account of loss of enjoyment and immunity, physical pain and mental agony and loss of marriage prospects to the appellant, who was 25 years of age at the time of accident.

4. Learned counsel has relied upon the decision of Hon’ble the Supreme Court in Mohan Soni vs. Ram Avtar Tomar and others 2012 (2) SCC 267, to contend that in the case of a farmer suffering 65% permanent disability on account of loss of a leg, the same would constitute the end of the road insofar as the earning capacity of the appellant as a farmer was

concerned. Therefore, the functional disability had to be treated as 100% and compensation payable worked out accordingly. Learned counsel further contended that compensation of ₹10,000/- each on account of loss of enjoyment and immunity and physical pain and mental agony was too meager and minimum of ₹1,00,000/- ought to have been awarded on each count besides award of ₹1,00,000/- on account of loss of marriage prospects.

5. Learned counsel for the respondent No.3-insurance company has not disputed the position as enunciated by Hon'ble the Supreme Court in Mohan Soni's case (supra). Learned counsel, however, contended that the enhancement of claim on account of loss of enjoyment and immunity, physical pain and mental agony, besides loss of marriage prospects was highly exorbitant.

6. I have considered the submissions of learned counsel for the parties and am of the view that for the reasons as are recorded hereinunder, the appeal is liable to be allowed, award modified and compensation payable enhanced. Admittedly, the appellant was 25 years of age at the time of accident i.e. on 08.04.2013, was unmarried and running a dairy farm besides was an agriculturist on his own farm. Income of the appellant was assessed by the learned Tribunal at ₹5200/- per month. By applying multiplier of '18' to the annual income for the purpose of award of compensation, the learned Tribunal worked out the same at ₹11,23,200/-. However, as against 65% permanent disability, the functional disability was taken @ 30% and the compensation in respect thereto was worked out only at ₹3,36,960/-. In Mohan Soni's case (supra), Hon'ble the Supreme

Court has held that in the case of a marginal farmer, or a cycle rickshaw puller, whose leg is amputated, disability has to be treated as 100% functional disability and incapacity in earning. Relevant extract of the aforementioned decision in Mohan Soni's case (supra) is reproduced as under:-

“7. On hearing counsel for the parties and on going through the materials on record, we are of the view that both the Tribunal and the High Court were in error in pegging down the disability of the appellant to 50% with reference to Schedule 1 of the Workmen's Compensation Act, 1923. In the context of loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by the person suffering the disability. This is the basic premise and once that is grasped, it clearly follows that the same injury or loss may affect two different persons in different ways. Take the case of a marginal farmer who does his cultivation work himself and ploughs his land with his own two hands; or the puller of a cycle-rickshaw, one of the main means of transport in hundreds of small towns all over the country. The loss of one of the legs either to the marginal farmer or the cycle-rickshaw-puller would be the end of the road insofar as their earning capacity is concerned. But in case of a person engaged in some kind of desk work in an office, the loss of a leg may not have the same effect. The loss of a leg (or for that matter the

loss of any limb) to anyone is bound to have very traumatic effects on one's personal, family or social life but the loss of one of the legs to a person working in the office would not interfere with his work/earning capacity in the same degree as in the case of a marginal farmer or a cycle-rickshaw-puller.

8. The question of loss of earning capacity resulting from amputation of one the legs in the case of a tanker driver was considered by this Court in *K. Janardhan v. United India Insurance Company Limited and another*, (2008) 8 SCC 518. In that case, a tanker driver suffered serious injuries in a motor accident and as a result, his right leg was amputated upto the knee joint. He made a claim under the Workmen's Compensation Act, 1923. The Commissioner for Workmen's Compensation held that disability suffered by him as a result of the loss of the leg was 100% and awarded compensation to him on that basis. In appeal, the High Court, like in the present case, referred to the Schedule to the Workmen's Compensation Act, 1923 and held that the loss of a leg on amputation amounted to reduction in the earning capacity by 60% and, accordingly, reduced the compensation awarded to the tanker driver. This Court set aside the High Court judgment and held that the tanker driver had suffered 100% disability and incapacity in earning his keep as a tanker driver as his right leg was amputated from the knee and, accordingly, restored the order passed by the Commissioner of Workmen's

Compensation. In K. Janardhan this Court also referred to and relied upon an earlier decision of the Court in Pratap Narain Singh Deo v. Srinivas Sabata (1976) 1 SCC 289, in which a carpenter who suffered an amputation of his left arm from the elbow was held to have suffered complete loss of his earning capacity.

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.”

7. In the circumstances, the functional disability of the appellant- a dairy farmer and agriculturist, is treated as 100%, resultantly, as against compensation of ₹3,36,960/- awarded on account of 30% functional disability of total compensation of ₹11,23,200/-, payable on account of amputation of left leg, the appellant is held entitled to award of ₹11,23,200/- as compensation. As regards enhancement of compensation payable on account of loss of enjoyment and immunity, physical pain and mental agony and loss of marriage prospects, I am of the view that claim for award of compensation at the rate of ₹1 lakh on each count is highly excessive and ends of justice would be met, if compensation of ₹25,000/- on each count is payable. Accordingly, as against award of ₹10,000/- on account of loss of enjoyment and immunity, physical pain and mental agony and loss of marriage prospects, appellant is held entitled to ₹25,000/- on each count. Accordingly, as against compensation of ₹7,90,838/- awarded by the Tribunal, the appellant is held entitled to award of compensation of ₹16,26,878/- along with interest at the rate of 7% per annum from the date of claim petition till date of payment, less payment, if any, already made.

8. Accordingly, appeal is allowed and award is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

27.08.2018

rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No