

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

FAO No. 8171 of 2014(O&M)

Date of Decision: August 02 , 2018.

Jasbir

..... APPELLANT (s)

Versus

Devender and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Surinder Dagar, Advocate
for the appellant.

Mr. G.D.Gupta, Advocate
for respondent No.3 – Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been preferred by the appellant for enhancement of compensation awarded to him vide award dated 03.04.2014 passed by the learned Motor Accident Claims Tribunal, Palwal (hereinafter referred to as 'Tribunal') on account of 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 was preferred by the appellant seeking compensation on account of the injuries and disability suffered by him. The appellant was involved in a motor vehicle accident on 29.05.2011 when he

alongwith one Ranbir Singh were proceeding to village Chhapehra from village Dhamka on motorcycle No.HR-52A-7898 being driven by Ranbir Singh. The appellant was a pillion rider. When they reached near petrol pump of village Mandkola, the offending truck bearing registration No.HR-55H-1280 being driven by respondent No.1-Devender came from Nuh side at a very high speed and struck against the appellant's motorcycle. Both Ranbir Singh and the appellant fell down. The wheel of the truck rolled over the left leg of the appellant. Due to the said injuries, the appellant's left leg was amputated. FIR No.146 dated 30.05.2011 under Sections 279/337/338/427 IPC, Police Station Hathin was registered.

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 offending truck bearing registration No.HR-55H/1280 by respondent No.1-Devender. This finding of the learned Tribunal has not been challenged and the same thus attained finality.

The learned Tribunal concluded that the appellant sustained injuries in this accident leading to 75% disability. A sum of ₹40,000/- towards pain and suffer and ₹10,000/- for special diet were awarded. ₹2,00,000/- was afforded on account of permanent disability to the extent of 75% suffered by the appellant. A total sum of ₹4,38,093/- was awarded by the learned Tribunal as compensation including medical expenses of ₹1,88,093/- borne by the appellant. The present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellant argues that the appellant's income should have been assessed as ₹8,000/- per month as he was a shopkeeper at the

time of the accident. Learned counsel for the appellant further submits that 50% increase in income be afforded to the appellant and compensation be awarded accordingly. Meagre amounts have been awarded on account of pain and suffering and no amount has been awarded on account of loss of future income. Learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in **Jagdish v. Mohan, 2013 (2) RCR(Civil) 308**. 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 reasonable and as per the evidence on record. It is however not denied that the claimant suffers from 75% disability.

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

As noted above, there is no dispute regarding the injuries suffered by the appellant in the accident in question. The appellant's left leg had to be amputated due to the injury suffered by him in the said accident. PW4 Dr.B.S.Sharma has proved the disability certificate (Ex.PW4/A) dated 11.07.2012 reflecting 75% disability suffered by the appellant.

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 – Devender. The appellant is stated to be running a shop, earning ₹8,000/- per month. However, there is no evidence on record regarding the appellant running a shop except the bald statement of the appellant himself. Daily wages of an unskilled labourer as on the date of

accident were ₹4,348/- per month in the State of Haryana. In this situation, the income of the appellant is assessed as ₹4,348/- per month.

Keeping in view 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 compensation awarded to the appellant deserves to be enhanced as there is an amputation of the appellant's leg. It is held that the functional disability cannot be less than 75%. Therefore, loss of income is $4348 \times 75/100$ i.e., ₹3,261/- per month.

While affording an increase of 50% in the income of the appellant on account of loss of future income, the amount comes to $[(3261 + (3261 \times 50\%)] = ₹4,891/-$ per month i.e., ₹58,692/- per annum. Age of the injured/appellant was 21 years as on the date of the accident, therefore, multiplier of 18 is to be applied. Loss of earnings is, thus, assessed as ₹10,56,456/- $[58,692 \times 18]$.

The appellant is held entitled to a sum of ₹75,000/- each on account of pain and sufferings as well as loss of amenities. Actual medical expenses of ₹1,88,000/- as ordered by the learned Tribunal is maintained. Keeping in view the admitted medical condition of the appellant, he is also entitled to a sum of ₹50,000/- for future medical expenses. ₹50,000/- each is awarded on account of loss of marriage prospects and towards cost of artificial leg.

Appellant is, thus, entitled to compensation detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of earnings	₹10,56,456
2.	Pain and sufferings	₹75,000
3.	Loss of amenities	₹75,000

4.	Actual medical expenses	₹1,88,000
5.	Future medical expenses	₹50,000
6.	Cost of artificial leg	₹50,000
7.	Loss of marriage prospects	₹50,000
Grand Total		₹15,44,456/-

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.

August 02 , 2018.
'om'

(LISA GILL)
JUDGE

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