

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

FAO No.8289 of 2014 (O&M)

Date of decision: 21.11.2018

Anil

.... Appellant

Versus

Om Parkash @ Suresh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr.Vijay Vijarania, Advocate
for the appellant.

Mr. Sumit Sangwan, Advocate
for respondents No.1 and 2.

Mr. V.Ramswaroop, Advocate
for respondent No.3- Insurance Company.

Avneesh Jhingan, J. (Oral)

The award dated 25.04.2013 passed by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') has been assailed in the appeal for enhancement of compensation.

The appellant suffered injuries in a motor vehicular accident that took place on 28.08.2010. The driver of tralla dumper bearing registration No.HR-61G-1455 (for brevity, 'the offending vehicle'), the owner and the insurer of the offending vehicle i.e. United India Insurance Company Ltd. have been arrayed as respondents No.1 to 3 respectively in the present appeal.

The facts emanating from the record are that on 28.08.2010, Anil along with other persons was travelling in a jeep. On their way, the jeep was struck by a rashly and negligently driven the offending vehicle. As a result of the impact, Anil along with other persons sustained injuries. FIR No.198 dated 28.08.2010 was registered at Police Station Badhra.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for brevity, 'the Act') was filed.

The Tribunal, after considering the facts and on appreciating the evidence produced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹69,152/- along with interest @ 6% per annum.

Heard learned counsel for the parties and perused the paper-book and record.

It was pleaded that the appellant was 40 years of age at the time of the accident and he was an agriculturist by profession. Before the Tribunal, it was established that as a result of the accident, he suffered 18% permanent injury qua the lower limb. The disability certificate Ex.PW9/A was proved by deposition of PW9-Dr.S.S.Dhankar, Medical Officer, General Hospital, Bhiwani and PW-10-Dr. Vijay Malik, Senior Resident Surgery 5/6, PGIMS, Rohtak. The Tribunal considering the disability as 18% awarded ₹36,000/-as compensation. ₹10,000/-was awarded for transportation, special diet, attendant and loss of income and ₹10,000/- for

pain and suffering.

Learned counsel for the appellant contended that the appellant had suffered a fracture of leg which resulted into permanent disability. He was hospitalised for 12 days and was operated upon. His grievance is that no multiplier method was applied for assessing the permanent disability and amounts awarded under the various heads are on the lower side.

Learned counsel for the respondents rebutted the contentions. It was argued that nothing has come on record as to how the permanent disability qua the limb has effected the functional ability of the appellant. Any further enhancement is resisted.

The contentions raised by learned counsel for the appellant deserve acceptance.

The pleadings, that the appellant was an agriculturist, were not rebutted. There is no dispute between the parties that there was 18% permanent disability qua the lower limb. Albeit, nothing has come on record to establish the functional disability qua the whole body. The accident is of the year 2010. It would not be appropriate to remand the matter at this stage.

Having due regard to the decision of the Supreme Court in **Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343**, wherein it was held as under :-

“18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning

capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%.”

In view of the above decision of the Apex Court, the permanent disability qua the whole body is taken as 8%.

Keeping in view the facts and circumstances of the case, it

would be appropriate that the appellant is considered as a semi-skilled labourer, relying upon the minimum wages prevalent at the time of accident. The disability compensation is calculated by applying the multiplier method. The permanent disability qua the whole body is taken as 8%. The minimum wages for a semi-skilled labourer at the time of accident in the State of Haryana is ₹4608/- per month. The same is rounded off to ₹4600/- per month. There is no dispute with regard to the age of the deceased as 40 years, hence, multiplier of 15 is applied. Loss of dependency is recalculated as under :-

$$4600 \times 8\% \times 12 \times 15 = ₹66,240/-$$

In case of non-fatal injuries in order to arrive at a just and equitable compensation, both pecuniary and non-pecuniary damages are to be considered.

In the present case, the appellant suffered fracture of leg and he was operated upon. He was hospitalized for 12 days, in such circumstances, he would have been needing transportation not only during the period of hospitalization but thereafter also. An attendant would have been required at least for the period of hospitalization. In order to have a speedy recovery, post operational and for fracture, special diet was bound to be given, The appellant suffered pain and suffering not only physical but mental agony also. There would have been a loss of income for the period he was not able to attend his work. In case of fracture, it would be appropriate to assume that he would not have been able to do his occupation at least for eight weeks.

In view of the above discussion, the compensation under the various heads is awarded as under:-

Permanent disability	₹66,240/-
Medical expenses as already awarded by the Tribunal	₹13,152/-
Transportation	₹7500/-
Attendant	₹7500/-
Special diet	₹10,000/-
Pain and sufferings	₹15,000/-
Loss of income	₹10,000/-
Total	₹1,29,392/-

The award dated 25.04.2013 is modified to the extent that the amount of ₹69,152/- awarded by the Tribunal is enhanced to ₹1,29,392/-.

The claimants shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

21.11.2018
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- 1.Whether the order is speaking/reasoned: Yes/No
- 2.Whether the order is reportable : Yes/No