

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

FAO No.852 of 2014 (O&M)
Date of decision: 20.04.2018

NARESH KUMAR

... Appellant

Versus

MANOJ & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Manpreet Kaur, Advocate for
Mr. Chanderhas Yadav, Advocate
for the appellant.

Mr. J.S. Chatrath, Advocate for
Mr. Neeraj Khanna, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.2662-CII of 2014

Heard.

Allowed as prayed for. Delay of 40 days in filing the appeal
stands condoned.

Main Case

The injured claimant is in appeal seeking enhancement of
compensation on account of injuries sustained in a motor vehicular accident
that took place on 25.01.2010.

The Tribunal has awarded compensation of Rs.3,54,758/-,

detailed in para 32 of the award, extracted hereinbelow:-

1. Loss of income due to 85% disability	Rs.1,70,000/- (Rs.2000/- per percentage of disability)
2. Diet and nutrition	Rs.10,000/-
3. Medical expenses	Rs.64,758/-
4. Pain and sufferings	Rs.10,000/-
5. Loss of amenities and enjoyment of life	Rs.50,000/-
6. Loss of future earnings	Rs.50,000/-

Counsel for the appellant would argue that compensation awarded by the Tribunal under various heads is extremely inadequate and liable to be enhanced. The injured remained hospitalised in AIIMS, Delhi from 26.01.2010 to 25.02.2010. He has been rendered disable to the tune of 85% as per the disability certificate Ex.PA proved by Dr. Ashok Saini PW2. It is argued that with regard to disability suffered by the victim, future loss of income is liable to be assessed by applying multiplier method more particularly in the circumstances that the victim was 23 years old at the time of occurrence. It is further argued that even if the claimant failed to adduce evidence with regard to expenses on transportation and attendant charges but in view of the materials on record, he is entitled to compensation even under these heads.

Counsel representing the insurance company has supported assessment made by the Tribunal with the plea that the claimant has been adequately compensated.

The Tribunal, in para 25 of the award, has noticed that perusal of medical record reveals that injured sustained multiple crush fracture on

right leg and right hand. After the accident, he was shifted to General Hospital, Rewari and thereafter to AIIMS, Delhi. Operation of right leg was conducted and right hand amputated from shoulder. He remained admitted in AIIMS from 26.01.2010 to 25.02.2010 and thereafter he was an outdoor patient in AIIMS, Delhi and Amandeep Hospital for 18 months. He has become disable to the extent of 85% as proved by Dr. Ashok Saini PW2 and disability certificate is Ex.PA.

Perusal of copy of the disability certificate made available by counsel for the appellant would show that the injured suffered amputation through upper part of right arm rendering him disable to the extent of 85%. The injured was 23 years old at the time of occurrence. The Tribunal has assessed his income at Rs.4200/- per month on the basis of minimum wage fixed by the Labour Commissioner, Haryana vide notification dated 24.02.2010. Taking into consideration that the injured has been treated as a casual labour who has suffered amputation of right upper limb, he may not be able to do the labour job throughout his life. Keeping in view nature and extent of disability suffered by the victim, interest of justice commands that future loss of income is assessed by applying multiplier method and giving benefit of increase in income for future prospects. I would hasten to add that since the victim has suffered disability of right upper limb, it can not be assumed that he would not be able to perform any other job or is rendered useless/disable to the extent of 100%. By taking his functional disability to the extent of 50%, future loss of income qua disability comes to

Rs.6,35,040/- ((Rs.4200 x 12 x 18 + 40%) x 50%). The amount of Rs.1,70,000/- qua disability and loss of future earnings of Rs.50,000/- shall be adjusted out of amount assessed by this Court qua loss of future earnings.

The injured remained hospitalised for a period of one month. He had been getting treatment as an outdoor patient for about 18 months. His right upper limb has been amputated. He is allowed total loss of income for a period of six months @ Rs.4200 per month and the same comes to Rs.25,200/-.

The Tribunal has awarded an amount of Rs.10,000/- for pain and sufferings. Claimant shall be entitled to Rs.50,000/- for pain and sufferings. Compensation awarded by the Tribunal for loss of amenities of life, medical expenses, diet and nutrition is affirmed. However, claimant shall be entitled to an amount of Rs.20,000/- for transportation charges and services of an attendant. The total compensation is Rs.8,54,998/- and the additional amount is Rs.5,00,240/- (8,54,998 – 3,54,758) payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

20.04.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No