

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

FAO No. 7394 of 2015

Date of decision : November 01, 2018

Gurnam Singh

..... Appellant

v.

Surinder Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Ramneek Vasudeva, Advocate
for the appellant.

Ms. Swatantar Kapoor, Advocate
for the respondent/Insurance Company.

Ajay Tewari, J (Oral)

This appeal has been filed by the injured/claimant for enhancement of compensation. Since a very limited issue has been raised, further reference to the detailed facts would not be necessary.

Counsel for the appellant has argued that in the accident, the appellant had suffered multiple fractures and his hip joint was displaced. He was operated upon thrice and had to undergo implants and internal fixation. Dr. Rakesh Kumar, Orthopedic Surgeon, Civil Hospital, Mohali who initially examined the injured stated that the injury suffered by him was such that physical disability had to be reassessed after a period of two years. As per his testimony on 15.10.2013, the physical disability was 30% but

when it was reassessed on 6.2.2015, it had increased to 60% as there was

shortening of right lower limb by 2-1/2 inches. In the opinion of Dr. Navtejpal Singh, Medical Officer, Civil Hospital, Mohali (who had conducted the reassessment), the appellant would not be able to do any work which would involve physical activity and would not be able to walk without any help so as to earn livelihood. He emphatically stated that appellant would not be able to continue the work of helper/conductor which he was doing.

Counsel for the appellant has argued that in view of these facts, the Tribunal erred in computing the functional disability of the appellant as 30%. As per him, this is a case where there should be 100% functional disability.

Counsel for the respondent has countered by arguing that at the most it could be a case of 60% functional disability (which was the disability assessed by the doctor).

In my opinion, both the arguments raised by counsel for the parties are too extreme. No doubt, as per the doctor, the appellant cannot do the work involving physical activity and cannot walk without the help of crutches, yet does it mean that he is left absolutely immobile. On the other hand, the argument that his functional disability has been impaired only by 60% cannot be taken to be correct. In the circumstances, I fix his functional disability as 80%.

Counsel for the respondent has argued that once there was no proof of income, the income of the appellant had to be taken as per that of a labourer and in the year 2013, the income of a labourer as per the Schedule attached to the Minimum Wages Act in the State of Punjab was ₹ 5695/- say ₹6,000/-. Counsel for the appellant is not in a position to counter this

argument. In the circumstances, the monthly income is taken to be ₹ 6,000/-. In view of the decision of the Supreme Court in National Insurance Company Limited vs Pranay Sethi and others, 2017(4) RCR (Civil) 1009, 10% would be added as future prospects.

Counsel for the appellant has further argued that as regards the medical expenses, the Tribunal has rightly considered the bills Exs.P6 to P51 and the total amount of these bills comes to be ₹85,206/- but it has been wrongly calculated as ₹ 71,079/-. Counsel for the respondent is not in a position to deny/verify this fact. In the circumstances, I take the medical expenses as ₹ 85,206/-.

Counsel for the appellant has further argued that as regards pain and suffering, only a sum of ₹ 8,000/- has been awarded and that nothing has been awarded for permanent disability. I find this to be correct and award ₹72,000/- more towards pain and suffering and ₹ 1.20 lakh towards permanent disability.

Counsel for the appellant has further argued that the appellant was hospitalized in three hospitals and, therefore, a sum of ₹ 10,000/- on special diet and transport charges was highly inadequate. I find this to be correct and award another sum of ₹ 40,000/- under these heads.

Counsel for the appellant has further argued that nothing has been awarded for attendant charges. I find this to be correct also and award ₹ 50,000/- under this head.

Counsel for the appellant has further argued that in view of the decision of the Supreme Court in Civil Appeal No.9581 of 2018, Magma General Insurance Company Ltd vs Nanu Ram @ Chuhru Ram and others, decided on 18.9.2018, interest @ 12% pa has to be granted. Counsel for the

respondent, however, states that that may have been justified if it was an old case but in the present case, the accident took place in 2013. In the circumstances, I award interest @ 9% from the date of application till the date of payment. Rest of the award will remain unchanged. This appeal stands disposed of.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

November 01, 2018
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No