

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

**FAO No. 9407 of 2014(O&M)
Date of Decision: September 20, 2018.**

Som Nath Appellant.
Versus

Gurdev Singh and others Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Anmol Partap Singh Mann, Advocate
for the appellant.

Mr. Gurdial Singh Jaswal, Advocate
for respondents no.1 and 2.

Mr. Prateek Rathee, Advocate
for Mr. Chandan Deep Singh, Advocate
for respondent no.3-Insurance Company.

LISA GILL, J.

This appeal has been preferred by the appellant for enhancement of compensation awarded to him vide award dated 23.07.2014 passed by the learned Motor Accident Claims Tribunal, Hoshiarpur (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 in a motor vehicle accident, which took place on 08.09.2012. It has been averred that the claimant along with his son Abhishek (now deceased) went on a Platina

Motorcycle bearing registration no. PB-24-A-8577 in connection with personal work to Haryana Town, where Ram Jeet and Balwinder met them. After finishing work, all of them proceeded back to their village Noor Talai. Ram Jeet and Balwinder were travelling on their Kinetic. Claimant-Som Nath was going on a normal speed on the correct side of the road on his motorcycle ahead of Ram Jeet and Balwinder Singh. At about 6.00.p.m, a truck bearing registration No. PB-07-AA-2596 being driven by respondent No.1-Gurdev Singh, in a rash and negligent manner came at a very high speed from the front side and hit the claimant and his son. As a result thereof, the claimant and his son suffered head injuries and injuries on other parts of their body. They were taken to Civil Hospital, Haryana and thereafter, referred to Civil Hospital, Hoshiarpur, for treatment. They were then taken to Shivam Hospital, Hoshiarpur, but Abhishek, son of the deceased died during treatment. The claimant remained admitted in the hospital from 08.09.2012 to 20/24.09.2012. FIR (Ex.A-2) was registered against respondent No.1.

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.PB-07-AA-2596 by respondent No.1-Gurdev Singh. This finding of the learned Tribunal has attained finality.

The learned Tribunal concluded that the appellant sustained injuries in this accident leading to 70% disability. ₹50,000/- each were awarded on account of permanent disability suffered by the appellant, besides pain and suffering. ₹15,000/- were awarded towards attendant charges. ₹10,000/- were allowed on account of special diet A total amount of ₹4,50,000/- was awarded by the learned Tribunal as compensation. The present appeal has been filed seeking

enhancement of the aforesaid compensation.

Learned counsel for the appellant argues that the appellant's income has been incorrectly assessed as ₹4,000/- per month whereas, minimum wages of even an unskilled labourer in the State of Punjab at the relevant time were ₹5200/- per month. Disability suffered by the appellant is not in dispute. Learned counsel for the appellant further submits that in view of the guidelines laid down by the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680, 40% increase in income be afforded to the appellant and compensation be reworked accordingly. Meagre amount has been awarded on account of pain and suffering as well as loss of amenities. 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.

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

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 – Gurdev Singh. The appellant was 35 years old at the time of the accident which took place on 08.09.2012. AW-3- Dr.Rajesh Mehta, Medical Officer, stated that the appellant suffered 60% disability in regard to the head injury and 40% in regard to eye. Disability certificate Ex.A-112 was duly proved on record. Vision of the claimant is clearly impaired.

Needless to say, functional disability of the appellant, claiming himself to be a carpenter cannot be assessed less than 70% in any case. It is not in dispute that the appellant underwent surgery i.e. Right Frontal Contusectomy and Lobectomy. The claimant has visual as well as hearing disability. His disability was assessed approximately as 70% in relation to his body which is not in dispute. AW-3-Dr. Rajesh Mehta, Medical Officer, has proved the disability certificate as Ex. A.112.

The learned Tribunal has wrongly assessed the claimant's income to be ₹4,000/- per month. Even if the claimant is considered to be a labourer, there is no justification for assessing his income to be less than ₹5200/- per month which was the minimum wage in the State of Punjab at the time of the accident. Income of the claimant is accordingly assessed as ₹5200/- per month.

Compensation to the claimant is therefore to be reworked in terms of 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**. Disability suffered by the claimant is proved to be 70% in relation to his body. Functional disability of the appellant in this case cannot be assessed to be less than 70%. Therefore, loss of income is assessed as ₹3,640/- per month.

While affording an increment at the rate of 40% on account of future income, the amount comes to $[(3640 + (3640 \times 40\%)] = ₹5096/-$ per month i.e., ₹61,152/- per annum. Age of the appellant was 35 years as on the date of the accident, therefore, multiplier of 16 is to be applied. Loss of earnings is, thus, assessed as ₹9,78,432/-.

The appellant/injured is held entitled to a sum of ₹75,000/- each on account of pain and sufferings as well as loss of amenities. ₹2,94,834/- towards

actual medical expenses, ₹25,000/- for loss of earnings during the period of hospitalization, ₹15,000/- on account of attendant charges and ₹10,000/- towards special diet, as ordered by the learned Tribunal are maintained. Keeping in view the admitted medical condition of the appellant, he is entitled to a sum of ₹50,000/- for future medical expenses.

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	₹9,78,432
2.	Loss of Pain and sufferings	₹75,000
3.	Loss of amenities	₹75,000
4.	Medical expenses	₹2,94,834
5.	Special diet	₹10,000
6.	Attendant charges	₹15,000
7.	Loss of income during the period of hospitalization	₹25,000
8.	Future medical expenses	₹50,000
Grand Total		₹15,23,266/-

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.

September 20, 2018.
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(LISA GILL)
JUDGE

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