

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

FAO No.1382 of 2018

Date of Decision.14.03.2018

Bharti AXA General Insurance Company Limited

.....Appellant

Vs

Amit and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Subhash Goyal, Advocate
for the appellant.

-:-

AMIT RAWAL J.(ORAL)

C.M. No.5254-CII of 2018

For the reasons stated in the application, delay of 115 days in
filing the appeal is condoned.

Application is allowed.

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The insurance company is in appeal against the award passed
by the Tribunal for a sum of ₹23,89,000/- on account of injuries suffered by
respondent No.1.

Mr. Subhash Goyal, learned counsel for the appellant submitted
that the claimant suffered injuries in a road accident occurred on
04.06.2016. When he was proceeding from Rohtak to village Patwapur in
an Auto-tempo bearing No.HR-46D-1724, a duster car hit the same
resulting into serious injuries on his person and his right leg was amputated
above the knee. He was employed with Neetu Workshop, New Jind Bye
Pass, Rohtak and stated to be earning ₹12000/- per month. He was found to
be 85% permanent disabled on account of knee amputation.

income of the deceased as ₹8000/- per month and applied 50% increase on the same as future prospect while assessing the loss of future earning on account of 85% disability, which is not a correct approach. No evidence brought on record by the claimant as to how and to what extent his earning capacity was hampered due to injuries. The amount of ₹36,000/- i.e. @ ₹6000/- per month for six months provided towards attendant charges is highly excessive, thus, urges this Court for reducing the amount of compensation.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Goyal. The argument of Mr. Goyal with regard to future prospect of 50% is wholly erroneous and hereby discarded, for, loss of future income cannot be restricted to the avocation of the claimant which he was doing at the time of accident but several other factors are required to be looked into viz; (i) whether a person with the permanent disability i.e. 85% in the present case, would be accepted in his present avocation same way he was working earlier. There is every chance that the employer would think as to why he should pay same salary to a handicap person when he cannot perform the way he was performing before the accident, (ii) whether the employer would consider a person, whose leg has been amputated above knee, resulting into 85% permanent disability for further promotion as he would have been otherwise entitled to, had the accident not occurred; surely will not (iii) whether a person who got handicapped in an accident for no fault of his, will get an employment in the open market the same way a healthy person gets; surely not. There are numerous instances when the persons who got handicapped due to some mis-happening downgraded in

their employment just because they became unable to perform their duties on the post they were working the way they were performing before such mis-happening.

As regards the attendant charges to the extent of ₹36,000/-, I am of the view that the Tribunal did not provide anything for loss of amenities of life and loss of prospect of marriage as the injured was about 20 years at the time of accident and must have been a bachelor, thus, the amount of ₹36,000/- towards attendant charges cannot be said to be higher side as it would compensate to some extent for not providing any amount under the aforementioned heads.

In view of the aforementioned, I do not find any illegality and perversity in the award passed by the Tribunal and the same is upheld. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 14, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No