

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

FAO 4052-2017 (O&M)

Date of Decision: 25.5.2018

Dharam Singh

...Appellant

Vs.

Balbir and others

..Respondents

CORAM: HON'BLE MS.JUSTICE RITU BAHRI

Present: Mr. Atul Yadav, Advocate for the appellant.

Ms. Neha Sharma, Advocate for Mr. S.P. Arora, Advocate
for respondent No.3.

RITU BAHRI, J.

The claimant has come up in appeal against the award of the Tribunal, Gurugram dated 01.2.2017 whereby compensation of Rs.96,280/- has been awarded on account of injuries suffered by him in a road side accident on 24.5.2015.

FACTS NOT IN DISPUTE

On 24.5.2015, the claimant was going to attend to his duty on motorcycle bearing registration No. HR-26-BT-4650. When he reached at Sector 9, Gaushala, Gurgaon, a dumper bearing registration No.HR-39-B-5674 came at a very high speed and in rash and negligent manner and hit against the motor cycle of the claimant. As a result of which, he suffered multiple injuries on vital organs of his body.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal assessed the compensation as under:

<i>Sr.No.</i>	<i>Head</i>	<i>Amount (₹)</i>
1	Transportation charges	₹5,000/-
2	Compensation for special diet	₹5,000/-
3	Pain and suffering	₹15,000/-
4	Loss of future income	₹71,280/-
	Total	₹96,280/-

Counsel for the claimant-appellant has referred to disability certificate dated 27.07.2016 vide which permanent disability of the claimant-appellant was found to be 18%, as he was having difficulty in squatting, walking, leg, elevation and there is problem in movement of ankle as well.

Counsel for the respondent-Insurance Company has submitted that the compensation awarded by the Tribunal is adequate and no interference is required.

It is not in dispute that there is disability of 18% which is permanent in nature. The disability certificate was proved by Dr. Virender Baswana but the learned Tribunal while awarding the compensation took the disability at 9%. The appellant will have difficulty in squatting, long standing and climbing stairs.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of **Raj Kumar vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101** wherein the Apex Court had laid down the principles for determining the loss and the affect of permanent disability on the actual earning capacity. It would be useful to refer to the relevant paragraphs:-

“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such

permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was

earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award

under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

Since the appellant in the present case was working with M/s Supreme Industries Basai Enclave Part II, Gurgan, his monthly income can be taken of an unskilled labourer at Rs.8000/- per month for determining the compensation. The compensation is re-assessed as under:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount (₹)</i>
1	Loss of income by multiplier method	(8000 X 12 X 11) X 18% disability =1,90,080/-
2	Transportation charges/special diet	Rs.20,000/-
3	Pain and suffering and loss of enjoyment	Rs.20,000/-
4	Total compensation awarded	Rs.2,30,080/-
	Enhanced amount of compensation	230080-96280=Rs.133800/-

The enhanced amount of compensation of Rs.1,33,800/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of

Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others,

passed in Civil Appeal No. 448-2018, decided on 19.01.2018. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

25.5.2018
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	- Yes
Whether Reportable	- No