

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

FAO-2874-2018 (O&M)
Date of Decision:-29.5.2018

United India Insurance Co. Ltd.

... Appellant

Versus

Deep Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Harsh Aggarwal, Advocate for the appellant.

GURVINDER SINGH GILL, J.(Oral)

1. The insurer has filed this appeal challenging award dated 19.3.2018 passed by learned Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as "*the Tribunal*"), whereby respondent No.1-claimant Deep Chand, has been awarded compensation to the tune of ₹ 28,47,400/-.
2. The claimant had filed a petition under Section 166 of Motor Vehicle Act, 1988 (hereinafter referred to as "*the Act*") averring therein that on 3.10.2016, when he was going from Fatehabad to his village Mehrana, Tehsil Bhadra, District Hanumangarh (Rajasthan) on motorcycle on the correct side of the road, then a tractor attached with trolley bearing registration No. HR-59B-3049 driven by respondent No.1 in a rash and negligent manner came from the opposite side and hit against his motorcycle by coming on the

wrong side, resulting in multiple injuries on the person of the claimant and ultimately leading to amputation of his right leg below knee.

3. The claim petition was resisted by the respondents, who filed their written statement. The Tribunal, upon appreciating the evidence led by the parties, awarded compensation to the tune of ₹ 28,47,400/- under the following heads:-

For medical expenses	: ₹ 3,60,000/-
For transportation	: ₹ 25,000/-
For special diet	: ₹10,000/-
For services of attendant	: ₹ 10,000/-
For loss of earning during the period of treatment	: ₹ 90,000/-
For loss of future earnings on account of permanent disability	: ₹ 16,52,400/-
For damages for pain, suffering and trauma	: ₹ 1,00,000/-
For loss of amenities	: ₹ 2,00,000/-
Loss of prospects of marriage	: ₹ 2,00,000/-
For loss of expectation of life (shortening of normal longevity)	: ₹ 2,00,000/-
Total	: ₹ 28,47,400/-
(Rupees Twenty Eight Lakhs Forty Seven Thousand Four Hundred only)	

4. The learned counsel for the appellant has, first of all, assailed the findings of the Tribunal as regards the negligence of respondent No.1. The claimant himself while in the witness-box categorically stated regarding the manner of

accident and has deposed that the accident in question had occurred when respondent No.1, who was driving his tractor-trolley rashly and negligently came from opposite side and hit against him by coming on the wrong side. The aforesaid testimony is corroborated by the testimony of PW-5 Bintoo. There is nothing on record to rebut the aforesaid evidence. So much so, even the driver of the tractor-trolley in question had not stepped into the witness box. In these circumstance, I do not find any ground to interfere with the findings of the learned Tribunal as regards the negligence of respondent No.1.

5. The learned counsel for the insurer has next assailed the quantum of compensation as awarded by the Tribunal. It has been submitted that the amount awarded towards medical expenses i.e. ₹ 3,60,000/- is on the higher side. However, I do not agree with the aforesaid contention inasmuch as apart from the medical expenses incurred by the claimant, he would also be required to go in for some prosthetic limb for which no amount seems to have been awarded separately. Taking the said fact into account, the amount awarded cannot be said to be excessive. It has next been submitted that the learned Tribunal fell in error in assessing the income of the claimant as ₹ 9,000/- per month, whereas the claimant being a resident of Rajasthan, his income as per the minimum wages of Rajasthan ought to have been assessed as ₹ 5,500/- per month.
6. I have considered the aforesaid submission. No doubt it appears that the claimant is a permanent resident of Rajasthan but it is evident that he was serving in Hisar. As such, it is the minimum wages applicable to the State of Haryana, where he was working, which would be applicable and not those of

Rajasthan. The aforesaid submission is found to be devoid of merits and is repelled. It has also been submitted that the amount awarded towards loss of earning capacity, which has been assessed as ₹ 16,52,400/- is also on the higher side and that it is not the case that the claimant had lost his job.

7. I have considered the aforesaid submission.
8. On account of the amputation of the leg of the claimant, his permanent disability has been assessed as 85% of the limb. In view of the dictum of hon'ble the Supreme Court in Raj Kumar Versus Ajay Kumar and another, (2011) 1 SCC 343, the loss to which the permanent disability translates into, has to be assessed keeping in view of the actual loss suffered by the claimant bearing in mind the nature of job, which the claimant was doing and as to what extent his disability has affected his performance viz-a-viz his job or profession.
9. In the present case, the claimant admittedly was working as a sales representative. Needless to mention the job of a sale representative is certainly not an office job and he is expected to visit several offices, prospective customers and clients for collecting orders for increase in business. Further apart from the fixed salary, the major component of income of a sales representative would be the commissions/bonuses, which he would get from the business garnered. Bearing the aforesaid factors in mind, and also the fact that claimant was aged 21 years only when he lost his leg I do not find that the amount of ₹ 16,52,400/- as assessed by the Tribunal towards loss of earning capacity is on the higher side. Even the other amounts assessed by the

Tribunal under various heads i.e. loss of amenities, loss of marriage prospects, transportation, special diet etc. cannot be said to be unreasonable.

10. Consequently, I do not find any infirmity in the impugned award and the same is hereby upheld. There is no merit in the present appeal and the same is hereby dismissed.
11. The statutory amount of ₹ 25,000/- deposited by the insurance company in this Court, be remitted to be Tribunal for its disbursement to the claimant.

29.5.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No