IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 674 of 2018 (O&M)

Date of Decision: 22.05.2018

Ishaq ....Appellant

Versus

Dharam Chand Aggarwal and others ......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Brijender Singh, Advocate for
Mr. Ashish Gupta, Advocate
for the appellant.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance company.

AVNEESH JHINGAN, J.(oral)

The present appeal is against the award dated 16.10.2017 passed by the Motor Accident Claims Tribunal, Mewat (for short 'the Tribunal').

The brief facts of the case are that an accident took place on 05.02.2016, appellant-Ishaq along with Deen Mohammed was going towards Nuh on a motor cycle bearing registration No.HR-52-C-5836. The motor cycle was being driven by Deen Mohammed. Near Balaji Petrol Pump, Delhi Alwar road, Nuh, the motor cycle was struck by a rashly and negligently driven Car bearing registration No. RJ-05-CA-6746. As a result of the impact, Ishaq suffered multiple injuries. FIR No. 71 dated 05.02.2016 was registered at Police Station Nuh.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the injured-claimant.

Before the Tribunal, the disability certificate Ex.PW2/A was produced showing permanent disability of 30% qua the right leg. The

Tribunal considering the facts of the case and evidence produced, awarded a sum of Rs.87,400/- along with interest at the rate of 7% per annum.

The present appeal has been filed for enhancement of compensation.

Learned counsel for the appellant argued that the Tribunal though applied a multiplier method but instead of 30% disability, has considered 10% disability. His grievance is that the appellant was hospitalized for 22 days and was operated upon and suffered injuries of fracture of both bones of right leg. He further argued that there is a mild restriction of movement of right knee and in such circumstances, the amounts awarded under various heads are on lower side. The monthly income assessed by the Tribunal was Rs.6000/- which is on lower side and is less than even the minimum wages.

Learned counsel for the insurer contended that the deceased was 62 years of age at the time of accident and it has not been proved that his occupational ability has been effected by such disability. Inspite of the fact that the percentage of functional disability has not come on record, considering the decision of Supreme Court in ***Raj Kumar Vs. Ajay Kumar & Anr., 2011(1) SCC 343***. 30% permanent disability qua the limb is taken 15% qua the whole body. The Supreme Court has held as under:-

> "8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent

(percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. -2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567).

18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%."

Taking into consideration the minimum wages prevalent in the

State of Haryana, at the time of accident, the compensation for loss of future earning would be calculated considering monthly earning as Rs.7000/- i.e.7000x15% =1050x12x7=88200/-.

Considering the facts of the case and the type of injuries suffered by the appellant, the amount awarded under various heads is enhanced as per table given below:

Sr.No.	***Description***	***Amount earlier awarded by the tribunal***	***Amount now awarded***
1	Loss of future earning	Rs.50,400/-	Rs.88,200/-
2	Nutritious Diet	Rs.2000/-	Rs.5000/-
3	Services of Attendant	Rs.5000/-	Rs.10,000/-
4	Transportation charges	Rs.5000/-	Rs.10,000/-
5	Pain and suffering	Rs.25,000/-	Rs.35,000/-
	Total:	Rs.87,400/-	Rs.1,48,200/-

The award dated 16.10.2017 is modified to the extent that the amount awarded by the Tribunal of Rs.87,400/- is enhanced to Rs./- 1,48,200.

The claimant would be entitled to enhanced amount along with interest, as awarded by the Tribunal, from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

22.05.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No