

FAO No.1640 of 2003

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

FAO No.1640 of 2003
Date of decision: 11.09.2019

Baldev Singh

.....Appellant

versus

Baljeet Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Mayank Dev Singh, Advocate,
for Mr. Rajinder Goyal, Advocate,
for the appellant.

Mr. Paramjit Jakhar, Advocate,
for Mr. Charanji Lal, Advocate,
for respondent No.2.

Ms. Shamsheer Kaur, Advocate,
for respondent No.4.

RAMENDRA JAIN, J. (ORAL)

Photocopy of the paper-book produced in Court today is
taken on record. Be tagged at appropriate place.

Injured-claimant through this appeal has sought
enhancement of compensation, modifying impugned award dated
12.03.2003 of the Motor Accident Claims Tribunal, Kaithal (for short 'the
Tribunal').

Briefly, in the night of 01.06.2001, appellant-claimant,
travelling in jeep bearing registration No.HR-9A-0966, when reached

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near bus stand, Kaithal, offending jeep bearing registration No.HR-11A-9000 in a rash and negligent manner driven by respondent No.3 coming from Cheeka side, struck on the left side of their jeep. As a result thereof, claimant and other occupant received multiple grievous injuries on various parts of their bodies. He remained hospitalized in PGI, Rohtak from 02.06.2001 to 04.08.2001.

With these broad submissions, appellant filed claim petition under Sections 166 and 163-A of the Motor Vehicles Act, 1988 before the Tribunal, who vide impugned award, awarded compensation of ₹2,08,587/- along with interest at the rate of 9% per annum from the date of filing claim petition till realization.

Learned counsel for the appellant *inter alia* contends that the tribunal has wrongly applied per percentage method qua permanent disability of 65% suffered by the appellant. It was required to apply multiplier method to calculate loss of income to the injured in view of dictum laid down in **Ajay Kumar v. Raj Kumar, 2011(2) R.C.R.(Civil) 101.**

On the other hand, learned counsel for respondent No.4 – Insurance Company has not seriously opposed above submissions of learned counsel for the appellant. However, learned counsel for respondent No.2 has raised grouse about finding of the Tribunal qua holding contributory negligence of respondents No.1 and 2.

Having given thoughtful consideration to the rival submissions, this Court finds that there is scope of enhancement of

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compensation in this appeal in view of *Ajay Kumar's* case (*supra*).

Appellant did not produce any authentic proof regarding his occupation and income. Thus, his income at the relevant time has to be taken equivalent to the minimum wages prescribed by the Haryana Government inasmuch as accident took place in the State of Haryana. The same at the time of accident were ₹2160/- per month. Permanent disability of appellant to the extent of 65%, due to amputation of his right lower limb is not disputed. Thus, future loss of income to the injured-appellant comes to $\text{₹}2160 \times 65\% \div 100 = \text{₹}1404/-$ per month. Tribunal has held the age of the appellant 28 years on the date of accident. Thus, multiplier of 17 has to be applied to calculate the loss of his future income, total of which comes to $\text{₹}1404 \times 12 \times 17 = \text{₹}2,86,416/-$, 40% has to be added to the same in view of *Ajay Kumar (supra)* towards future prospects. Adding the same, amount comes to ₹4,00,982/-. Besides above, the Tribunal has awarded ₹20,000/- to the appellant towards pain and suffering, ₹43,587/- towards medical bills, ₹15,000/- towards special diet. Adding the same, amount so to be awarded to the appellant comes to ₹4,79,569/-. That apart, the Tribunal has not awarded any compensation to the appellant towards two months of his hospitalization. This Court grants ₹4,320/- to the appellant for the loss of income, during his hospitalization. Adding the same, total amount comes to ₹4,83,889/-. The Tribunal has awarded ₹2,08,587/-. Therefore, remaining amount comes to $\text{₹}4,83,889 - \text{₹}2,08,587 = \text{₹}2,75,302/-$ for which the appellant is held entitled.

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As far as contributory negligence of respondent No.2 is concerned, he has not assailed findings of the Tribunal by filing any separate appeal, which impliedly and expressly proves that he had no grouse ever in fixation of his liability to the extent of 50% for payment of compensation. That apart, perusal of impugned award shows that respondent No.2 was booked and tried for causing accident in question, for driving his jeep in a rash and negligent manner. From the above fact only irresistible conclusion which can be drawn is that he was equally responsible in causing the accident along with respondent No.3, who was driving jeep bearing registration No.HR-11A-9000.

In view of above factual position, this Court is not inclined to differ with the finding of the Tribunal, holding 50% liability of respondent No.2 and remaining 50% of respondent No.3. Since respondent No.3 has been indemnified by respondent No.4 – Insurance Company, therefore, respondent No.2 and respondent No.4 are directed to deposit 50% each of the aforesaid compensation of ₹2,75,302/- over and above the amount awarded by the Tribunal within one month from today before the Tribunal along with interest @ 7.5% per annum from the date of filing claim petition till realization for onward disbursement of the same to appellant-claimant in accordance with law against proper receipt and identification.

In case aforesaid enhanced amount is not deposited within stipulated time, respondent No.2 and respondent No.4 – Insurance Company would be liable to pay the same with interest @ 15% per

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annum from the date of institution of claim petition till realization.

Disposed of.

September 11, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No