IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2842-2004

Date of Decision: 19.12.2019

Manpreet Singh **...Appellant**

Vs.

Avtar Singh and anr. **..Respondents**

CORAM: HON'BLE MS.JUSTICE RITU BAHRI

Present: Mr. Raman Sharma, Advocate for the appellant.

Mr. Ravinder Arora, Advocate for respondent No.3.

RITU BAHRI, J.

C.M. No. 22770-CII-2019

The application for fixing an early actual date of hearing in the appeal is allowed and the case is taken up today itself for disposal.

C.M. No. 22771-CII-2019

The application under Order 41 Rule 27 CPC for placing on record medical record/admission record of GMCH, Sector 32, Chandigarh is allowed. Accordingly, Annexure P-3 is taken on record.

FAO No. 2842-2004

The claimant has come up in appeal against the award of the Motor Accidents Claim Tribunal, Rupnagar dated 12.11.2003 whereby compensation of Rs.30,000/- has been awarded on account of injuries suffered by appellant in a road side accident on 10.04.2001.

FACTS NOT IN DISPUTE

On 10.04.2001, appellant was returning from the side of Banur towards his village Mullanpur Garibdas on scooter bearing registration No. PB-27-A-5961. When he reached near the turning point of village ladran on Landran-Chandigarh road, one tata sumo bearing registration No. HR-23-A-5938, being driven by respondent No. 1 came in a rash and negligent manner from the direction of Sohana and by coming on the wrong side hit the scooter of the appellant. The accident was witnessed by Kuldip Singh son of Gurdial Singh of village Togan. The claimant was immediately taken to Sector 32 Government Hospital, Chandigarh. F.I.R No. 67 dated 10.04.2001 was registered at Kharar against the driver of tata sumo.

<u>COMPENSATION ASSESSED BY THE MACT</u>

On the basis of evidence led by the parties, the Tribunal awarded the compensation of Rs.30,000/- to the appellant.

Learned counsel for the appellant has referred to statement of P.W.3 Dr. Gagandeep Singh who stated that after examining the appellant, the appellant was suffering from dementia and was referred to Disability Board consisting of Professor B.S.C Chevan, Dr. Lok Raj and Harpreet Kaur and after examination, the disability Board found that the appellant is suffering from mental disability to the extent of 60% to 80%. He proved the disability certificate as Ex P-2.

Learned counsel for the appellant has further referred to Exhibit A-2 which shows that the disability of the appellant has increased from 71% to 99%, as per certificate dated 18.10.2010 issued by GMCH, Sector 32 Chandigarh.

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 71% to 99%, as per certificate dated 18.10.2010 (Ex A-2) and the compensation can thus be awarded by applying multiplier method by taking the disability of the appellant as 100%.

Reference at this stage can be made to judgment of Hon'ble the Supreme Court of India in the case of ***Sanjay Kumar vs. Ashok Kumar and another 2014(1) RCR (Civil) 875***, wherein the claimant who was earning Rs.4500/- per month suffered 70% permanent disability in motor accident, it was held that 'Loss of future prospects' should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment. In that case keeping in mind the young age of victim he was held entitled to 50% of his income as future increase in income.

In another judgment by Hon'ble the Supreme Court of India in the case of ***Rajan vs. Soly Sebastian and others, 2015(3) RCR (Civil) 962,*** wherein the victim was a professional driver, the Tribunal assessed his notional income at Rs.2000/- p.m. It was held that income was not correctly assessed. Income should have been assessed after taking into consideration the relevant Minimum Wages fixed by Government. Income be taken at Rs.3500/- p.m to work out compensation. Victim though suffered 60% bodily disability, but suffered 100% permanent disability with regard to his earning capacity. After considering 50% enhancement for future prospects, the compensation for permanent disability was calculated at (Rs.3500/-+ Rs. 1750/-)x12x17=Rs. 10,71,000/-.

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.*
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> *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 will face difficulty in doing his work now, therefore, his monthly income can be taken at Rs.3000/- per month for determining the compensation. Applying the ratio of the above mentioned judgments, the compensation is re-assessed as under by taking the disability of the appellant at 100% qua whole body:-

Sr. No.	***Head***	***Amount (₹)***
1	Loss of income by multiplier method	(3000 X 12 X 18) X 100% qua whole body=06,48,000/-
2	Pain and suffering	Rs.1,00,000/-
3	Special Diet	Rs.50,000/-
4	Attendant charges	Rs.50,000/-

Sr. No.	*Head*	*Amount (₹)*
5	Loss of estate	Rs.50,000/-
6	Loss of amenities	Rs50,000-
	Total compensation awarded	Rs.09,48,000/-
	Enhanced amount of compensation	**Rs.9,48,000-30,000=Rs.9,18,000/-**

The enhanced amount of compensation of Rs.9,18,000/- 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 @ 9% per annum in view of judgment of Hon'ble the Apex Court in Civil Appeal No. 4528-2019 titled as ***Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019***. 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.

(RITU BAHRI)
JUDGE

19.12.2019
G Arora

Whether speaking/reasoned - Yes
Whether Reportable - No