

432(3/3)

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

FAO No.357 of 2007

Date of Decision: 15.01.2019

Aman Kumar Bansal

Appellant

Versus

Sewa Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. A.K. Goel, Advocate
for the appellant.

Mr. R.N. Singal, Advocate
for the Insurance Company.

AVNEESH JHINGAN, J (Oral):

The present appeal has been filed against award dated 02.09.2006 passed by the Motor Accident Claims Tribunal, Bhiwani [for brevity 'the Tribunal'] in MACT No.166 of 2002 seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The facts in brief are that the appellant alongwith Basant Goel was riding a motorcycle on 16.02.2002. On their way, the motorcycle was struck by a rashly and negligently driven three-wheeler bearing registration No. HR-61-0294 [hereinafter referred to

as 'offending vehicle']. As a result of the impact, the appellant suffered injuries and was taken to Govt. Hospital, Bhiwani. FIR No.66 dated 16.02.2002 was registered at Police Station City Bhiwani.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver-cum-owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹1,06,000/-, which includes ₹10,000/- for special diet; ₹10,000/- for attendant charges; ₹8,000/- for transportation charges; ₹28,000/- for loss of income; ₹25,000/- for future loss of earning and ₹25,000/- for pain & suffering. It was proved before the Tribunal that there was disability of 40% and shortening of right leg by 1½ inches. The appellant was working as a Cashier in Punjab National Bank.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellant states that there was 40% disability and shortening of right leg by 1½ inches, but no amount has been awarded for disability. He further contends that the Tribunal has not considered the fact that the appellant was operated upon and steel plates were fitted as he had suffered fractures. His grievance is that no amount has been awarded for loss of amenities of life and for follow-up treatment.

Learned counsel for the insurer contends that it was not proved that the disability affected the functional ability of the appellant. He continued with his service, his promotion etc. were not affected. He vehemently resisted any further enhancement of the amount awarded.

From the perusal of the paper book, it is evident that the functional ability of the appellant was not affected and he continued with his service. It has come on record that his medical bills were reimbursed by his employer. The Tribunal had reimbursed the loss of salary for the months of January and February, 2003. There is no serious dispute on the fact that there is shortening of right leg by 1½ inches and the appellant remained hospitalized for 82 days.

The Supreme Court in **Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343**, held as under :-

“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%.”

Inspite of the fact that there is nothing on record to show that the functional ability of the appellant was affected, yet it cannot be denied that he had suffered 40% disability with shortening of leg, in such circumstances, it would not be appropriate to hold that he is not entitled to compensation for disability. Relying upon the decision of the Division Bench of this Court in **Piara Singh and others vs. Satpal Kumar and others, 2006(4) RCR 546,** ₹2,000/- per percentage of disability is awarded as compensation i.e. ₹80,000/- {40% disability X 2,000 = ₹80,000/-}. The nature of the injury sustained is such that he was bound to get follow-up treatment and he has lost amenities of life. Consequently, ₹10,000/- is awarded for follow-up treatment and ₹20,000/- for loss of amenities of life.

The award dated 02.09.2006 is modified to the extent that compensation of ₹1,06,000/- awarded by the Tribunal is enhanced by ₹1,10,000/-. The claimant shall be entitled to 7.5% interest on the enhanced amount, from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed.

[AVNEESH JHINGAN]
JUDGE

January 15th, 2019

pankaj baweja

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| 1. Whether speaking/reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |