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

FAO No. 4710 of 2008(O&M)

Date of decision: 3.10.2019

Dilbagh Singh …..Appellant

VERSUS

Vivek Bhushan and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Charanpreet Singh, Advocate for
Mr. B.S. Kathuria, Advocate for the appellant.

Mr. D.K. Prajapati, Advocate for insurance company.

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REKHA MITTAL, J. (Oral)

The claimant is in appeal seeking enhancement of compensation awarded by Motor Accidents Claims Tribunal, Patiala (in short 'the Tribunal') on account of injuries sustained in a motor vehicular accident that took place on 31.08.2005.

The Tribunal has awarded Rs.2,00,000/- detailed hereunder:-

Loss of permanent disability	Rs.1,40,000/-
Pain and suffering	Rs.20,000/-
Medical expenses and hospitalization	Rs.40,000/-

Counsel for the appellant would argue that the Tribunal has allowed reimbursement of medical bills to the tune of Rs.40,000/- vis-à-vis expenses to the tune of Rs.1,21,000/-, evidenced by bills produced on record by Dr. Shalinder Sadiq PW-3, examined by the claimant. Another submission made by counsel is that the Tribunal has awarded Rs.1,40,000/-

towards permanent disability i.e. amputation of lower left limb below knee on the basis whereof disability has been assessed to the tune of 70%.

Counsel representing the insurance company, on the other hand, would argue that claimant did not examine a member of the medical board to prove disability certificate Ex.A2 and there is no evidence as to how this disability can be considered qua functional disability.

Counsel for the insurance company has not disputed that as per medical evidence on record, claimant incurred expenses of Rs.1,21,800/- on medical treatment, proved by Dr. Shalinder Sadiq PW-3. The Tribunal has allowed reimbursement of medical expenses to the tune of Rs.40,000/- with the observations, quoted thus:-

> "The above medical evidence cannot be disbelieved, vide which the injured had incurred expenditure on treatment more than Rs.1,00,000/- but he is entitled to only reasonable expenditure of hospitalization because this tragedy cannot be allowed to be converted into a wind fall because insurance company is a public money."

The aforesaid observation of the Tribunal is quite strange and is not based upon any logic that can stand the test of judicial scrutiny. No sooner the Tribunal has believed evidence on record that injured incurred expenses on medical treatment to the extent of Rs.1,21,800/-, there was no question of allowing reasonable expenditure of hospitalization. That being so, claimant shall be entitle to Rs.1,21,800/- towards medical expenses and hospitalization (additional amount of Rs.81,800/-).

This brings the Court to compensation qua disability suffered by the victim. The disability certificate Ex.A2 issued by a Medical Board of Civil Surgeon, Patiala has been produced on record without any objection from the insurance company. The claim has been preferred under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act'). The Second Schedule appended to Section 163-A of the Act particularly Note-5 thereof deals with disability of 'non fatal accidents'. In case of permanent total disablement or permanent partial disablement, percentage of loss of earning capacity shall be as per Schedule under the Workmen's Compensation Act, 1923. Taking into consideration the nature and extent of disability suffered by the victim i.e. amputation below knee, percentage of loss of earning capacity shall be 50%. The contention raised by the insurance company that disability certificate cannot be considered for want of examination of a doctor is rejected for the reason that disability certificate has been issued by members of the Medical Board in discharge of their public functions and the same was tendered into evidence without any objection by the insurance company.

The plea of claimant that he was earning Rs.3300/- per month at the time of occurrence does not find corroboration from an independent source much less documentary evidence. Taking into consideration the minimum wage, fixed by the State of Punjab, at the relevant time, income of the injured is assessed at Rs.2500/- per month. As the injured was 32 years old, admissible multiplier is 17. In this manner, loss of future income comes to Rs.2,55,000/- (Rs.2500 x 12x 17 x 50%).

Compensation allowed for pain and sufferings is restricted to Rs.5,000/- in view of the Second Schedule.

In view of the above, total compensation is Rs.3,81,800/- and the additional amount is Rs.1,81,800/- (Rs.3,81,800/- - Rs.2,00,000/-)

payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

OCTOBER 3, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no