

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

FAO-3221-2010 (O&M)

Date of Decision:18.10.2019

Umesh Bhardwaj

... Appellant

Vs.

Santosh Prasad and others

... Respondents

CORAM : HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Ashwani Arora, Advocate
for the appellant.

Ms. Vandana Malhotra, Advocate
for the respondent-insurance company.

NIRMALJIT KAUR, J. (Oral)

The present appeal has been filed for enhancement of compensation against the award dated 14.09.2009 vide which only an amount of Rs.7,07,750/- was awarded on account of 75% disability suffered by the appellant-claimant.

While praying for enhancement of compensation, learned counsel for the appellant submitted that the appellant-injured was 37 years of age at the time of accident. He was working as a draftsman with Chief Engineer Panchayati, Raj Bhawan, Plot No.3, Sector-28, Chandigarh and was earning a sum of Rs.12,129/- per month. He received serious injuries i.e. fractures right leg, head injury and other multiple injuries. Therefore, he should have been granted future prospect on account of loss of income.

Learned counsel for the respondent-insurance company while disputing the aforesaid submission submitted that the appellant has already been granted Rs.3,00,000/- toward 75% disability. Further, he has not lost his job. He continues to get salary and will also continue to get pension.

Learned counsel for the appellant has relied upon the various judgments rendered in the cases of Surjit Singh v. Major Singh and others; (FAO No.1810 of 1995; decided on 13.05.2013); Jagmal Singh v. Raghbinder Singh and others; (FAO No.893 of 1990; decided on 03.07.2017); Kulwinder Singh v. Sh. Parkash Chand and others; (FAO No.5056 of 2005; decided on 23.04.2014); PRTC & another v. Karnail Singh and another; (FAO No.229 of 2008; decided on 07.04.2014); Naresh Chandra Mytle v. Haryana State; 1995 AJC 987; Arjan Singh Gill v. Devi Parshad and another; (FAO-1062-2008; decided on 02.09.2019) and Talwinder Singh v. Surinder Kumar and others; (FAO No.2058 of 2015; decided on 29.11.2018) to contend that in all those cases, the claimants were still in service after they received injuries in the accident and are continuing to get salary but still the Court granted them compensation towards loss of future income after applying the multiplier.

However, all the judgments are of Single Bench. The same do have persuasive value but this Court cannot ignore the judgment rendered by the Apex Court in the case of Raj Kumar v. Ajay Kumar and another; 2011 (2) R.C.R (Civil) 101 wherein it was specifically held in para-10 that in certain cases where the injured-claimant continued to be in service, there may not be any need to grant compensation under the head of loss of future earnings. Para-10 of the judgment reads as under:

“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 driver 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.”

In the present case, the appellant-claimant has already been awarded a total sum of Rs.3,00,000/- i.e. Rs.4,000/- per disability. Therefore, this Court does not deem it proper to grant compensation under the head of loss of income towards future earning taking into account that he continues to be in service and there is loss in income.

However, there is merit in the argument of the learned counsel for the appellant-claimant that the amount deserves to be enhanced under the head of attendant charges; medical expenses, loss of amenities; physical and mental Pain and transportation charges etc taking into account the nature of disability. Reliance has been placed on the judgment of the Apex Court rendered in the case of **Kavita** v. **Deepak and others**; 2012 (8) SCC 604.

While applying the test laid down in the case of Kavita (supra), this Court needs to examine the facts of the present case and the medical condition of the appellant. Dr. Rajesh Chhabra, Department of Neuro Surgery, PGI, Chandigarh, who was examined as PW-3, in his statement, has submitted that injured has got difficulty in coordination of movements, walking and difficulty in speech. He had suffered head injury with fracture shaft of femur (L) with fracture neck of femur (R) side with low I.Q with 111rd nerve palsy with cerebellar signs. He was found to be suffering from permanent physical disability to the extent of 75% in relation to his whole

Chandigarh, who was examined as PW-5, too in his statement submitted that the appellant-injured was not even mobile.

In these circumstances, this Court is of the view that the amount deserves to be enhanced. In the case of Kavita (supra), the compensation awarded towards attendant charges, physical and mental pains and loss of amenities and loss of expectation of life is Rs.6,00,000/-, Rs.3,00,000/- and Rs.3,00,000/- respectively. No doubt, injury in the case of Kavita (supra) pertains to 90% disability whereas in the present case disability is 75%, hence, this Court deems it appropriate to enhance the amount of compensation towards attendant charges to the tune of Rs.3,00,000/- and Rs.1,00,000/- towards physical and mental pain and Rs.1,00,000/- towards loss of amenities.

Accordingly, the present appeal is allowed only to the said extent. The enhanced amount of ₹ 5,00,000/- be deposited within two months from the receipt of certified copy of this order alongwith 6% interest from the date of the claim petition till its realization.

However, in case the same is not deposited within two months, the same shall thereafter be deposited alongwith interest @ 12% till payment after the expiry of two months.

(NIRMALJIT KAUR)
JUDGE

18.10.2019
rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No