

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 2007 of 2011

Date of Decision: 08.08.2019

Heera Lal

...Appellant

versus

Banwari Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: (On the date that judgment was reserved):-

Mr. Rajneesh Chadwal, Advocate, for the appellant.

Mr. R.K. Saini, Advocate, *Amicus Curiae* appointed
“on behalf of the claimant”.

Mr. R.C. Kapoor, Advocate, *Amicus Curiae*
“for respondents no. 1 and 2”.

None for respondent no. 3.

Amol Rattan Singh, J.

This appeal has been filed by the claimant before the Motor Accident Claims Tribunal, Narnaul, seeking enhancement of the compensation of Rs.87,300/- awarded to him by the Tribunal on account of the injuries suffered by him in a motor vehicle accident which is stated to have taken place on 14.02.2008.

As per the case of the appellant-claimant, he was going in a vehicle (Tata-407 canter), bearing registration no.RJ-32-G-2941, from Mohindergarh (Haryana) to Malout (Punjab), with the vehicle being driven by respondent no.1, Banwari Lal.

As per the appellant, one Bajender Singh was also sitting in the vehicle, between him and the aforesaid driver.

At about 7:30 p.m. on that day, when the vehicle had gone about

4-5 kms after crossing Dabwali town, the rear brakes thereof are stated to have suddenly jammed, with the vehicle therefore turning turtle.

The appellant is stated to have sustained serious injuries with him having been taken to the Government Hospital, Malout, by people who came to the spot. Daily Diary Report no.19, dated 18.02.2008, was thereafter lodged at Police Post Kalianwali, Police Station Lambi, District Mukatsar, as regards the accident in question.

The appellant is thereafter stated to have been shifted to the Metro Hospital at Hisar, where he was operated upon, with him having contended that he also received treatment from Chandrawati Hospital and Major Hospital at Mohindergarh.

2. As per the appellants' claim in his petition before the Tribunal, he was 28 years of age at the time of accident, earning Rs.39,000/- per annum as a labourer, with him having spent Rs.2,00,000/- on his treatment, which at the time of filing of the claim petition (23.04.2008), was still continuing.

It was further stated that he was an able bodied person prior to the accident and that his family members were entirely dependent upon him for their livelihood, but with him having become permanently disabled from carrying out his daily work and pursuits, he was entitled to a compensation of Rs.10,00,000/-.

3. Notice having been issued in the claim petition by the Tribunal, the owner of the vehicle, i.e. respondent no.2 (Rajesh Kumar), as also the driver (respondent no. 1 herein), are shown to have been proceeded against *ex parte*, they not having put in an appearance.

Thus, the present respondent no.3, i.e. the insurance company as had insured the vehicle in question, alone contested the petition, which was

instituted under the provisions of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter to be referred to as the Act).

4. In its written statement, the insurance company took the usual preliminary objections of no cause of action having arisen to the petitioner (present appellant), that the driver of the vehicle did not possess a valid driving licence, and further, that the petition was not maintainable as the injured petitioner was not a third party and was travelling as a gratuitous passenger, with him actually being in collusion with the driver and owner of the vehicle, simply to claim “fictitious compensation”.

On the merits of the claim petition, even the factum of the accident was disputed by the insurance company, which further contended that an exaggerated claim had been sought.

5. No replication having been filed by the present appellant, the following issues were framed by the the learned Tribunal:-

- “1. Whether petitioner Heera Lal suffered injuries in a road accident which took place on 14.2.2008 in the area of Maloth (Police Station Killiyawali, Police Station Lambi, District Mukatsar, Punjab) by use of Canter No.RJ-32G-2941 as alleged? OPP
2. Whether respondent no.1 did not hold a valid driving licence, if so what effect? OPR-3
3. Whether the petitioner is entitled to award of compensation and if so, how much and from whom? OPP
4. Relief.”

6. By way of evidence, the appellant-claimant stepped into the witness box as PW1 and reiterated the version of the accident as given by him in the claim petition.

By way of documentary evidence, he tendered the following

documents in support of his claim:-

Disability certificate	Ex.PA
Admission record of Heera Lal	Ex.PB
Copy of DDR no.19 dated 18-2-08	Ex.PC
Hindi version of DDR no.19	Mark-P1
Medical bills/prescription/receipts	Marks-P2 to P133

7. A perusal of the Award shows that an application filed by the insurance company under Section 170 of the Act was allowed, thereby allowing it to take all pleas available to it in terms of sub-section (2) of Section 149 of the Act.

However, the insurance company (respondent no.3) did not adduce any evidence to rebut that led by the appellant-claimant, thereby leading to the Award being passed on the strength of that evidence alone, with issue no.1, on whether or not the claimant had suffered any injuries in the road side accident in question, decided in his favour.

8. As regards the issue of respondent no.1 herein not holding a valid driving licence on the date of the accident, no evidence having been led by the insurance company to prove that either, it was also decided against it and in favour of the appellant-claimant.

As regards issue no.3, i.e. whether the claimant was entitled to any compensation, the contention of the insurance company, that being a gratuitous passenger he was not entitled to any compensation, was rejected by the Tribunal on the ground that Section 163-A of the Act “begins with a non obstante clause”, to the effect that the insurer of the vehicle is bound to “satisfy the Award”, regardless of anything contained either in the Act or any other law in force.

9. To determine the amount of compensation to be awarded, it was first recorded by the learned Tribunal that, as per the affidavit of the claimant

(Ex.PW1/A), he had deposed that his pelvic bone had been broken and his urinary bladder was also damaged.

His statement was also to the effect that he had spent Rs.6,00,000/- on his treatment which was still ongoing, and that he used to earn Rs.3300/- per month, with his entire family dependent upon him, he being a labourer.

He was found to have admitted in his cross-examination that the vehicle that he was travelling in, was a goods carrying vehicle.

10. As regards evidence of his injuries and the amount spent by him on his treatment, 104 bills were produced by him, the sum total of all the bills being Rs.2,48,512/-.

Of that amount, it was found that Rs.54,850/- was spent by him on transportation and a sum of Rs.16,039/- spent on the purchase of milk.

However, it was noticed by the Tribunal that the bills were not supported by oral evidence of any witness (other than the claimant himself).

11. A disability certificate showing him to be disabled to the tune of 10% due to a malunion of the pelvic bone, with “deep complication”, was proved by PW2 Dr. Dinesh Podar, Deputy Civil Surgeon, Narnaul, he being a member of the Medical Board at the General Hospital, Narnaul, where the appellant herein had been examined on 29.06.2009.

12. Having recorded the aforesaid findings, the Tribunal then referred to the 2nd Schedule to the Act and held that the claimant was entitled to an amount of Rs.5000/- on account of grievous injuries received by him, an amount of Rs.1000/- on account of non grievous injuries and an amount of Rs.15,000/- on account of medical expenses.

Referring to clause (ii) of paragraph 4 of the said Schedule, the

Tribunal observed in that context that no amount more than Rs.15,000/- can be paid under that head (medical expenses).

13. Next referring to the income of the claimant, it was accepted to be Rs.39,000/- per annum as per his statement; but his contention that he was 28 years of age was rejected, on account of the fact that at the time that he was admitted to the hospital he had given his age to be 32 years, which was consequently accepted to be his true age.

Hence, then referring to clause (b) of paragraph 5 of the 2nd Schedule, the Tribunal came to the conclusion that the appellant herein was entitled to Rs.66,300/- on account of permanent partial disablement (calculated in the ratio of the percentage of disablement, by applying the method of calculation as laid down in clause (a) thereof).

Thus, the total compensation so awarded came to Rs.87,300/-, as already noticed earlier.

He was further held entitled to interest @ 9% per annum on the aforesaid amount, running from the date of filing of the claim petition till the date of payment of the amount by the insurance company.

14. This appeal having been filed in the year 2011, respondents no.1 and 2, i.e. the driver and owner of the offending vehicle, were held to have been proceeded against *ex parte* vide an order recorded on 15.01.2018, with however Mr. R.C. Kapoor, Advocate, appointed by a co-ordinate Bench to assist the court 'on their behalf' as *Amicus Curiae*. Subsequently, Mr. R.K. Saini was also requested to assist the court as *Amicus Curiae* 'on behalf of the claimant', on the issue of the extent of compensation that can be awarded in an injury case when a claim petition is filed under the provisions of Section 163-A of the Act, especially as to whether expenses for transportation, services of

an attendant, special diet etc. could also be granted, which are not provided for in the said Schedule.

Thereafter, the matter having been adjourned to from time to time, on 13.03.2019, learned *Amicus Curiae* for respondents no.1 and 2 had submitted that nothing further can be paid other than what is stipulated in the 2nd Schedule, except on account of any medical bills duly proved before the Tribunal.

In that context, he had referred to a judgment of a co-ordinate Bench of this court in **Oriental Insurance Company Ltd. v. Gurdev Singh and others** 2012 (2) RCR (Civil) 611, wherein this court had referred to paragraph 5 of the judgment of the Supreme Court in **Raj Kumar v. Ajay Kumar and another** 2011 (2) RCR (Civil) 101, which reads as follows:-

“5. The provision of the **Motor Vehicles Act**, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner.

The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (see **C.K. Subramania Iyer vs. T.Kunhikuttan Nair**, **R.D.Hattangadi vs. Pest Control (India) Ltd.** and **Baker vs. Willoughby.**.]”

15. Having noticed as above, this court observed that simply because a petition was filed under Section 163-A and not under Section 166, the loss suffered by the next of kin of a deceased would not be reduced, and that consequently, the claimant in that case, who had unfortunately lost his leg in an accident, would be entitled to higher compensation for medical expenses than what is stipulated in the 2nd Schedule to the Act, with the cost of an artificial limb also having been taken into account.

16. It may be noticed here that, strangely, though counsel for the insurance company had been regularly appearing till 05.10.2018, thereafter, for three dates in succession, i.e. on November 02, 2018, March 13, 2019 and on the date that judgment was reserved in this case, i.e. March 19, 2019, none had appeared for the company, and even in the interim period of 4 months, no application has been received seeking any re-hearing of the case in order to appreciate any arguments to be made by counsel for the company, i.e. respondent no.3 in the appeal.

17. Be that as it may, to appreciate the case of both sides, first of all, the provision under which the claim petition was filed, i.e. Section 163-A of the Act, needs to be looked at and is consequently reproduced hereinunder:-

“163A. Special provisions as to payment of compensation on structured formula basis:- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any

wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

18. Thus, in essence what is contained in the aforesaid provision, is that the owner or insurer of a motor vehicle is liable to pay compensation to a victim in case of any permanent disablement arising out of any accident involving the said motor vehicle/(or pay compensation to the next of kin of a victim who unfortunately died in such accident), and that to claim such compensation, the negligence of the driver of the vehicle concerned, is not necessary to prove; but that such compensation has necessarily to be calculated as per the parameters laid down in the 2nd Schedule to the Act, with the Central Government empowered to amend the said schedule from time to time, as per the rising (or decreasing if at all) cost of living.

19. In this context, first a judgment of the Supreme Court must be referred to, in the case of **Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd.** Law Finder DocID #70466 (Civil Appeal no.3126 of 2002, decided on 19.03.2004, which was a judgment delivered by a three Judge Bench, upon a reference having been made to it as is described in paragraph 2 of the judgment:-

“2. A Division bench of this Court by an order dated 19.04.2002 doubting the correctness of 2-Judge Bench decision in **Oriental Insurance Co. Ltd. v. Hansrajhai v. Kodala and Others [(2001) 5 SCC 175] (Kodala): 2001 (2) RCR (Civil) 629 (SC)** has referred the matter to a 3-Judge Bench whereby and whereunder the proceedings under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to and called for the sake of brevity as “the Act”) has been held to be a final proceeding as

a result whereof the claimants had been debarred from proceeding with their further claims made on the basis of fault liability in terms of Section 165 (*sic*) thereof.”

20. Upon consideration of the issue, it was observed by their Lordships that Section 163-A of the Act was inserted w.e.f. 14.11.1994, “to provide for a new pre-determined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement”.

Section 163-B of the Act was also referred to, wherein it is stipulated that a person can either file a claim petition under Section 140 or Section 163-A but not both.

It was further held that the said provision was by way of a social security scheme that is a Code by itself, as would be obvious from a reading of the objects and reasons of the Amendment Act, 1994.

It was also held (reference paragraph 37 of the judgment), that Chapter XI of the Act (containing Section 163-A) was enacted so as to grant immediate relief to a section of people whose annual income was not more than Rs.40,000/-, and therefore a structured formula was provided as a full and final settlement of the claim.

Thereafter, it was held as follows by the Supreme Court:-

“46. The scheme envisaged under Section 163-A, in our opinion, leaves no manner of doubt that by reason thereof the rights and obligations of the parties are to be determined finally. The amount of compensation payable under the aforementioned provisions is not to be altered or varied in any other proceedings. It does not contain any provision providing for set off against a higher compensation unlike Section 140. In terms of the said provision, a distinct and specified class of citizens, namely, persons whose income per annum is Rs.40,000/- or less is

covered thereunder whereas Sections 140 and 166 cater to all sections of society.

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48. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See **Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries, [AIR 1985 Supreme court 278: (1985) 1 SCC 2181]**).

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52. We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.”

Eventually, it was concluded as follows, as regards the question of law referred to the three Judge Bench:-

“62. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs.40,000/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs.40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.

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64. Keeping in view of the limited questions posed before us, in our opinion, it is not necessary to go into the purported

discrepancies existing in the Second Schedule of the Act.”

(Emphasis applied in this judgment only)

21. Thereafter, in the case of *Raj Kumar* (supra), their Lordships after discussing the method of computation of compensation to be paid in injury cases specifically (reference paragraph 15, Law Finder Edition), held that where “a claim for compensation is made under that section by an injured alleging disability, and if the quantum of loss of future earning claimed, falls under the second schedule to the Act, the Tribunal may have to apply the principles laid down in Note (5) of the Second Schedule to the Act to determine compensation.

[It is to be noticed here that since paragraph 15 hereinabove specifically refers to the methodology of calculating compensation in the case of a claim petition filed under Section 163-A, thereby differentiating what had been laid down in paragraphs 13 and 14 immediately prior thereto, very obviously, the method of computation given in paragraph 14 would be in cases where the claim petition is filed under Section 166.]

22. To apply the aforesaid parameters to the present case, the facts that need to be borne in mind are as given hereinafter.

- i) As regards the age of the appellant-claimant, the Tribunal did not accept his claim that he was 28 years of age, on the ground that in the medical slip issued by the first hospital that he went to, i.e. the Civil Hospital, Malout, Sri Mukatsar Sahib, his age is given to be 32 years.

However, as a matter of fact thereafter it is seen that in all other hospitals it is shown to be 28 years.

Be that as it may, it would be appropriate for this court to

take an average both the aforesaid 'age limits' and accept his age to be 30 years in the absence of any firm proof of age, and accordingly, the multiplier to be applied on the loss of income, as per the 2nd Schedule to the Act, is 17.

- ii) The income of the appellant was accepted by the Tribunal to be Rs.39,000/- per annum as a labourer, which was what he had claimed in his petition also.

Thus, with that quantum of income not having been challenged by any of the respondents, that is to be accepted by this court also.

- iii) The medical bills produced by the appellant before the Tribunal, have been accepted to be to the tune of Rs.2,48,512/-, with again that finding not having been challenged. Though of course, this court (co-ordinate Bench) had sought assistance of learned *Amicus Curiae* on the question of whether the amounts of Rs.54,850/- and Rs.16,039/- shown to be spent on transportation and the purchase of milk respectively, can be granted as part of the compensation, in claim petition instituted under Section 163-A.

That part would be dealt with immediately hereinafter, the essential facts as regards the claim of the appellant himself having been thus enumerated.

- iv) Next, it has to be seen as to how long the appellant remained out of work on account of the accident, for

compensation to be calculated accordingly in terms of paragraph 5 of the 2nd Schedule.

It is to be noticed in that context, that the accident having taken place on 14.02.2008, medical bills show the appellant to have been continually receiving treatment till September 2018.

23. It is also to be noticed at this stage itself, in relation to what is contained in paragraph 5 of the 2nd Schedule, that though clause (b) thereof has been duly applied by the learned Tribunal, loss of income during the period of disablement due to hospitalisation and treatment etc., has not at all been considered.

Of course, it needs be said that no such compensation beyond a period of 52 weeks of disablement, can be awarded as per the said provision, which again would be an issue to be dealt with.

24. Thus, having perused the record of evidence, it is seen that the appellant was first admitted to the Civil Hospital, Malout, on 14.02.2008 and was discharged on the same date, even though the diagnosis was a fracture of the pelvis.

The last part of the admission record of that hospital (Ex.PB) reads as follows:-

“# Pelvis

Advised to shift to Orthopedic Surgeon.

(Signature of the Doctor)
14/2/08”

Thereafter, though in his testimony he stated that he was admitted to the Metro Hospital at Hisar, where he was operated upon for an injury to his

urethera and was again admitted to the Saumya-Nursing Home, Mohindergarh, where his pelvic bone was operated upon, certificates of admission in those hospitals are not seen to be exhibited, though a large number of receipts qua medicines and medical consumables etc. purchased are on record, dating from 15.02.2008 uptill even September 2008.

It is however seen that the discharge certificate issued by the Saumya-Nursing Home, at Mohindergarh, is also on the record of the learned Tribunal (duly attested by the office of the learned District Judge, Narnaul), though the exhibit number of the said document is not discernible.

Even so, the date of discharge is shown to be 27.02.2008, with it recorded on it to the effect that the urethral injury had already been operated upon at Hisar, and the renal function monitoring showed a gradual recovery, with the urine being clear and the stitches removed.

It is also recorded that the bowel/bladder functions were normal and that the patient was being discharged after consultation with the General Surgeon.

Thereafter, on 27.03.2008 (one month later) a prescription slip from the same hospital is seen to be issued, prescribing 4 medicines and asking him to come for a review/re-examination after 15 days.

25. After that, as already noticed, there are various bills of purchase of medicines, some seen to be from the Baba Durlabhji Memorial Hospital-cum-Medical Research Institute, Jaipur, as also The Aaryan Hospital, Gurgaon, and various other hospitals and chemist shops, right uptill September 2008, but with no medical advice/prescription qua the medicines/medical consumables purchased; due to which it is not possible to

positively determine as to whether the appellant suffered any serious complications of the accident itself, or the medicines were prescribed for some other illness.

Yet, looking at the fact that the aforesaid bills have been accepted by the Tribunal to be in the context of the injuries suffered by the appellant in the accident in question, with no appeal filed against the Award by any of the respondents, I would accept, in the circumstances, that the appellant was still under-going treatment on account of the said accident uptill at least September 2008, i.e. a period of 6 months since the date of the accident on 14.02.2008.

26. That being so, the Tribunal has wholly missed out on awarding him compensation in terms of the 1st part of Paragraph 5 of the 2nd Schedule to the Act, which reads as follows:-

“5. Disability in non-fatal accidents:

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.

PLUS either of the following:-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in permanent total disablement/ permanent partial disablement and percentage of loss or earning capacity shall be as per Schedule I under Workmen's

Compensation Act, 1923.”

(Emphasis applied in this judgment only)

27. Thus, with a claimant to be paid for the loss of income for disablement upto 52 weeks, in addition to compensation to be paid to him for permanent partial disablement as per clause (b) of Paragraph 5 (which has, of course, been awarded by the Tribunal to the extent of Rs.66,300/-), the appellant would be entitled to further compensation of Rs.26,000/-, taking it that he would have been unable to work for a period of 8 months after the accident, treatment having obviously continued for a period of 6 months (upto September 2008).

The break up of the said amount of Rs.26,000/- as is follows:-

Annual income of Rs.39,000/-	= Rs.3250/- per month
Period of disablement	= 8 months
Total payable under the head of loss of income for actual period of disablement (in terms of Paragraph 5 of the 2 nd Schedule to the Act).	= Rs.26,000/-

28. As regards compensation for the permanent (partial) disability suffered by him, the disability certificate, Ex.PA, states as follows:-

“DO (*sic*) No MLR seen Treatment slip of memo
Hospital Hissar

FINDINGS #Pelvis with Bladder of
urethera injury.

Malunion Pelvis (Public (*sic*) (L) side with
deep complication.

Honce he/she permanent disability to the tune of 10% (ten
per cent)

(Member) (Secretary) (Chairman)
Ortho. Surgeon, Handicapped Board, Handicapped Board,
General Hospital, Cum-Medical Superintendent, Civil Surgeon,

Narnaul.

General Hospital, Narnaul.

Narnaul.”

The Tribunal accepted the annual income of the appellant to be Rs.39,000/-, and therefore with him having suffered a 10% disability in his leg, compensation by way of loss of earning capacity was awarded. Such loss obviously seems to have been taken to the Rs.3900/- per annum, with the multiplier applicable being 17 as per the said schedule itself, and therefore the compensation under that head coming to Rs.66,300/- (3900 x 17).

In terms of clause (b) of Paragraph 5 of the said schedule, such compensation, even in the opinion of this court, would be as has been awarded by the Tribunal.

[It also needs to be noticed here that though the last part of paragraph 5 of the 2nd Schedule states that injuries resulting in a permanent partial disablement and percentage of loss of earning capacity would be as specified in Schedule 1 under the Workmen's Compensation Act, 1923, however, a perusal of that schedule shows that it only specifies the percentage of disablement on account of loss of a limb/a part thereof and even though the note below the said schedule states that complete and permanent loss of the use of any limb would be deemed to be the equivalent of the loss of that limb or member, in the present case there would be no another method of determining the percentage of loss of usage of one leg, to the appellant, other than by way of the certificate issued by the medical board constituted in the Civil Hospital, at Narnaul.]

29. Other than the above, it needs to be observed that the 2nd Schedule to the Act has been amended w.e.f. May 22, 2018 with it now stating as follows:-

“1. (a) Fatal Accidents:

Compensation payable in case of Death shall be five lakh rupees.

(b) Accidents resulting in permanent disability:

Compensation payable shall be = [Rs.5,00,000/- × percentage disability as per Schedule I of the Employee's Compensation Act, 1923 (8 of 1923)] :

Provided that the minimum compensation in case of permanent disability of any kind shall not be less than fifty thousand rupees.

(c) Accidents resulting in minor injury:

A fixed compensation of twenty five thousand rupees shall be payable:

2. On and from the date of 1st day of January, 2019 the amount of compensation specified in the clauses (a) to (c) of paragraph (1) shall stand increased by 5 per cent annually”.
3. This information shall come into form on the date of its publication in the Official Gazette.”

Very obviously the said amendment is not applicable to the case of the appellant, with the accident in question having taken place more than 10 years prior to such amendment. However, what this court cannot ignore, is that the 2nd Schedule was inserted in the Act w.e.f. November 14, 1994, i.e. 13 years and about 3 months prior to the accident that the appellant met with.

Hence, in my opinion, since a very plausible rationale has been given in paragraph 2 of the amended Schedule, to the effect that the amount of compensation specified in paragraph 1 thereof would stand increased by 5% annually, I would extend that concession to the appellant also, even though, equally obviously, the unamended schedule did not provide for any such increase. Yet, this court cannot ignore the fact that for the aforesaid period of 13 years plus, between 1994 and 2008, the cost of living naturally also

increased.

Consequently, as regards the maximum amount of Rs.15,000/- that is specified in clause (ii) of paragraph 4 of the unamended schedule, by way of medical expenses, a percentage increase of 5% per year, should be added, thereby bringing the total compensation payable under that head to be Rs.29,700/-.

Therefore, instead of the total compensation of Rs.87,300/- awarded by the Tribunal, in my opinion, the appellant would be entitled to the following compensation under various heads:-

Loss of income due to his inability to work after the accident	Rs.26,000/- (as per the calculation given in paragraph 27 hereinabove).
Permanent partial disability of the leg to the extent of 10%	Rs.66,300/- (as already awarded by the Tribunal).
On account of medical expenses	Rs.29,700/- (instead of Rs.15,000/- specified in clause (iv) of paragraph 3 of the unamended schedule).
Total	Rs.1,22,000/-

30. Consequently, the appeal is allowed to the aforesaid extent, with it to be observed that interest on the enhanced amount of compensation would run in favour of the appellant @ 6% per annum from the date of filing of the claim petition till the date of payment of such amount.

The parties are left to bear their own costs.

August 08, 2019
dinesh

(AMOL RATTAN SINGH)
JUDGE

- 1.Whether speaking/reasoned?
- Yes
2. Whether reportable?
- Yes