

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

FAO No.3540 of 2011 (O&M)

Date of decision: 12.09.2019

Mandeep Singh

..... Appellant

Versus

Mohammad Deen and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sandeep Kotla, Advocate
for the appellant.

Service upon respondents No.1 and 2 is dispensed with.

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

RITU BAHRI, J. (ORAL)

The claimant has come up in appeal against the award of the Tribunal dated 31.01.2011 whereby compensation of Rs.12,83,265/- has been awarded on account of injuries suffered by the appellant after suffering 81% permanent disability as per the disability certificate Ex.P-1.

The parties are not in dispute regarding finding on issue No.1 that the accident took place on 24.01.2007 on account of negligent driving by Mohammad Deen-respondent No.1 while driving Trala bearing registration No. HR-36-GA/0216. After the accident, FIR No.13 dated 24.01.2007 under Sections 304-A/279/337/427, IPC, Police Station Patran was registered against the driver (Ex.P-4). Copy of challan is Ex.P-44, copy of charge-sheet is Ex.P-45 and recovery memo of the vehicle is Ex.P-46.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal assessed the compensation as under:

<i>Sr.No.</i>	<i>Head</i>	<i>Amount (₹)</i>
1	Compensation for pain and suffering	₹50,000/-
2	Compensation for permanent disability	₹2,00,000/-
3	Medical Bills	₹10,33,265/-
	Total	₹12,83,265/-

Counsel for the claimant-appellant has referred to disability certificate Ex.P-1 vide which permanent disability of the claimant-appellant was found to be 81%. He has referred to the statement of PW3 Dr. Hitesh Khurana who stated that the appellant was diagnosed of multiple injuries on account of anterior open bite deranged, posterior occlusion and linear scar (chin) with head injury with I.Q=48 with mild hemiparesis with right hip joint ossification with left lower limb shortening with difficulty in squatting. The claimant is 24 years of age.

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 81% which is permanent in nature.

Reference at this stage can be made to a judgment of this court in a case of ***Parveen v. Vikram and others, 2016(2) RCR (Civil) 717*** whereby this Court in the case of driver who suffered 70% bodily disability took his disability to be 100% regarding working capacity and while referring to the various judgments has observed as under:-

In a judgment by 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/-.

In the case of ***Kavita vs. Deepak and others, 2012 (4) RCR (Civil) 273***, Victim suffered 100% permanent disability. She lost her capacity for hearing, understanding, speaking and establishing interaction. The victim required an attendant at all times and continued physiotherapy. Victim was 30 years of age, earning taken as Rs.2000/- p.m. Multiplier of 17 was applied. She was also awarded Rs.2000 per month as attendant charges for 25 years. Victim was awarded compensation of Rs.34,38,747/-.

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.

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.”

10. In the present case, the compensation is being reassessed as per the judgments mentioned above:-

<i>Sr.No.</i>	<i>Head</i>	<i>Amount (₹)</i>
1	Loss of income by multiplier method	(3500 X 12 X 40% future prospects 18) X 81% =8,57,304/-
2	Special Diet and attendant charges	Rs.50,000/-
3	Loss of enjoyment in life and marriage prospects	Rs.1,00,000/-
4	Pain and suffering	Rs.50,000/-
5	Transportation charges	Rs.20,000/-
6	Medical expenses	Rs.10,33,265/-
7	Total compensation awarded	Rs.21,10,569/-
8	Compensation awarded by MACT	Rs.12,83,265/-
9	Enhanced amount of compensation	21,10,569-12,83,265= Rs.8,27,304/- rounded off to Rs.8,27,000/-

11. The enhanced amount of compensation of Rs.8,27,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% 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.

12. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

12.09.2019

D.Bansal

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No