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

**FAO No. 7279 of 2010
Date of decision:- 20.11.2019**

Amit Kumar Rana ...Appellant

Versus

Arvind Kumar and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Puneet Sharma, Advocate for Mr. Sandeep Saini, Advocate for respondent/Insurance Co.

RITU BAHRI J. (Oral)

The present appeal has been preferred by the injured-appellant (for short 'the appellant'), against award dated 08.01.2010 passed by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') whereby claimant was awarded compensation of Rs.26,000/-.

The facts in brief are that on 01.03.2006, the claimant-appellant along with Krishan Kumar was going on motorcycle driven by Krishan Kumar. When they reached in front of Ram Garhiya Bhawan, Sector 27, Chandigarh, a motor cycle bearing No. CH-03-N-2686 driven by respondent No. 1 came in a rash and negligent manner and struck against the motor cycle of Krishan Kumar. They both fell down and suffered injuries. The matter was registered to the police.

While assessing the compensation, the Tribunal awarded Rs.7,000/- towards pain and sufferings, Rs.5000/- towards special diet and Rs.14,000/- towards disability of 7%. The appellant was awarded total compensation of Rs.26,000/-.

At the very outset, learned counsel for the appellant has referred to disability certificate (P-17) wherein it has been reflected that the appellant had fracture of both bones right leg. His disability was assessed as 7%. He was admitted in the hospital on 01.03.2006 and operated upon on 03.03.2006 and discharged on 17.03.2006. he was again admitted on 26.08.2006 and was discharged on 11.09.2006.

Learned counsel submits that the appellant was only 18 years of age at the time of accident and was student of 10+1 and thus, in this case multiplier method is to be applied for calculating the compensation.

Reference has been made to a judgment of this Court in a case of ***Baldev Raj vs. Jeet Singh and others, passed in FAO No. 387-2004, decided on 07.05.2014*** wherein the appellant received injuries in road side accident. The permanent disability was assessed at 8%. This Court enhanced the compensation by applying the multiplier method keeping in view the fact that future earnings are liable to be discontinued by 8%.

Heard learned counsel for the parties.

It is not in dispute that there is disability of 7% which is permanent in nature and appellant was a student of 10+1.

Reference at this stage can be made to judgment of 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/-.

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."*

Since the appellant in the present case was student and will face difficulty in doing his work, his monthly income can be taken at Rs.3000/- per month for determining the compensation.

Applying the ratio of the above mentioned judgments, the compensation is re-assessed as under by applying the multiplier method:-

HEAD	***COMPENSATION AMOUNT***
Income	Rs.3000 per month
Annual Salary	Rs.3000X12=36,000/-
Future prospects 40%	36000+14400=Rs.50400/-
Multiplier of 18	50400X18=09,07,200/-
Loss on account of 7% disability	907200 X 7/100=Rs.63504/-
Pain and sufferings	Rs.15,000/-
Special Diet, and , Attendant Charges	Rs.15,000/-
Loss of enjoyment in life	Rs.50,000/-
Total compensation	**Rs.1,43,504/-**
Enhanced amount of compensation	**143504-26000=Rs.1,17,504/- (rounded off to Rs.1,18,000/-)**

The amount of compensation of Rs.1,18,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition 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***.

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

20.11.2019 (***RITU BAHRI***)
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***