

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

**FAO No.4757 of 2012
Date of Decision: 30.05.2019**

SameemAppellant

Versus

Harjinder Singh and othersRespondents

Coram: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Ms. Amandeep Kaur, Advocate
for the appellant.

Mr. Punit Jain, Advocate for
respondent No.3-Insurance Company.

ARUN KUMAR TYAGI, J.

1. The injured-claimant has filed the present appeal seeking enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') vide award dated 01.05.2012 passed in **MACT Case No.382 of 2009 titled Sameem Vs. Harjinder Singh and others** on account of injuries suffered by him in a motor vehicle accident, which took place on 30.07.2009.

2. The appellant/claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 30.07.2009 the appellant/claimant was going from his house to Sector 34, Chandigarh on his motor cycle along with Pardeep Singh as pillion rider on the left side of the road. They were being followed by Anish on his scooter. At about 8:00 a.m. when they

were going on the road leading from Mullanpur to Dhanas and reached in front of Radha Krishna Marble, Dhanas bus bearing registration No.PB-12-G-4508, owned by respondent No.2 and insured with respondent No.3, driven by respondent No.1 in a rash and negligent manner came at fast speed from opposite direction and by coming to the wrong side struck against their motor cycle due to which the appellant/claimant and Pardeep Singh fell on the road and suffered serious injuries. They were taken to PGI, Chandigarh. FIR No.180 dated 31.07.2009 was registered under Section 279 and 337 IPC at Police Station Sector 11, Chandigarh.

3. The appellant/claimant averred in the claim petition that he suffered from fracture of right hand (distal radius right) and underwent operation of bone grafting in P.G.I. Chandigarh. The appellant/claimant spent amount of ₹50,000/- towards his medical treatment. The appellant/claimant was aged about 22 years and was a student at the time of accident. The appellant/claimant having done B.A. and wanted to do M.B.A. Due to the accident he became permanently disabled. The appellant/claimant accordingly sought award of compensation of ₹15 lacs with costs and interest at the rate of 12% per annum against respondents No.1 to 3 jointly and severally.

4. Notice of the claim petition was issued to the respondents. Respondent No.1-driver and respondent No.2-owner of the bus suffered themselves to be proceeded against ex-parte. In its written statement respondent No.3 took preliminary objections as to non-maintainability, petition being collusive, respondent No.1-driver not having valid and effective driving licence at the time of accident and

breach of the terms and conditions of the insurance policy. Respondent No.3 controverted the material averments made in the petition and denied its liability.

5. Injured Pardeep Singh filed separate claim petition under Section 166 of the M.V. Act bearing **MACT Case No.383 of 2009 titled Pardeep Singh Vs. Harjinder Singh and others** which was contested by the respondent No.3 and tried and disposed of with the above-said claim petition filed by appellant/claimant Sameem.

6. The Tribunal framed Issues and recorded evidence produced by the parties and on conclusion of inquiry held that the appellant/claimant-Sameem and Pardeep Singh suffered injuries due to accident caused by rash and negligent driving of bus bearing registration No.PB-12-G-4508 by respondent No.1 who was having valid and effective driving licence and respondents No.1 to 3 were jointly and severally liable for payment of compensation to the appellant/claimant. The Tribunal awarded amount of ₹25,600/- towards medical treatment, ₹50,000/- on account of loss of future income, ₹25,000/- under the head of loss of marriage prospects, ₹5,000/- towards attendant, ₹5,000/- for special diet, ₹3,000/- towards conveyance charges and ₹10,000/- on account of pain and suffering. The Tribunal awarded total compensation of ₹1,23,600/- and directed respondents No.1 to 3 to pay the same jointly and severally with costs and interest at the rate of 6% per annum from the date of filing of the petition till realization. In the other connected case, the Tribunal awarded compensation of ₹79,440/- to the injured-claimant Pardeep

Singh with costs and interest at the rate of 6% per annum from the date of filing of the claim petition till realization.

7. Feeling aggrieved, the injured-claimant-Sameem has filed the present appeal.

8. I have heard arguments addressed by the learned Counsel for the appellant/claimant and learned Counsel for respondent No.3 and gone through the record.

9. Learned Counsel for the appellant/claimant has argued that the appellant/claimant suffered injuries including fracture right hand and head injury in the accident and was treated and operated in P.G.I., Chandigarh. The appellant/claimant remained under medical treatment for a long time and was advised special diet. He had to visit hospital number of times and required attendant. The Tribunal has awarded meager amounts under the heads of medical treatment, transportation, special diet and attendant which may be enhanced. The appellant/claimant was 22 years of age at the time of the accident, had done B.A. and wanted to do M.B.A. He was having bright future prospects ahead. Due to the injuries caused in the accident, he suffered from permanent disability to the extent of 15%. The Tribunal awarded meager sum of ₹50,000/- towards loss of future income which may be enhanced. The Tribunal awarded meager amount of ₹10,000/- towards pain and sufferings. Keeping in view the nature of injuries of the appellant/claimant, the same may be enhanced to amount of ₹1,00,000/-. The permanent disability of the appellant/claimant also had a serious effect on his matrimonial prospects. The Tribunal has awarded a meager amount of ₹25,000/- under the head of loss of

marriage prospects which may be enhanced to ₹3,00,000/-. The Tribunal awarded lesser interest at the rate of 6% per annum instead of 12% per annum claimed in the petition. Therefore, the appeal may be allowed and the amount of compensation awarded by the Tribunal may be enhanced.

10. On the other hand, learned Counsel for respondent No.3 has argued that the appellant/claimant has failed to produce medical bills and prove the amount spent by him on his medical treatment beyond the amount awarded by the Tribunal. The appellant/claimant suffered from temporary disability of the right upper limb to the negligible extent of 15% and the appellant/claimant has failed to prove his functional permanent disability as claimed. The Tribunal has awarded just and adequate compensation to the appellant/claimant and he is not entitled for enhancement thereof. Therefore, the appeal may be dismissed.

11. It is now well settled that in personal injury cases compensation can be awarded under the following heads:-

(1) **Pecuniary damages (Special damages)-**

- (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure;
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising
 - (a) Loss of earning during the period of treatment; and
 - (b) Loss of future earnings on account of permanent disability; and
- (iii) Future medical expenses

(2) **Non-pecuniary damages (General damages)**

- (i) Damages for pain, suffering and trauma as a consequence of the injuries;
- (ii) Loss of amenities (and/or loss of prospects of marriage); and
- (iii) Loss of expectation of life (shortening of normal longevity).

(See Raj Kumar Versus Ajay Kumar and another (2011) 1 Supreme Court Cases 343 and R. D. Hattangadi Versus Pest Control (India) Limited and others 1995 ACJ (SC) 366).

12. So far as the claim of the appellant/claimant for expenses relating to treatment, hospitalization and medicines is concerned, the appellant/claimant testified as PW-2 that he suffered fracture of right hand and other multiple injuries. He remained admitted in P.G.I., Chandigarh for 19 days. He remained under the follow up treatment in P.G.I., Chandigarh and remained on bed for a period of 6 months. He further testified that he has spent ₹50,000/- on his medical treatment. To corroborate his testimony he examined Dr. Sudesh Pebam, Assistant Professor, Department of Orthopedics, P.G.I., Chandigarh as PW-1 and also produced his Medical Treatment Card and Prescription Slips Ex.P-2, medical bills Ex.P-5 to Ex.P-64 which show that he spent the amount of ₹25,607/- on his medical treatment. In view thereof the Tribunal has awarded amount of ₹25,600/- to the appellant/claimant towards expenses incurred on his medical treatment. The appellant/claimant has not examined any other doctor or chemist and has not produced any other bill or receipt to show that the appellant/claimant incurred any further amount on his medical treatment. In the absence of examination of the concerned

doctors/chemists and production of the relevant bills/receipts, any further amount claimed cannot be awarded to the appellant/claimant on the assumption of the same having been spent by him on his medical treatment. In the facts and circumstances of the case, amount of ₹25,600/- awarded to the appellant/claimant by the Tribunal towards expenses incurred on his medical treatment cannot be said to be unjust and inadequate and the appellant/claimant is not entitled to award of any further amount towards expenses incurred on his medical treatment. It is also pertinent to observe here that the appellant/claimant has not produced any medical evidence to prove requirement of his medical treatment in future. Therefore, the appellant/claimant is not entitled to award of any compensation towards future medical treatment.

13. Even though the appellant/claimant testified as PW-2 that he spent ₹30,000/- on special diet and ₹10,000/- on transportation but he did not produce any bills and his self-serving testimony as to quantum of the amount spent towards special diet could not be relied upon for acceptance of his claim in toto. However, it is common knowledge that in such cases expenses are incurred on conveyance, attendant and special diet. The Tribunal awarded amount of ₹3,000/- towards conveyance, amount of ₹5,000/- towards attendant and amount of ₹5,000/- towards special diet. However, in view of the nature of injuries, special diet required and period of treatment and the number of visits to hospital in Chandigarh as mentioned in Medical Treatment Card and Prescription Slips Ex.P-2 amounts awarded towards conveyance, special diet and attendant cannot be said to be

adequate. In the facts and circumstances of the case, it will be appropriate to enhance the amounts of ₹3,000/-, ₹5,000/- and ₹5,000/- awarded by the Tribunal towards conveyance, special diet and attendant respectively to ₹10,000/-, ₹15,000/- and ₹10,000/-.

14. The appellant/claimant pleaded and testified as PW-2 that he remained on bed for a period of six months. The Tribunal did not award any amount towards loss of earnings during the period of medical treatment. The appellant/claimant being a graduate would have worked and earned during period of medical treatment but for his inability caused by the accident. In view of the minimum wages of ₹4,202/- notified by Labour Department, Chandigarh to be payable to Clerk during the relevant period, it will be just and reasonable to hold the notional income of the appellant/claimant to be ₹4,202/- per month at the time of the accident. In view of the nature of injuries including fracture suffered by the appellant/claimant and the recovery period of about three months, the appellant/claimant is entitled to award of ₹12,606/- towards loss of income during the period of treatment.

15. To prove his permanent disability and consequent loss of future earnings, the appellant/claimant examined Dr. Sudesh Pebam, Assistant Professor, Department of Orthopedics, P.G.I., Chandigarh as PW-1 who has testified that the appellant/claimant suffered fracture of distal radius and was held to be physically handicapped to the extent of 15% in relation to his right upper limb. In his cross-examination PW-1 Dr. Sudesh Pebam has admitted that the disability was to be re-assessed after a period of five years and added that the injuries

suffered by him could improve or deteriorate further with the passage of time.

16. In **Raj Kumar Vs. Ajay Kumar and another : 2011 (2) RCR (Civil) 101** Hon'ble Supreme Court considered in detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it and in paragraphs No.10, 11 and 13 of its judgment made the following observations:-

“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.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

13. We may now summarise the principles discussed above :

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).
- (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.
- (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

17. Since the case of the appellant/claimant was that of post traumatic right forearm and wrist stiffness and the injuries suffered by the appellant/claimant could, as admitted by PW-1 Dr. Sudesh Pebam, improve and are not proved to have deteriorated with passage of time, disability of the appellant/claimant could not be said to be permanent in the absence of cogent and reliable evidence as to inability of the appellant/claimant to work after his medical treatment, the appellant/claimant could not be said to have suffered from functional permanent disability of the body and consequent loss of future earning capacity. In the facts and circumstances of the case, the appellant/claimant is not entitled to award of any compensation

towards loss of future income on account of partial permanent disability and the Tribunal erred in awarding amount of ₹50,000/- to the appellant/claimant towards loss of future income. It may be added here that in such cases where loss of future earnings due to functional permanent disability and consequent loss of future earning capacity is not specifically proved the aspect of awarding of compensation for permanent disability gets covered under the heads of award of compensation for pain and suffering and loss of amenities.

18. So far as the non-pecuniary general damages are concerned, the Tribunal merely awarded amount of ₹10,000/- towards pain and suffering as a consequence of the injuries and awarded amount of ₹25,000/- towards loss of matrimonial prospects. In view of the nature of the injuries including fracture of right hand and consequent disability suffered by the appellant/claimant and also the long period of his medical treatment, the amount awarded by the Tribunal for pain and suffering was on the lower side. In the facts and circumstances of the case, it would be just and proper to award amount of ₹1,00,000/- to the appellant/claimant towards pain and suffering. However, the amount of ₹25,000/- awarded by the Tribunal towards loss of matrimonial prospects under the head of loss of amenities cannot be said to be inadequate. Since, the injuries suffered by the appellant/claimant are not proved to have shortened the longevity of life and resulted in loss of expectation of life. Therefore, the appellant/claimant is not entitled to any compensation for the same.

19. It follows from the above discussion that the appellant/claimant is entitled to payment of compensation as calculated under the following heads:-

Sr. No.	Head	Compensation
1.	Expenses relating to medical treatment, hospitalization and medicines	₹25,600/-
2.	Future medical treatment	-nil-
3.	Expenses relating to Transportation, Special Diet and Attendant	₹35,000/-
4.	Loss of earnings during the period of treatment	₹12,606/-
5.	Loss of future earnings due to loss of earning capacity/functional permanent disability	Nil
6.	Pain and suffering	₹1,00,000/-
7.	Loss of amenities including loss of matrimonial prospects	₹25,000/-
8.	Shortening of longevity of life	-nil-
9.	Total Compensation	₹1,98,206/-

20. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the whole amount which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

21. In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accident Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest, in the eventuality of claim petition being allowed, from the date of making the claim at such rate as may be specified by it. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of

Civil Procedure, 1908 to restrict the award of interest to 6% per annum.

22. In **Puttamma and others Vs. K.L. Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443**, Hon'ble Apex Court observed in para 60 as under:-

“This Court in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148** noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.”

23. In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

24. In **Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy : 2012(3) RCR (Civil) 203** and **Syed Sadiq etc. Vs. Divisional Manger, United India Insurance Company : 2014(1) RCR (Civil) 765** interest was awarded at the rate of 9% per annum.

25. In **Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC)** rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

26. In view of the observations in above referred judicial precedents, mercantile rate of interest prevalent, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, it will be appropriate to modify interest awarded by the Tribunal at the rate of 6% per annum to 9% per annum.

27. It follows from the above discussion that the appellant/claimant is entitled to payment of amount of ₹1,98,206/- from respondents No.1, 2 and 3 jointly and severally with costs and interest at the rate of 9% per annum from the date of institution of the petition till realization. Amount of ₹1,23,600/- already awarded to the appellant/claimant shall be liable to be deducted from the abovesaid amount.

28. In view of the above discussion, the appeal is allowed with costs in the above terms and award dated 01.05.2012 is modified as discussed above.

(ARUN KUMAR TYAGI)
JUDGE

30.05.2019
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No