

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

**FAO No.5123 of 2012 (O&M)
Date of decision: 29.08.2019**

Karam Chand

....Appellant

Versus

Tek Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjeev Patiyal, Advocate,
for the appellant.

Mr. Harsh Aggarwal, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM No.22752-CII of 2012

For the reasons mentioned in the application, same is allowed
and delay of 11 days in filing of the appeal is condoned.

FAO No.5123 of 2012

This appeal has been filed by the claimant-appellant seeking
enhancement of compensation awarded by Motor Accident Claims Tribunal,
Panchkula (hereinafter referred to as 'the Tribunal') vide award dated
09.04.2012 on account of injuries received by him in a motor vehicular
accident which took place on 27.03.2010.

Brief facts of the case are that on 27.03.2010, at about 7.00
P.M., claimant-appellant (Karam Chand) along with his brother Surjan
(pillion rider) was returning home on his motorcycle. When they reached in
front of Haryana Roadways Workshop, Kalka, a Canter bearing registration
No. HP-14-A-1599, being driven by Tek Singh-respondent No.1 in a rash

and negligent manner, came from the opposite side and struck against the motorcycle, as a result of which, both Karam Chand-claimant and his brother fell down and received injuries. Karam Chand-claimant suffered fracture of right femur and injuries on both hands. He was taken to Civil Hospital, Kalka, from where, he was referred to Govt. College, and Hospital, Sector 32, Chandigarh. But, he was taken to Ortho Nova Clinic, Sector 2, Panchkula. He remained admitted in the hospital upto 29.03.2010. With regard to the accident, FIR was registered against driver-respondent No.1. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver-respondent No.1 and thus, returned the finding on issue no.1 in favour of the claimant. This finding was rightly given on the basis of deposition of Karam Chand-claimant (CW-1). Apart from this, claimant has also proved on record copy of FIR Ex.P9, report under Section 173 Cr.P.C. Ex.P10 and copy of charge sheet Ex.P11. Ultimately, the claim petition was accepted by the Tribunal and compensation was assessed as under:-

Sr. No.	Heads	Amount (Rs.)
1.	Amount spent on treatment and purchase of medicines	Rs.46,465/-
2.	Loss of future earning	Rs.80,928/-
3.	Pain and sufferings	Rs.15,000/-
4.	Special diet	Rs.15,000/-
5.	Misc. expenses, including transportation etc.	Rs.15,000/-
	Total	Rs.1,72,393/-

Hence, the claimant was found entitled to a total compensation

of Rs.1,72,393/- along with interest at the rate of 6% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

Learned counsel for the appellant has argued that in the present case, compensation of Rs.80,928/- on account of suffering 25% permanent disability should be reassessed after properly applying the method of income criteria.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. Parties are not in dispute with regard to finding given by the Tribunal on issue No.1 to the effect that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver. This Court, vide order dated 14.03.2019, had given a direction to the appellant to appear before the Head of the Department of Orthopedics, PGIMER, Chandigarh on 29.03.2019 for medical examination with respect to the permanent disability. Thereafter, report dated 9/11.04.2019 given by the Board of Doctors had been received, wherein it has been stated as under:-

“A Committing consisting of the following members is hereby constituted for medical examination of Karam Chand son of Sh. Jagir Chand and members attended the meeting on 09.04.2019 and the report is as under:-

1. Dr. Peamb Sudesh
2. Dr. Sarvdeep Dhatt
3. Dr. Vikas Bachhal

After examining the patient and relevant documents, the board is of the opinion that:

1. There is nothing wrong with the intra medullary nail of the femur (rod inserted in the femur).
2. With the present state of disability the patient is having, it will be difficult for him to drive vehicle and doing manual labour.

(Dr. Peamb Sudesh) (Dr. Sarvdeep Dhatt) (Dr. Vikas Bachhal)”

A perusal of the above report shows that with respect to the disability, it will be difficult for the patient i.e. claimant to drive vehicle and do manual labour. In the present case, claimant-appellant was running a shuttering store at Bitna, Kalka. When the accident had taken place, he was driving a motorcycle. After the accident, it will be difficult for him to drive a vehicle and do manual work. The Medical Board has assessed the disability with respect to lower limb of claimant as 25%. Hence, for all times to come, he will never be able to drive any vehicle. Therefore, disability qua the whole body has to be taken as 50%. Before the accident, claimant-appellant was running a shuttering store. Accordingly, income of claimant-appellant is assessed as Rs.4500/- per month. In this income, 40% addition is made on account of future prospects. By doing so, total income of claimant comes to Rs.6300/- (4500 + 1800). Since, the claimant was 31 years of age at the time of accident, multiplier of 16 has to be applied. After applying the multiplier of 16, loss of income due to permanent disability comes to Rs.6300 x 50/100 x 12 x 16 = Rs.6,04,800/-. Hence, keeping in view the peculiar circumstances, in which the injured-claimant had been put, the compensation is hereby re-assessed as under:-

Sr. No.	Heads	Amount (Rs.)
1	Amount spent on treatment and purchase of medicines (Medical expenditure)	Rs.46,465/-
2	Loss of future earning due to disability	Rs.6,04,800/-
3	Pain and sufferings	Rs.50,000/-
4	Special diet	Rs.20,000/-
5	Misc. expenses, including transportation etc.	Rs.15,000/-
6	Loss of future enjoyment	Rs.1,00,000/-
7	TOTAL COMPENSATION AWARDED	Rs.8,36,265/-
	Enhanced amount of compensation	Rs.8,36,265 – 1,72,393 = Rs.6,63,872/-

The enhanced amount of compensation of **Rs.6,63,872/-** shall be payable within a period of two months 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, till its realization in view of the judgment of Hon'ble the Supreme Court in the case of “**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others**”, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019). Remaining conditions of disbursal of amount shall remain unaltered.

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

(RITU BAHRI)
JUDGE

29.08.2019
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No