IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2344 of 2009(O&M)

Date of decision: 13.11.2019

Kamal Kumar …..Appellant

VERSUS

Prem Chand and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Y.P. Khullar, Advocate for the appellant.

Mr. Ashwani Talwar, Advocate for the insurance company.

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REKHA MITTAL, J.(Oral)

CM No.21112-CII of 2018

Heard.

Allowed as prayed for.

Affidavit of the appellant is taken on record.

Disposed of accordingly.

FAO No.2344 of 2009

The claimant is in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Rupnagar (in short 'the Tribunal') on account of injuries sustained in a motor vehicular accident that took place on 27.05.2007.

The Tribunal awarded Rs.3,88,000/- (wrongly calculated as Rs.4,03,000/-) detailed hereunder:-

Medical expenses	Rs.1,38,000/-
Permanent disability	Rs.1,60,000/-

Transportation, special diet and attendant charges	Rs.90,000/-

Counsel for the appellant would inform that compensation allowed on account of disability and under various other heads is grossly inadequate and merits enhancement. It is further argued that appellant may be awarded compensation for expenses of artificial limb and loss of amenities of life.

Counsel representing the insurance company, on the contrary, would argue that appellant cannot assert claim for compensation both in regard to expenses of artificial limb and loss of business of tailoring as possibility cannot be ruled out that he can pursue his business of tailoring by getting affix artificial limb.

The claimant is present in the Court and he uses crutches for moving as his right lower limb is amputated above knee.

The Tribunal has awarded Rs.1,38,000/- on account of medical expenses and the same is affirmed.

Before the unfortunate occurrence, Kamal Kumar was doing tailoring business at Ropar at the shop of his brother. In his testimony recorded on 01.09.2008, he had stated that he is unable to do tailoring work and any other work. He had to keep permanent attendant to look after him and his business at Rs.4,000/- per month. In cross examination, he stated that there were two employees at his shop before the accident.

The appellant filed an affidavit dated 27.09.2018. A relevant extract therefrom reads as follows:-

> "4. That due to the accident the deponent suffered loss in his tailoring business as he could not devote time for the same and ultimately the deponent had to close his business at Ropar

and now has shifted from Ropar to Patiala as his one of the son is doing some private service at Patiala.

5. That the deponent is incapable of doing tailoring work with Foot Paddle Machine as the lower limb of the deponent is amputed in accident. Now the deponent is fully dependent upon his son and doing nothing."

Counsel for the insurance company made a statement that there is no contest to contents of affidavit aforesaid with regard to the injured having stopped his tailoring business at Ropar and shifted to Patiala.

Counsel for the appellant would fairly inform that despite the appellant having shifted to Patiala, he occasionally does some tailoring job. Though the appellant has suffered amputation of right lower limb but he cannot be treated as totally impaired to do tailoring work. Taking a cumulative view of the aforesaid, interest of justice would be served if functional disability is assessed at 50% and loss of future income is assessed by extending benefit of addition in income for future prospects at the rate of 25%.

The appellant produced income tax returns, one filed before the occurrence and the other after the accident. The income tax return filed before the accident would be taken into consideration for assessing monthly income of the injured at the relevant time. As per income tax return Ex.109, total taxable income is Rs.70272.01 namely salary received from M/s Verma Cloth House Rs.24,000/-, interest income received from M/s Verma Cloth House Rs.10772.01 and income from tailoring Rs.35,500/-. The interest income would not be taken into consideration for assessing annual income and the same comes to Rs.59,500/- per annum. The injured was born on 06.10.1964 and he was 43 years old at the time of occurrence. The admissible multiplier is 14. Accordingly, loss of future income is calculated at Rs.5,20,625/- [Rs.8,33,000/- (Rs.59500/- x 14) + Rs.2,08,250/- (25% addition towards future prospects) x 50%].

The injured remained hospitalized for a period of about one month. He suffered fracture shaft of right femur with vascular injury. He underwent above knee amputation on 28.05.2007. The second surgery was done on 31.05.2007 when he was lying admitted in PGI, Chandigarh. During his hospitalization in Parmar Hospital, Ropar for the second time, skin grafting was done. Taking into consideration the nature of injuries sustained rendering him disable to the extent of 80% on account of amputation of right lower limb coupled with nature of treatment received during his treatment in PGI, Chandigarh and Parmar Hospital, Ropar, the appellant is awarded Rs.50,000/- for pain and sufferings. He is awarded Rs.30,000/- for loss of amenities of life.

Compensation allowed by the Tribunal for transportation, special diet, services of an attendant to the tune of Rs.90,000/- is affirmed. The claimant is allowed Rs.2,00,000/- for expenses of artificial limb. In this manner, total compensation is Rs.10,28,625/- and additional amount is Rs.6,40,625/- (Rs.10,28,625/- - Rs.3,88,000/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

NOVEMBER 13, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**
Whether speaking/reasoned : yes/no
Whether reportable : yes/no