

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

FAO No. 3058 of 2013

Date of decision:- 15.11.2019

Rajesh

...Appellant

Versus

Bhanwar Lal and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vijay Sangwan, Advocate for the appellant.

Mr. R.S. Sharma, 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 19.12.2013 passed by the learned Motor Accident Claims Tribunal, Narnaul (for short, 'the Tribunal') whereby claimant was awarded compensation of Rs.3,87,950/-.

The facts in brief are that on 20.10.2011, the claimant-appellant was going to Delhi from his house in village Banihari for selling mustard on his tractor trala bearing registration No. HR-35-F-8050 FarmTrack. When he reached at IFFCO Chowk flyover, then a truck bearing No. RJ-06-GB-2626, being driven by respondent No. 1 rashly and negligently came from back side and hit his tractor trala, as a result of which the tractor of the claimant fell down and the claimant sustained injuries on his person. F.I.R No. 136 dated 28.04.2011 under Sections 279/338/427 IPC was registered in P.S Sector 15/17, Gurgaon.

While assessing the compensation, the Tribunal awarded Rs.15,000/- towards pain and sufferings, Rs.8000/- towards special diet and attendant charges, Rs.17,950/- on account of transportation, Rs.2,87,778/-

towards cost of treatment and medical bills, Rs.50,000/- towards enjoyment of life, Rs.10,000/- towards loss of income. The appellant was awarded total compensation of Rs.3,87,950/-.

At the very outset, learned counsel for the appellant has referred to statement made by P.W.1 Dr. Dinesh Podar who stated that he found appellant suffering from permanent disability to the tune of 25% on account of range of motion of left ankle joint reduced by 70% deep complication. The disability certificate has been proved on file by Dr. Dinesh Podhar as Ex P1 which shows that such disability will deprive him from enjoying the life like a normal health person.

Learned counsel submits that due to this disability, the appellant who was doing agricultural work and was earning, will not be able to do the work properly now and thus, in this case multiplier method is to be applied for calculating the compensation.

Heard learned counsel for the parties.

It is not in dispute that there is disability of 25% with regard to left ankle of the appellant which is permanent in nature and appellant was doing the agricultural work.

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 doing the agricultural work and will face difficulty in now doing his work, his monthly income can be taken at Rs.5000/- per month for determining the compensation.

Applying the ratio of the above mentioned judgments, the compensation is re-assessed as under by taking the disability of the appellant at 30% qua whole body:-

HEAD	COMPENSATION AMOUNT
Salary (Income)	Rs.5000 per month
Annual Salary	Rs.5000X12=60,000/-
Loss on account of 30% disability	60000 X 30/100=Rs.18,000/-
Multiplier of 16	18000X16=2,88,000/-
Pain and sufferings	Rs.30,000/-

<i>HEAD</i>	<i>COMPENSATION AMOUNT</i>
Special Diet, and , Attendant Charges	Rs.10,000/-
Loss of enjoyment in life	Rs.50,000/-
Medical Bills	Rs.2,88,778/-
Transportation	Rs.20,000/-
Loss of income	Rs.10,000/-
Total compensation	Rs.6,96,778/-
Enhanced amount of compensation	696778-387950=Rs.3,08,828/- (rounded off to Rs.3,09,000/-)

The amount of compensation of Rs.3,09,000/- 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.

15.11.2019
G Arora

(***RITU BAHRI***)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No