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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1753 of 2014 (O&M)
Date of Decision: 04.04.2019

SATPAL SINGH **......Appellant**

Vs

INDER AND ORS. **.....Respondents**

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Roopak Bansal, Advocate
for the appellant.

Mr. Surinder Sharma, Advocate
for respondents No.1 and 2.

Mr. D.K. Dogra, Advocate
for respondent No.3.

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RAJ MOHAN SINGH, J. (Oral)

CM-5989-CII-2014

For the reasons mentioned in the application, the same is allowed. Delay of 49 days in re-filing the present appeal is condoned.

CM-5988-CII-2014

There is delay of 109 days in filing the present appeal.

Notice of this application was issued to the respondent.

The averments made in the application have not been controverted by the respondents.

After hearing learned counsel for the respondents, I deem it appropriate to condone the delay of 109 days in filing the appeal. The application is allowed.

<u>FAO No.1753 of 2014</u>

[1]. This appeal has been preferred by the injured/claimant against the inadequacy of award dated 14.01.2013 passed by the Motor Accident Claims Tribunal, Kapurthala (hereinafter to be referred as 'the Tribunal').

[2]. Brief facts are that the accident in question took place on 07.03.2008 at about 3.00 p.m., when the claimant was going on his motorcycle which was being driven by Sonu son of Gurdev Singh. When they reached near the Kaumpur gate, the offending vehicle (Maruti car) came in a rash and negligent manner, which was being driven by respondent No.1 struck against the motorcycle resulting in serious injuries on the person of the claimant.

[3]. After appreciating the material on record, the Tribunal has found that the injured/claimant has sustained permanent disability to the tune of 55% in relation to his legs, where he suffered fracture in both the legs due to the incident. There was shortening of his leg also. The injured/claimant remained hospitalized from 07.03.2008 to 07.05.2008. The Tribunal assessed an amount of Rs.1,34,387/- towards medical expenses incurred by the claimant. Permanent disability to the

tune of 55% was redressed by granting an amount of Rs. 2,000/- per percentage towards disability, thereby granting an amount of Rs.1,10,000/- under the head of permanent disability. For two fractures in the legs, an amount of Rs.15,000/- was assessed besides assessing an amount of Rs.20,613/- towards pain, shock and sufferings. In totality, an amount of Rs.2,80,000/- was awarded by the Tribunal as compensation along with interest @ 7% per annum from the date of filing of claim petition till final realization of the amount. Insurance Company was held liable to indemnify the injured. Insurance Company was further directed to deposit the amount within a period of one month from the receipt of copy of the award, failing which the claimant was held entitled to receive an amount of compensation with interest @ 10% per annum.

[4]. Learned counsel for respondent No.3/Insurance Company stated at the bar that the amount of compensation has been deposited by Insurance Company.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. Due to the accident, the injured/claimant has sustained permanent disability to the tune of 55% in relation to his legs. Compensation assessed by the Tribunal towards permanent disability on the basis of Rs.2000/- per percentage is found to

be in order. However, the Tribunal has not assessed loss of future income on the basis of permanent disability suffered by the injured/claimant. This head needs to be appreciated on the basis of multiplier method. In ***Govind Yadav vs New India Insurance Company Limited, 2011 (4) RCR (Civil) 817***, the Hon'ble Apex Court after considering all pros and cons held in detail and assessed the compensation in case of permanent disability towards six components:-

> *(1) Expenses relating to treatment, hospitalization, medicines, transportation, special diet and miscellaneous expenses.*
>
> *(2) Loss of earning and other gain which the injured would have got had he not been injured. This head includes:- loss of earnings during period of treatment and loss of future earnings on account of permanent disability.*
>
> *(3) Future medical expenses.*
>
> *(4) Non-pecuniary damages /general damages are also required to be assessed towards pain, suffering and trauma as consequent of the injuries.*
>
> *(5) Loss of amenities in life including loss of marriage prospects.*
>
> *(6) Loss of expectation of life i.e. shortening of longevity of life.*

[7]. In ***K. Suresh vs New India Assurance Company Limited and another, 2013(1) RCR (Civil) 213; G. Ravindranath @ R. Chowdary vs E. Srinivas and another, 2013(3) RCR (Civil) 934***; ***Rekha Jain vs National***

InsuranceCompany Limited, 2013(3) RCR (Civil) 996; Neerupam Mohan Mathur vs New India Assurance Company, 2013(4) Law Herald (SC) 3422 and ***Yadava Kumar vs The Divisional Manager, National Insurance Company Limited and another, 2010(4) RCR (Civil) 155***, it was held that in case of permanent disability, injured is entitled to grant of compensation towards permanent disability as well as for loss of future earning capacity. The determination of compensation for loss of earning capacity on the basis of multiplier method was held to be proper. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective standards. There cannot be a flight in fancy. The award should correspond to reasonableness and should be inconsonance with conventional sum. The endeavor should be made to award just compensation, keeping in view the sufferings of the injured person. The determination of just compensation cannot be equated to be a bonanza. It has to be based on application of fair and equitable principles. Reasonable approach should be adopted. Compensation towards permanent disability and loss of earning capacity, both were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of future earning capacity. A distinction has to be drawn between damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner, as if injury has not taken place.

[8]. In view of aforesaid, it is found that the appellant is entitled for both the components i.e. an amount of Rs.2000/- per percentage and a compensation for future loss of income on account of permanent disability. The appellant was 45 years of age at the time of accident. Permanent disability to the tune of 55% was in relation to both legs. If the aforesaid permanent disability is considered in relation to the whole body, the same can be reduced to 50%. In all fairness, the disability in relation to whole body can be considered to the tune of 28% for the purposes of assessing future loss of earning. For want of any proof of income of the claimant, even if he is taken to be a daily wager, his income can be assessed to be Rs.4,000/- per month. Monthly loss of income on the basis of 28% permanent disability would come to Rs.1120/- per month i.e. Rs.13,440/- per annum. In view of age of the claimant, multiplier of 14 would be just and appropriate. Therefore, loss of future income on account of permanent disability to the tune of 28% would come out to be

Rs.1,88,160/- (1120 x 12 x 14). In this way, the total amount under the permanent disability and loss of future income on account of permanent disability would come to Rs.2,98,160/- (1,10,000 + 1,88,160).

[9]. The compensation towards medical expenses is dependent upon nature of evidence produced by the claimant. The compensation to the tune of Rs.1,34,387/- is based on medical bills produced by the claimant, thus the same needs no enhancement. The finding qua the aforesaid head is affirmed.

[10]. So far as an amount of Rs.15,000/- assessed by the Tribunal towards fracture of legs of the injured/appellant is concerned, the finding under this head is affirmed.

[11]. The amount of Rs.20,613/- assessed towards pain, shock and sufferings, in my considered opinion, is on the lower side and the same needs to be enhanced to Rs.50,000/- keeping in view the nature of injuries and the period during which the claimant/injured remained hospitalized. In this manner manner, the total amount of compensation would come to Rs.4,97,547/- (2,98,160 + 1,34,387 + 15,000 + 50,000).

[12]. In this way the total amount of enhanced compensation would come out to be Rs.2,17,547/- (4,97,547 – 2,80,000). The enhanced amount would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the

same.

[13]. In view of aforesaid, the award is modified. Appeal stands disposed of.

April 04, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

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