**In the High Court of Punjab and Haryana at Chandigarh**

**FAO No. 1387 of 2015(O&M)**
**Date of Decision:30.4.2019**

**Abdul Ali**

**---Appellant**

**vs.**

**Gaurav Chopra and another**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr.Ashwani Arora, Advocate
for the appellant

Mrs. Swatantar Kapoor, Advocate
for the insurance company

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**Rekha Mittal, J.**

The claimant is in appeal seeking enhancement of compensation on account of injuries sustained in a motor vehicular accident that took place on 1.5.2012.

The Motor Accidents Claims Tribunal, Chandigarh (in short "the Tribunal") awarded Rs. 15,90,783/-, detailed hereunder:-

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|---|---|
| Medical charges | Rs. 30,383/- |
| Transportation charges | Rs. 10,000/- |
| Compensation for engaging an attendant | Rs. 10,000/- |
| Compensation for special diet | Rs. 10,000/- |
| Pain and suffering | Rs. 50,000/- |
| Compensation for loss of enjoyment | Rs. 50,000/- |
| Compensation for permanent disability | Rs. 13,82,400/- |
| Loss of income | Rs. 48,000/- |

Counsel for the appellant would argue that the Tribunal has assessed loss of future income to the tune of Rs. 13,82,400/- by applying multiplier of 18, functional disability to the extent of 80% and monthly income at Rs. 8000/- per month. It is argued that the injured was a driver by profession and has suffered amputation of leg, therefore, he can no more be a driver by profession. It is argued that loss of future income is liable to be assessed by considering functional disability to the extent of 100% and extending benefit of addition in income for future prospects @ 40%. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Syed Sadiq and others vs. Divisional Manager, United India Insurance Company 2014 (1) RCR (Civil) 765** and **Rajan vs. Soly Sebastian and others 2015(3) RCR(Civil)962.** Further reference has been made to judgments of Hon'ble the Supreme Court under the Workmen's Compensation Act, 1923 (in short "the Act") **Partap Narain Singh Deo vs. Shrinivas Sabata and another 1976(1) SCC 289, K.Janardhan vs. M/s United India Insurance Company Limited and another 2008(8) SCC 518.**

Counsel representing the insurance company, on the contrary, would argue that judgments rendered by Hon'ble the Supreme Court while dealing with grant of compensation under the Act can not be applied to cases under the Motor Vehicles Act, 1988 (in short "the MV Act"). To bring home her contention, it is argued that under the Act, a specific criteria has been prescribed as to how injury resulting in permanent disablement is to be viewed in the context of loss of earning capacity in the light of provisions of Schedule-I appended thereto. It is further argued that expression 'total disablement' has been defined in Section 2(1)(l) of the Act but that is not so under the MV Act.

To refute contention of the claimant with regard to treating functional disability to the extent of 100% or allowing addition in income for future prospects, it is argued that a two Judge Bench of Hon'ble the Supreme Court in **Raj Kumar vs. Ajay Kumar and another 2011(2) R.C.R.(Civil) 101** has taken note of illustration 'B' incorporated in para 14 of the judgment whereby the driver suffered amputation of hand rendering him disable to drive a vehicle and permanent disability was assessed to the tune of 60% but the Tribunal assessed loss of future earning capacity as 75% and computed loss of future earning by applying multiplier method. It is argued that in **Raj Kumar's case (supra),** Hon'ble the Supreme Court has approved the criteria adopted in the said case wherein the Tribunal has held that chances of getting any other employment by the victim are bleak and even if he got any job, the salary was likely to be pittance. It is further argued that as the victim would be entitle to 80% of his salary, to be earned by him over the next 18 years, in one go and he would be entitle to invest the same for earning further income, contention of the appellant for allowing addition in income for future prospects is not sustainable. It has further been argued that in **Neerupam Mohan Mathur vs. New India Assurance Company 2013(4) RCR (Civil) 268** relied upon by the appellant in the grounds of appeal, Hon'ble the Supreme Court affirmed loss of earning capacity to the extent of 70% in a case where the claimant was B.Sc. and Diploma Holder in Mechanical Engineering and due to amputation of one arm, his services were terminated by his employer.

I have heard counsel for the parties and perused the paper book particularly the award.

The Tribunal, in para 21 of the award, has noticed that the appellant has suffered 80% disability. Doctor had stated that the appellant may have difficulty in doing job of a driver. The permanent disability assessed by the Medical Board is functional disability. The appellant will find difficulty to do prolonged sitting, sit in a particular posture for long, squatting and climbing stairs. It was held that a man with amputated leg can not safely drive a vehicle even after fixation of artificial limb. Taking into consideration the aforesaid, the Tribunal assessed future loss of income to the tune of Rs. 13,82,400/-.

In **Raj Kumar's case (supra),** a land mark judgment on the question of payment of compensation in injury cases that also finds reference in **Neerupam Mohan Mathur's case (supra)** and **Syed Sadiq and others' case (supra),** Hon'ble the Supreme Court did not extend benefit of addition in income for future prospects. As has rightly been argued by counsel for the insurance company, the court rather made reference to illustration 'B', a case in which a driver who had suffered amputation of hand rendering him misfit to drive a vehicle was allowed loss of earning @ 75%. In **Neerupam Mohan Mathur's case (supra),** Hon'ble the Supreme Court approved judgment of the High Court determining loss of earning capacity to the extent of 70% in a case wherein victim's services were terminated on account of amputation of one arm.

In **Syed Sadiq and others' case (supra) in Civil Appeal @ M.F.A. No. 1133 of 2011,** the victim was a cleaner of lorries by profession. He suffered 22% permanent disability to upper limb and 29% to the lower limb. The High Court calculated functional disability to 13%. Hon'ble the Apex Court held that it is evident from material evidence produced on record that the appellant-claimant had suffered comminuted fracture in the accident as a result of which he will not be able to bend, stretch or rotate his right hand. He will also not be able to lift heavy material which is so essential to carry on with his business to earn his livelihood. The Court expressed its inclination to observe that the appellant suffered functional disability to the extent of 85%. In para 23 of the judgment, it was held that based on legal principle laid down by the Court in various cases, appellant is entitle to 50% increment for future loss of income. The judgment was rendered by the Court on 16.1.2014. Counsel for the appellant has not referred to any previous judgment by the Court wherein addition in income for future prospects was allowed. In this view of the matter, it can safely be held that Hon'ble the Apex Court, in view of peculiar facts of the case, allowed increment for future loss of income. In **Rajan's case (supra)**, the High Court came to the conclusion that the appellant suffered total permanent disability to the extent of 100% in respect of his earning capacity and in those circumstances, the appellant was extended benefit of future prospects.

The injured suffered amputation of one leg rendering him unable to pursue his profession as a driver. He will have difficulty to do prolonged sitting or to sit in a particular posture for long. He would also have difficulty in squatting and climbing stairs. However, it is difficult to believe that for the rest of his life, he can afford to sit idle or not do any work for earning his livelihood. In the given circumstances, it is difficult to accept contention of the appellant that loss of earning capacity should be taken as 100% and appellant should be extended benefit of addition qua future prospects. As has been rightly argued by counsel for the insurance company, he has been paid loss of income to the tune of Rs. 13,82,400/- which he would have earned over the next 18 years of life. In this view of the matter, I do not find merit in contention of the appellant that he is entitle to additional compensation qua loss of income on account of permanent disability. The Tribunal has awarded a sum of Rs, 50,000/- for loss of enjoyment of life, in addition to loss of future income. However, the appellant is awarded a sum of **Rs. 1,00,000/-** with regard to price of artificial limb and loss of matrimonial prospects. The additional amount of Rs. 1,00,000/- shall carry interest @ 7.5% per annum from the date of petition till realization.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

**(Rekha Mittal)**
**Judge**

**30.4.2019**
paramjit

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