

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

FAO No.1482 of 2015 (O&M)

Date of decision: 18.12.2019

Parveen Kumar

....Appellant

Versus

Nafe Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Sharma, Advocate,
for the appellant.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide award dated 01.11.2014 on account of injuries received by him in a motor vehicular accident which took place on 30.01.2011.

Brief facts of the case are that on 30.01.2011, claimant-appellant (Parveen Kumar), while driving dumper bearing registration No. HR-45-A-2533, was coming to Karnal from village Kunjpura. When he reached near *Peer Baba* in the area of village Kunjpura, a truck bearing registration No. HR-45-5018 being driven by Nafe Singh-respondent No.1, was coming from the side of Karnal. Meanwhile, all of a sudden, a *Neel Cow* appeared on the road and in order to save the cow, the accident took place, as a result of which, claimant-appellant received multiple, serious and grievous injuries. After the accident, he was taken to General Hospital,

Karnal, from where, he was taken to Virk Hospital, Karnal. With regard to the accident, DDR No.30 was registered at Police Station, Kunjpura. Consequently, the claimant-appellant filed a claim petition under Section 163-A of the Motor Vehicle Act 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 use of both the vehicles i.e. dumper bearing registration No. HR-45-A-2533 as well as truck bearing registration No. HR-45-5018 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 Parveen Kumar-claimant (PW-3). Apart from this, claimant has also proved on record documents Ex.P1 to Ex.P22. Ultimately, the claim petition was accepted by the Tribunal and compensation was assessed as under:-

Sr. No.	Heads	Amount (Rs.)
1.	Pain and sufferings	Rs.5000/-
2.	Medical expenses	Rs.58,066/-
3.	Loss of income due to permanent disability	Rs.78,408/-
	Total	Rs.1,41,474/-

Hence, the claimant was found entitled to a total compensation of Rs.1,41,474/- along with interest at the rate of 7.5% 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 after the accident, claimant-appellant has suffered disability to the extent of 22%, therefore, compensation for disability should have been granted after applying the method of income criteria as per .

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 use of both the vehicles i.e. dumper and the truck. As per deposition of Dr. Vinod Kumar, Medical Officer, Govt. Hospital, Karnal (PW-1), who was member of the Medical Board, claimant-appellant was found to be an old case of road side accident with operated case of right patella and left leg bones with implant in situ with partial restrictions of right knee movement with limping with foot drop right side and the disability was assessed to the extent of 22%. He proved the disability certificate as Ex.PW1/A. During cross-examination, he stated that the disability was qua a particular limb.

In the facts of the present case, claimant-appellant was working as a driver with respondent No.4 i.e. registered owner of the dumper bearing No.HR-45-A-2533. Keeping in view that as per disability certificate Ex.PW1/A, there was partial restrictions of right knee movement with limping with foot drop right side, this disability would deprive the claimant to do the job of driver. Hence, the functional disability, in this case, is being taken as 40%. Income of claimant-appellant is assessed as Rs.3300/- per month. Since the claimant was 24 years of age at the time of accident, multiplier of 18 has to be applied. After applying the multiplier of 18, loss of income due to permanent disability comes to $\text{Rs.}3300 \times 40/100 \times 12 \times 18 = \text{Rs.}2,85,120/-$. 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	Pain and sufferings	Rs.50,000/-
2	Medical expenses	Rs.58,066/-

3	Compensation for loss of earnings on account of permanent disability.	Rs.2,85,120/-
4	Special diet	Rs.15,000/-
5	Transportation charges	Rs.10,000/-
6	TOTAL COMPENSATION AWARDED	Rs.4,18,186/-
	Enhanced amount of compensation	Rs.4,18,186 – 1,41,474 = Rs.2,76,712/-

The enhanced amount of compensation of **Rs.2,76,712/-** 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

18.12.2019
ajp

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