

FAO No. 1698 of 2015 (O&M) .

-1-

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

FAO No. 1698 of 2015 (O&M)
Date of Decision: September 03, 2019

Chander Pal

..... Appellants(s)

Versus

Jitender Kumar and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Akash Vashishth, Advocate for
Mr. Sanjay Vashishth, Advocate
for the appellant.

Respondents No. 1 and 2 already ex-parte
vide order dated 01.02.2016.

Mr. Pradeep Kumar, Advocate
for respondent no.3.

LISA GILL, J.

This appeal has been filed by the appellant-claimant seeking enhancement of the compensation awarded to him vide award dated 09.10.2014, passed by learned Motor Accident Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal) on account of injuries suffered by him in the motor vehicle accident, which took place on 08.08.2013.

Petition under Section 166 of the Motor Vehicles Act was filed by the appellant-claimant seeking compensation on account of injuries received by him in the motor vehicle accident which took place on 08.08.2013, due to the rash and negligent driving of the offending car

bearing registration No. HR-30-K-7300, by its driver Jitender Kumar-respondent no.1. It is pleaded that the appellant was a partner to the extent of 1/3rd of the firm M/s. Om Aluminium & Glass Decorators Mitrol. The claimant it is pleaded was earning a sum of Rs.13,500/- per month besides earning another sum of Rs.10,000/- per month by independently doing work of glass decoration in newly constructed houses. The appellant suffered amputation of his left leg above the knee. Compensation was thus claimed.

Learned Tribunal on considering the evidence on record concluded that the appellant sustained injuries leading to amputation of his leg in the said motor vehicle accident caused due to the rash and negligent driving of the offending vehicle, by its driver, respondent no.1 - Jitender Kumar. Learned Tribunal observed that the claimant failed to prove that he is a partner in the firm M/s. Om Aluminium & Glass Decorators Mitrol. His income was assessed to be Rs.5,000/- per month with reference to the minimum wage of an unskilled labourer. Learned Tribunal awarded a sum of Rs.5,48,939/- as compensation to the claimant, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Medicines and Medical treatment	7,609/-
2.	Loss of earnings during the period of treatment	1,330/-
3.	Loss of future earnings on account of permanent disability	5,10,000/-
4.	Pain and suffering, loss of amenities of life	10,000/-
5.	Conveyance and special diet	20,000/-
	Total	5,48,939/-

FAO No. 1698 of 2015 (O&M) .

-3-

Learned counsel for the appellant vehemently argues that there is sufficient evidence on record to prove that the appellant is a partner of M/s. Om Aluminium & Glass Decorators Mitrol. It is further submitted that disability of the appellant in this case is 100% as he has lost his limb. Moreover, increment on account of future prospects has not been afforded and meagre compensation has been afforded under the conventional heads. It is, thus, prayed that the compensation be enhanced.

Learned counsel for the insurance company while refuting the arguments raised by learned counsel for the appellant submits that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no further enhancement. It is contended that increment on account of future prospects is not to be afforded in each and every case. He relies upon the judgment of Hon'ble Supreme Court in **Anant Vs. Pratap 2018(4) RCR(Civil) 124** and a judgment of this Court in **HDFC Ergo General Insurance Co. Ltd. Vs. Mayank Raj and others**, dated 05.07.2019 in FAO No. 18 of 2015. Dismissal of this appeal is prayed for.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

There is no dispute regarding the appellant/claimant having received injuries in the accident in question, which led to the amputation of his left leg above the knee. It is a matter of record that the appellant was first taken to Guru Nanak Hospital, Palwal and thereafter, referred to J.P.N. Apex Trauma Center, Delhi and amputation of his leg was carried out. Disability certificate Ex.P12 has been duly proved on record. There is no

FAO No. 1698 of 2015 (O&M) .

-4-

dispute that there is amputation of the left leg above the knee. The discharge summary and the medical record has been duly proved on record by PW6 Aditya Swaroop, Medical Record Technician, J.P.N. Trauma Center, AIIMS, New Delhi. The appellant has claimed himself to be a partner to the extent of 1/3rd in the firm M/s. Om Aluminium & Glass Decorators Mitrol. The only document relied upon to prove the same is a certificate Ex.P11 issued by PW-4 Mam Chand to the effect that the claimant is a partner in a firm namely M/s. Om Aluminium & Glass Decorators Mitrol. A copy of the bank statement, Form Vat-R1, trading account of the firm in question and certain documents pertaining to the Excise and Taxation Department in respect to the said firm are available on record as marked documents but none of the said documents indicate the appellant to be a partner in the said firm. Learned counsel for the appellant is unable to point out any evidence on record to indicate the appellant was a partner to the extent of 1/3rd in the said firm. In this view of the matter, learned Tribunal has correctly discarded the plea of the appellant being a partner of the said firm and assessed his income with reference to the minimum wage of an unskilled labourer. However, it is a matter of record that the minimum wage in the State of Haryana at the relevant time was Rs.5,341/- per month and not Rs.5,000/- per month. Therefore, income of the appellant is assessed as Rs.5,350/- per month instead of Rs.5,000/-.

Learned Tribunal has assessed disability of the appellant to be 50% and afforded loss of future earnings accordingly. The appellant as per the medical certificate and statement of PW5 Dr. Vipin, Medical Officer,

FAO No. 1698 of 2015 (O&M) .

-5-

GH/CHC, Hodal has undoubtedly suffered 80% permanent disability. PW5 has stated that the working capacity was reduced to 80% of the whole body for walking and that the appellant would be able to walk after affixation of an artificial leg though the efficiency and efficacy of the same is not commented on. There is indeed no evidence on record to indicate that functional disability of the claimant is more than 50%. There is no indication regarding the nature of the work being carried out by the appellant neither is there any evidence on record to show his qualifications, if at all.

Loss of income is to be worked out in terms of the guidelines of the judgment of Hon'ble Supreme Court in **Sayed Sadiq etc. Vs. Divisional Manager, United India Insurance Company, 2014(1) RCR (Civil) 765.** Functional disability suffered by the appellant is 50% in this case. Therefore, loss of income is assessed as Rs.2,675/- per month (50% of Rs.5,350/-).

I do not find any merit in the argument raised by learned counsel for the insurance company to the effect that increment on account of future prospects should not be afforded in this particular case. The Hon'ble Supreme Court in **Anant's** case (supra) has specifically observed that in case of the permanent disability suffered by the sole bread earner of the family, it is not only the victim but also the family which faces the trauma. In the present case, the appellant has a dependent wife and five children. The Hon'ble Supreme Court in **Jagdish Vs. Mohan and others 2018(2) RCR (Civil) 308** has afforded increment on account of future prospects to the

FAO No. 1698 of 2015 (O&M) . -6-

claimant in the said case who suffered 90% permanent disability. As the appellant in the present case was admittedly 30 years old at the time of the accident, 40% increment on account of future prospects is afforded, taking the amount to $[(2,675+1070 (2,675 \times 40\%)) = \text{Rs.}3,745/-$ per month i.e. Rs.44,940/- per annum. Multiplier of 17 is to be applied. Loss of earnings is, thus, assessed as Rs.7,63,980/- $[44,940 \times 17]$.

The amount awarded by the learned Tribunal on account of medicines/medical treatment i.e. Rs.7,609/-. Rs.10,000/- each for special diet and conveyance as assessed by the learned Tribunal is maintained. Instead of Rs.10,000/- each afforded by learned Tribunal on account of pain & suffering as well as loss of amenities of life, the appellant is entitled to a sum of Rs.50,000/- each on both these counts. Appellant is also entitled to a sum of Rs.10,000/- on account of attendant charges. The appellant is further entitled to Rs.1,00,000/- for the artificial limb.

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

Sr. No.	Heads	Calculations
1.	Medicines and Medical treatment	7,609/-
2.	Loss of future earnings on account of permanent disability	7,63,980/-
3.	Pain and suffering	50,000/-
4.	Conveyance charges	10,000/-
5.	Special diet	10,000/-
6.	Loss of amenities of life	50,000/-
7.	Attendant charges	10,000/-
8.	Artificial limb	1,00,000/-
	Total	10,01,589/-

FAO No. 1698 of 2015 (O&M) .

-7-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

September 03, 2019.

Sunil

**(LISA GILL)
JUDGE**

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