

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

Date of decision: 05.07.2019

FAO No.18 of 2015 (O&M)

HDFC Ergo General Insurance Co. Ltd. ... Appellant

Versus

Mayank Raj and others ... Respondents

FAO No.1945 of 2015 (O&M)

Mayank Raj ... Appellant

Versus

Gurpreet Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Goyal, Advocate
for the insurance company.

Mr. Vipul Sharma, Advocate
for the claimant.

Mr. Vijay Kumar, Advocate for
Mr. Mohit Jaggi, Advocate
for respondent No.1 in FAO No.1945 of 2015
for respondent No.2 in FAO No.18 of 2015.

REKHA MITTAL, J.

This order will dispose of FAO Nos.18 and 1945 of 2015 as these have emerged out of the same award dated 13.10.2014 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been assessed on account of injuries sustained by Mayank Raj in a motor vehicular accident that took place on 10.02.2011.

FAO No.18 of 2015 has been filed by the HDFC Ergo General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been preferred by the claimant seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred to assail only quantum of compensation assessed by the Tribunal.

The Tribunal awarded Rs.16,95,000/-, detailed hereunder:-

Transportation charges	Rs.10,000/-
Special diet	Rs.5000/-
Pain and sufferings and loss of amenities of life	Rs.1,00,000/-
Attendant charges	Rs.20,000/-
Loss of future earning capacity	Rs.9,72,000/-
Future expenditure on prosthesis	Rs.4,58,000/-
Loss of marriage prospects	Rs.1,00,000/-
Compensation for additional fee	Rs.30,000/-

Counsel for the insurance company has assailed quantum of compensation primarily on two grounds. It is argued that the Tribunal has assessed future loss of income by extending benefit of addition in income for future prospects to the tune of 50%. It is argued that the victim was a student of Institute of Hotel Management and Catering Technology, Chandigarh and about to complete his three years degree course in Hospitality and Hotel Administration. It is argued that the Tribunal has assessed notional income @ Rs.10,000/- per month which is on higher side. It is further argued that disability suffered by the victim would neither render him

totally immobile nor would make him incapacitated to perform sitting job. It is argued that in the given circumstances, respondent-claimant is not entitle to addition in income for future prospects.

Another submission made by counsel is that price of artificial limb is Rs.2,29,000/- but the Tribunal has extended benefit of double of the price by allowing a sum of Rs.4,58,000/- on account of expenditure on prosthesis.

Counsel representing the respondent/claimant, on the contrary, has supported the award with regard to extending benefit of future prospects. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **V. Mekala Vs. M. Malathi and another, 2014 (2) RCR (Civil) 880, Jagdish Vs. Mohan and others, 2018(2) RCR (Civil) 308 and New India Assurance Co. Ltd. Vs. Gajender Yadav and others, 2017(3) RCR (Civil) 974.**

Counsel for the insurance company, in reply, would argue that there is no such judgment rendered by the Apex Court that lays down as a principle in law that benefit of future prospects is to be extended in every case where the victim has sustained permanent disability resulting from accidental injuries. It is further argued that every case is to be examined in view of peculiar facts and circumstances for allowing just and reasonable compensation. He would further argue that no benefit of future prospects was allowed by Hon'ble the Supreme Court in the landmark judgment **Raj Kumar Vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101.** In support

of his contention, he has further relied upon **Sri Kumaresh Vs. The Divisional Manager National Insurance Co. Ltd. and another, 2011(2) RCR (Civil) 913, Tejinder Singh Gujral Vs. Inderjit Singh and another, 2007(1) SCC 508 and Anant Son of Sidheshwar Dukre Vs. Pratap Son of Zhamnnappa Lamzane and another, Civil Appeal No.8420 of 2018 (arising out of SLP (Civil) No.1159 of 2018), decided on 21.08.2018.**

I have heard counsel for the parties, perused the paper book, records of the Tribunal and judgments cited at bar.

Before advertng to the submissions made by counsel for the parties, it is pertinent to mention that there is no enunciation in law to extend benefit of future prospects in every case, whether the injured has suffered disability to a particular limb or even functional disability, meaning thereby that every case is to be decided in view of peculiar facts and circumstances but in the light of fact that the Tribunal owes an obligation to assess just and reasonable compensation.

In the case at hand, indisputably, the injured was a student of 3rd year in Institute of Hotel Management and Catering Technology, Chandigarh and about to complete his three years degree course in Hospitality and Hotel Administration.

Dr. Neeraj Gupta, Orthopedic Surgeon, GMCH- 16, Chandigarh, PW4 was examined to prove disability and disability certificate Ex.PW4/A. He has deposed that it was a case of amputation of right lower limb below knee upto 14 cms and disability is 65%. In cross

examination, a relevant extract from his testimony, reads as follows:-

I am aware that the patient had got artificial limb implanted in the injured leg. After the implantation, the patient can walk normally, again said at normal pace but the patient will have problem in standing for long time and running. It is incorrect to suggest that implants can compensate for a normal natural limb. The patient can perform his day to day chores after the implantation. It is incorrect to suggest that the disability is not of permanent nature and shall reduce by passage of time.

Perusal of testimony of Dr. Neeraj Gupta leaves no doubt that he has not expressed any opinion as to how disability qua a particular limb on account of amputation of right lower limb upto 14 cms. is to be treated for the purpose of functional disability much less in the context of educational background of the victim. The doctor has not expressed opinion that even after implant, the patient will limp or the disability will adversely affect his physical appearance. However, on due consideration of facts elicited in cross examination of Dr. Neeraj Gupta, it is evident that after the implant, the injured can walk normally and at normal pace but will have problem in standing for long time and running.

The Tribunal in para 28 of the judgment has held, reads thus:-

In the Hospitality and Hotel Industry, physical attributes and personality count a lot and the amputation of right lower limb would greatly affect the career prospects of the claimant. Though, despite his amputation, he would still be able to perform in a stationary, sitting job, he is incapacitated to a great extent from doing jobs which require

mobility. The loss of right lower limb has affected claimant's future prospects to a considerable extent. In the circumstances of the case, I would take the loss of earning capacity to 30%.

The Tribunal thereafter proceeded to assess future loss of income to the tune of Rs.9,72,000/- by taking his monthly income @ Rs.10,000/- per month in view of discussion in para 26 of the judgment, extending benefit of future prospects @ 50%, functional disability to the tune of 30% and applying multiplier of 18. As has been noticed hereinbefore, no such opinion has been given by Dr. Neeraj Gupta that even after implant, disability suffered by the victim would affect his personality or disability can be noticed on visual observation. There is no denial that in injury cases, the Court has to assess compensation by taking into consideration various factors including guess work, hypothesis etc. as has been held by Hon'ble the Supreme Court in **R.D. Hattangadi vs. M/s Pest Control (India) Private Limited, AIR 1995 (SC) 755**. Taking a cumulative view of the aforesaid, in my considered opinion, interest of justice would be served, if future loss of earning is assessed by treating functional disability to the extent of 35% but without extending benefit of future prospects. However, the notional income assessed by the Tribunal is affirmed. Accordingly, future loss of income is assessed at Rs.7,56,000/- (10,000 x 12 x 18 x 35%).

Sanjay Kumar, Technician, Deep Artificial Limb Center, PW2 proved that artificial limb was implanted on 07.09.2012 and claimant spent Rs.2,29,000/- as per bill Ex.PW2/B. The Tribunal has awarded additional sum of Rs.2,29,000/- for future expenditure of prosthesis with the

observations that interest on the additional amount would take care of expenditure on prosthesis to be incurred in later years.

Sanjay Kumar PW2 had stated that life of artificial leg is approximately 3 to 4 years and there is silicon socket that requires replacement after one year at the cost of Rs.27,000/-. Keeping in view the above, I do not find any reason to interfere in findings allowing additional sum of Rs.2,29,000/- for future expenditure on prosthesis.

The Tribunal has awarded Rs.5000/- for special diet. In view of nature of injuries coupled with period of treatment, the claimant is awarded additional sum of Rs.5000/- for special diet. Compensation allowed by the Tribunal with regard to transportation charges, pain and sufferings and loss of amenities of life, attendant charges, loss of matrimonial prospects and additional fee is affirmed. In this manner, total compensation is Rs.14,84,000/- and compensation awarded by the Tribunal is reduced to the extent of Rs.2,11,000/- (16,95,000 - 14,84,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

In view of what has been discussed hereinbefore, the appeal preferred by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the claimant is dismissed, leaving the parties to bear their own costs.

05.07.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No