

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

**FAO No.2038 of 2015 (O&M)  
Date of decision: 22.08.2019**

Parvesh Kumar

....Appellant

Versus

Yogesh Kumar and others

....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Tapan Kumar Yadav, Advocate,  
for the appellant.

Mr. J.P. Sharma, Advocate,  
for respondent Nos. 1 and 2.

Mr. Rahul Pathania, Advocate,  
for Mr. R.C. Kapoor, Advocate,  
for respondent No.3-Insurance Company.

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**RITU BAHRI J. (Oral)**

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') vide award dated 30.10.2014, on account of injuries received by him in a motor vehicular accident which took place on 11.05.2013.

Brief facts of the case are that on 11.05.2013, claimant-appellant (Parvesh) along with Smt. Anjubala was going to Narnaul on a motorcycle bearing registration No. PB-11-AC-4174. When they reached near Saraswati Senior Secondary School, Nasibpur, in the meantime, one Bolero vehicle bearing No. HR-66-4723 being driven by Yogesh Kumar-respondent No.1 in a rash and negligent manner, came from a street and struck against the motorcycle, as a result of which, both the occupants of

motorcycle fell down and received serious, multiple injuries. After the accident, claimant-Parvesh was taken to Government Hospital, Narnaul, from where he was referred to some higher institute. However, he was taken to SMS, Hospital, Jaipur, where he remained admitted from 11.05.2013 to 24.05.2013. With regard to the accident, FIR No.252 dated 28.05.2013, under Section 279/337 IPC was registered against driver-respondent No.1 at Police Station, City, Narnaul. Consequently, the claimant-appellant filed a claim petition 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 rash and negligent driving of offending vehicle by its driver-respondent No.1 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 Parvesh Kumar-claimant (PW-8) and Anju Bala (PW-9). Apart from this, claimant has also proved on record copy of FIR Ex.PW5/A and report under Section 173 Cr.P.C. Ex.PW5/B. Ultimately, the claim petition was accepted by the Tribunal and the claimant was found entitled to a lump-sum compensation of Rs.3,00,000 /- along with interest at the rate of 9% 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 as per disability certificate Ex.PW1/A, claimant has suffered disability to the extent of 80% on account of amputation of left leg upto the level of lower 1/3<sup>rd</sup> of thigh. He further argued that compensation for disability should have been granted after applying the method of income criteria.

I have heard learned counsel for the parties and perused the

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 rash and negligent driving of the offending vehicle by its driver.

Hon'ble the Supreme Court in **Sayed Mehaboob vs. New India Assurance Co. Ltd.**, 2012 (8) RCR (Civil) 721 had examined a case, where the claimant had suffered 86% disability on account of shortening of leg by 2.5 inches. In that case, the appellant was unable to use both his legs for driving. The Tribunal had assessed the functional loss of future earning capacity of the appellant to the extent of 100% and awarded compensation accordingly. On appeal, the High Court assessed the total bodily disability at 30% and reduced the compensation, which was awarded by the Tribunal. Hon'ble the Supreme Court, after taking into consideration the relevant factors, upheld the award passed by the Tribunal and set aside the judgment of the High Court being arbitrary in nature. The aforesaid judgment has been followed by this Court in **Ms. Nisha Rani vs. State of Haryana and others**, FAO-4527-2016 (decided on 20.12.2017). In that case, claimant was 21 years of age at the time of accident and was unmarried. As per disability certificate, she had suffered 30% permanent physical impairment and her left leg had been shortened. Keeping in view the nature of disabilities suffered by the appellant (in that case) and in view of the judgment passed in **Sayed Mehaboob's case** (supra), the functional loss of future earning capacity of appellant-Nisha Rani was estimated at 50% and compensation was assessed after applying the method of income criteria.

In the facts of the present case, as per disability certificate

Ex.PW1/A, left leg of claimant has been amputated upto the level of lower

thigh and he has suffered disability to the extent of 80%. Before the accident, claimant was working as driver with Baba Khetanath School, Sihma. Now, he is not able to do his previous job. The functional loss of future earning capacity of appellant-Parvesh Kumar is being assessed at 80% and the compensation is being assessed by applying the method of income criteria. The accident had taken place on 11.05.2013. Accordingly, income of injured-appellant, who was working as driver, is being assessed as Rs.6000/- per month as that of a skilled labourer. In this income, 40% addition is made on account of future prospects. By doing so, total income comes to Rs.8400/- per month. Since the claimant was 25 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 Rs.8400 x 80/100 x 12 x 18 = Rs.14,51,520/-. 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       | Medical expenditure as per bills Ex.P1 to Ex.P5    | Rs.8472/-                                       |
| 2       | Compensation for loss of earnings on account of 80 | Rs.14,51,520/-                                  |
| 3       | Compensation for future treatment                  | Rs.1,00,000/-                                   |
| 4       | Special diet                                       | Rs.10,000/-                                     |
| 5       | Attendant charges                                  | Rs.10,000/-                                     |
| 6       | Pain and sufferings and transportation             | Rs.15,000/-                                     |
| 7       | <b>TOTAL COMPENSATION AWARDED</b>                  | <b>Rs.15,94,992/-</b>                           |
|         | <b>Enhanced amount of compensation</b>             | <b>Rs.15,94,992 – 3,00,000 = Rs.12,94,992/-</b> |

The enhanced amount of compensation of **Rs.12,94,992/-** 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**

22.08.2019  
ajp

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