

FAO No. 402 of 2014 (O&M)
FAO No. 553 of 2014 (O&M)

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

FAO No. 402 of 2014 (O&M)
Date of Decision: 18.01.2019

Dr. Kamlesh Bhalla

-Appellant

Vs

M/s G.T. Roadways and others

-Respondents

FAO No. 553 of 2014 (O&M)

The Oriental Insurance Company Limited

-Appellant

Vs

Dr. Kamlesh Bhalla and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajesh Arora, Advocate,
for the appellant (in FAO-402-2014)
for respondent No.1 (in FAO-553-2014).
Mr. Sanjiv Pabbi, Advocate,
for respondent N.3 (in FAO-402-2014)
for the appellant (in FAO-553-2014).

RAJ MOHAN SINGH, J. (ORAL)

Vide this common order, FAO No. 402 of 2014 (O&M)
titled 'Dr. Kamlesh Bhalla vs M/s G.T. Roadways and others' and
FAO No. 553 of 2014 (O&M) titled 'The Oriental Insurance
Company Limited vs Dr. Kamlesh Bhalla and others' are being
decided.

Since both the appeals have arisen out of one

accident, therefore, common facts are being noticed.

Appellant received injuries in vehicular accident which took place on 13.12.2011. Appellant was serving as a doctor at the time of accident. Her monthly income was assessed to be Rs.35,000/- per month by the Motor Accident Claims Tribunal.

As per latest permanent disability certificate dated 16.12.2016 received on record in pursuance of order passed by this Court on 11.11.2016, permanent disability of the appellant was assessed to be 70%.

The Board has opined that the appellant has right upper limb brachial flexus injury. Her MRI shows atrophic brachial plexus roots & nerves. Right upper limb is flail & functionally useless with some finger & wrist movements.

The Tribunal while assessing the compensation took functional disability of the appellant to be 70% and calculated the amount under different heads viz an amount of Rs.26,46,000/- as future loss of income. The Motor Accident Claims Tribunal has deducted an amount of Rs.4,20,862/- towards Mediclaim policy from Rs.9,07,968/-. Remaining amount of Rs.4,87,106/- was assessed towards medical expenses. An amount of Rs.15,000/- towards food, transportation and miscellaneous expenses was assessed and

an amount of Rs.50,000/- was assessed towards pain and suffering. Besides the aforesaid amount, an amount of Rs.30,000/- was assessed towards loss of expectations and other amenities in life. In this way, total amount of compensation was assessed to be Rs.32,28,106/-. The aforesaid amount was payable with interest @ 7.5% per annum from the date of filing of claim petition till final realization of the amount.

Learned counsel for the appellant submitted that deduction to the extent of Mediclaim policy is wholly illegal inasmuch as that policy was availed by the appellant after paying premium and in view of ratio laid down in **Manoj Kumar Yadav vs Azad and others, 2015(3) PLR 211 (P&H)**, the said amount is not deductible.

The aforesaid view was taken by the High Court after following the ratio of judgment passed by the Apex Court in **Helen C. Rebello and others vs Maharashtra State Road Transport Corporation and another, 1998 AIR (SC) 3191** and **National Insurance Company Limited vs Bijomon, 2011(10) ACJ 546 (Kerala)** and **National Insurance Company Limited vs Aman Kapur and others, 2014 ACJ 1342.**

Learned counsel further submitted that in case of injury, head under permanent disability has to be considered on two considerations. Firstly, for disfigurement of the body, an

amount of Rs.2000/- per percentage has to be calculated and second component has to be considered towards loss of future income on account of permanent disability. The first component has not been considered and no amount was awarded on the basis of amount of Rs.2000/- per percentage.

Learned counsel further submitted that the award made by the Tribunal under heads of transportation, special diet and miscellaneous expenses is also on the lower side. Pain and suffering of the appellant have been inadequately answered by awarding an amount of Rs.50,000/- only.

Per contra, learned counsel for respondent No.3 has vehemently objected to the plea of enhancement and submitted that appellant was only a temporary employee who was not even confirmed in job. The appointment letter of the appellant dated 19.11.2011 was suggestive of the fact that her appointment was adhoc in nature. No material has been produced on record to show that the appellant was ever employed somewhere prior to the appointment in question.

Secondly, learned counsel submitted that in case of injury, there cannot be any future prospects as suggested by the appellant and the Mediclaim policy has to be considered for the deduction of the amount from total computation towards medical expenses.

Learned counsel further submitted that earning towards future loss on account of permanent disability cannot be computed @ Rs.35,000/- per month as the appellant was 60 years of age at the time of accident.

I have considered the submissions made by learned counsel for the parties and have also perused the record.

The appellant was 60 years of age at the time of accident. Her employment certificate shows that she was employed on a monthly salary of Rs.35,000/- per month prior to accident on 19.11.2011. Certificate of permanent disability issued by the Medical Board suggested that the appellant was having permanent disability to the tune of 70% and the said disability was opined to be functional disability, though the nature of injuries were defined by the Board in the certificate itself.

Keeping in view the totality of facts and circumstances, I deem it appropriate to consider the monthly income of the injured to be Rs.35,000/- per month with functional disability as 70% for the purpose of calculating future loss of income on account of permanent disability.

In **Govind Yadav vs New India Insurance Company Limited, 2011 (4) RCR (Civil) 817**, the Hon'ble Apex Court after considering all pros and cons held in detail and assessed the

compensation in case of permanent disability towards six components:

- (1) Expenses relating to treatment, hospitalization, medicines, transportation, special diet and miscellaneous expenses.
- (2) Loss of earning and other gain which the injured would have got had he not been injured. This head includes:-loss of earnings during period of treatment and loss of future earnings on account of permanent disability.
- (3) Future medical expenses.
- (4) Non-pecuniary damages /general damages are also required to be assessed towards pain, suffering and trauma as consequent of the injuries.
- (5) Loss of amenities in life including loss of marriage prospects.
- (6) Loss of expectation of life i.e. shortening of longevity of life.

In **K. Suresh vs New India Assurance Company Limited and another, 2013(1) RCR (Civil) 213, G. Ravindranath @ R. Chowdary vs E. Srinivas and another, 2013(3) RCR (Civil) 934, Rekha Jain vs National Insurance**

Company Limited, 2013(3) RCR (Civil) 996, Neerupam

Mohan Mathur vs New India Assurance Company, 2013(4)

Law Herald (SC) 3422, Yadava Kumar vs The Divisional

Manager, National Insurance Company Limited and another,

2010(4) RCR (Civil) 155, it was held that in case of permanent

disability, injured is entitled to grant of compensation towards permanent disability as well as for loss of earning capacity. The

determination of compensation for loss of earning capacity on the basis of multiplier method was held to be proper. In

determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked

out, but ultimate determination has to be viewed with some objective standards. There cannot be a flight in fancy. The

award should correspond to reasonableness and should be in consonance with conventional sum. The endeavor should be

made to award just compensation, keeping in view the sufferings of the injured person. The determination of just

compensation cannot be equated to be a bonanza. It has to be based on application of fair and equitable principles.

Reasonable approach should be adopted. Compensation towards permanent disability and loss of earning capacity, both

were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of earning

capacity.

A distinction has to be drawn between damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner, as if injury has not taken place.

In view of aforesaid precedents, it can be found that the appellant is entitled for both the components i.e. an amount of Rs.2000/- per percentage and an amount of Rs.26,46,000/- towards future loss of income on account of permanent disability. The total amount under aforesaid head can be assessed to be Rs.28,46,000/-.

In **Manoj Kumar Yadav's** case (supra), it was held that if the amount was directly paid to the hospital under Mediclaim policy, the same has to be deducted from the claim awarded by the Tribunal under this head. The features of the policy were to facilitate the family of the deceased for having regular income as if the injured employee was intact. The principles involved were somewhat different. Separate premium was paid by the claimant while availing Mediclaim policy. Such pecuniary advantage would have no co-relation with the cases of injury, death, suicide or serious illness which are relevant for the purposes of covering the same under Mediclaim policy or

Insurance policy. The application of general principle of loss and gain for the computation of compensation must co-relate to the type of injury or death i.e. accidental. If the pecuniary advantage is to be interpreted to mean from the death under the Motor Vehicles Act, it will dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. In other words, if the pecuniary advantage resulting from death means pecuniary coming under all the forms of death, then it will include all the assets of the amount receivable under the contract. So the Policy of the Mediclaim policy not only meant for accidental death, but it covers other mode of deaths for which requisite premium was paid by the party. Therefore, such pecuniary advantage would have no co-relation with the injury for which compensation is computed in terms of loss.

The principle laid down by the Hon'ble Apex Court in **Helen C. Rebello's** case (supra) was to the effect that deduction of Life Insurance Policy cannot be made while calculating compensation to be payable to the claimant under Motor Vehicles Act. The same proposition was held in case titled **New India Assurance Company Limited vs Shashikantbhai Harsukhlal Koticha and others (First Appeal No.2263 of 2014 with Civil Application No.7056 of 2014 in First Appeal No.2263 of 2014)** where the Division Bench of Gujarat High

Court held that Mediclaim policy is not to be adjusted while computing award under accident claims. No amount should be set off by the Tribunal while assessing amount of compensation. The aforesaid view of the Division Bench was upheld by the Hon'ble Apex Court in SLP No.661 of 2015 when the same was dismissed on 19.01.2015.

In view of aforesaid precedents, it can be easily culled out that deduction to the tune of Rs.4,20,862/- made by the Tribunal was wholly irrational and the claimant was entitled to the entire amount of Rs.9,07,968/- towards medical expenses thereby totaling the amount to Rs.37,53,968/- to which an amount of Rs.1 lac can be added up towards pain and sufferings. The total tally would come out to be Rs.38,53,968/-. To the aforesaid amount, consolidated amount of Rs.50,000/- towards special diet, transportation, attendant and other miscellaneous charges can be added. An amount of Rs.30,000/- can be added towards loss of expectations and other amenities. In this way, total amount of compensation would come out to be Rs.39,33,968/-.

The Tribunal has already awarded an amount of Rs.32,28,106/-. The balance of the amount i.e. Rs.7,05,862/- would carry interest @ 7.5% per annum from the date of filing of claim petition till final realization of the amount.

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In view of above, both the appeals are disposed of.
Normal consequences to follow.

18.01.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No