IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-146-2016 (O&M)
Reserved on:12.10.2018
Date of Decision:08.04.2019

Victor ... Appellant

Versus

Harmanjit Singh & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Arnav Sood, Advocate for the appellant.

Mr. S.K. Yadav, Advocate for respondent No.2.

...

TEJINDER SINGH DHINDSA, J.

Victor, the injured/victim is in appeal seeking enhancement of compensation in respect of injuries suffered by him in a motor vehicle accident dated 27.03.2014, due to rash and negligent driving of car bearing registration No.PB-07-AG-5656.

The Motor Accident Claims Tribunal, Hoshiarpur vide award dated 19.09.2015 has held the claimant/appellant entitled to a compensation amount of Rs.4,85,520/-. The compensation amount has been computed by the Tribunal as follows:

1.	Medical treatment/expenses	Rs.2,45,518/-
2.	Pain and suffering	Rs.50,000/-
3.	Loss of future earnings on account of permanent disability	Rs.1,20,000/-
4.	Special diet	Rs.10,000/-
5.	Loss of amenities of life	Rs.25,000/-
6.	Future medical expenses	Rs.25,000/-
7.	Attendant charges	Rs.10,000/-
8.	Total	Rs.4,85,518/- rounded off Rs.4,85,520/-

Learned counsel for the appellant has contended that the compensation amount awarded by the Tribunal is grossly inadequate against the backdrop of the injuries suffered as also the disability element. It is urged that the compensation awarded under the heads noticed herein above would need to be substantially enhanced besides the appellant being entitled to be awarded compensation under additional heads.

Counsel for the contesting Insurance Company has to the contrary supported the award passed by the Tribunal.

It may be noticed at the very outset that the Tribunal has recorded a specific finding that the accident had taken place due to rash and negligent driving of the offending/insured vehicle and which had hit the motorcycle on which the claimant/appellant was pillion riding and on account of which the injuries had been sustained. Insurance Company has not challenged such findings of the Tribunal and as such, this aspect has attained finality. Furthermore, the liability to pay the compensation amount was held to be joint and several and as such, it is the respondent/ Insurance Company, which would be the contesting party herein.

The principles for determining of compensation in the case of permanent/partial disablement have been exhaustively laid down by the Apex Court in **Raj Kumar Vs. Ajay Kumar & another, 2011 (2) RCR (Civil) 101**. The relevant paragraphs from such judgments are extracted hereunder:

> *"6. The heads under which compensation is awarded in personal injury cases are the following:*
> *Pecuniary damages (Special damages)*
> *(i) Expenses relating to treatment, hospitalisation, medicines,*

transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actual and are easily ascertainable from the evidence. Award under the head of future medical expenses Item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of nonpecuniary damages Items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for *award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability Item (ii)(a).*

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the *same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.*

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a

> *percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."*

In the considered view of this Court the compensation amount would require to be revisited and reassessed in the light of dictum laid down by the Apex Court in ***Raj Kumar's case (supra).***

In the present case, the claimants had examined AW3, Dr. J.S. Dhami, Ortho Surgeon, Civil Hospital, Hoshiarpur and who had deposed that on 05.06.2014, along with other doctors had examined Victor (appellant herein) and has assessed the permanent disability to the extent of 60% on account of amputation of the right leg below knee joint. The disability certificate reflecting permanent disability to the extent of 60% was duly proved on file as Ex.93. AW3, Dr. J.S. Dhami had stated that the handicap certificate had been issued to the claimant and which bears his signatures as also the signatures of Dr. Upkar Singh and that the certificate was counter signed by SMO, Civil Hospital, Hoshiarpur.

The Tribunal, while awarding Rs.1,20,000/- towards a compensation on account of permanent disability has computed the same on the basis of awarding Rs.2,000/- for every percent of disability i.e. 2000 x 60% disability = 1,20,000/-.

In the considered view of this Court, such conclusion cannot sustain. The Tribunal ought to have assessed the fact of the permanent disability on the earning capacity of injured/claimant and after assessing the loss of earning capacity in terms of percentage of income which ought to have been quantified in terms of money to arrive at the future loss of earning by applying the standard multiplier method employed to determine loss of dependency. Such aspect has been overlooked and ignored by the Tribunal.

Claim petition had been filed seeking a compensation to the tune of Rs.15 lakhs. Claimant/injured had asserted that he was 23 years of age as on the date of accident and was working as a Medical Lab Technician and earning a sum of Rs.5,000/- per month.

As per disability certificate duly proved on record, the disability element assessed is 60% on account of amputation of right leg below knee joint. What clearly emerges is that the appellant in the future would be barred from exploring such avenues of employment which require complete physical fitness. It is the case of the appellant himself that he was working as a Medical Lab Technician. In future also, the appellant would be confined to exploring avenues of employment where the job work would be sedentary in nature. Keeping in view the amputation of the right leg suffered by the appellant in the accident and the same being examined in the light of the principles laid down in **Raj Kumar's case (supra)**, in my considered view the ends of justice would be served if compensation for loss of future earnings is assessed by taking loss of earning capacity to the extent of 30%. In this manner, the compensation payable to the appellant under the heads of pecuniary damages and loss of future earnings on account of permanent disability would be computed as follows:

Sr. No.	Computation/Head	Revised calculation
1.	Income per month	Rs.5000/-
2.	40% increase in income towards future prospects	5000+2000 = 7000/-
3.	Annual income	7000 x 12 =84,000/-
4.	Income after applying multiplier of 18	84000 x 18 = 15,12,000/-
5.	30% of the total income assessed towards loss of future earnings	Rs.4,53,600/-
6.	Total	Rs.4,53,600/-

In the present case, claimant had led evidence towards a sum of Rs.2,45,518/- having been spent on medical treatment/expenses. The Tribunal had accepted the same. Such amount as such does not require any variation and is affirmed.

Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering. Keeping in view the period of hospitalization endured by the complainant/appellant from 27.03.2014 to 12.04.2014 as also the injuries suffered and which led to amputation of his right leg, the amount awarded by the Tribunal under the heading of pain and suffering/mental agony is found to be much on the lower side. The amount of Rs.50,000/- awarded by the Tribunal under such head would now stand enhanced to Rs.1,50,000/-.

Appellant was a young man of 23 years of age as on the date of accident. On account of the amputation of his right leg, there is bound to be a loss of marriage prospects including loss of amenities in life. The Tribunal has awarded a meagre amount of Rs.25,000/- under such head. This Court would award an amount of Rs.2 lakhs in favour of the claimant/appellant towards loss of marriage prospects including loss of amenities in life.

Tribunal has awarded Rs.25,000/- on account of future medical expenses. Even such amount requires to be enhanced to Rs.1 lakh as the claimant would require the fixation of an artificial prosthetic limb. It is directed accordingly.

The amounts awarded by the Tribunal under the heads of special diet and attendant charges are kept intact.

In view of the above, the compensation amount is re-assessed and calculated as follows:

Sr. No.	Head	Amount
1.	Loss of future earning and permanent disability	Rs.4,53,600/-
2.	Medical bills/treatment charges	Rs.2,45,518/-
3.	Pain and suffering/mental agony	Rs.1,50,000/-
4.	Loss of marriage prospects including loss of amenities of life	Rs.2,00000/-
5.	Future Medical treatment	Rs.1,00000/-
6.	Attendant charges and special diet	Rs.20,000/-
7.	Total	Rs.11,69,118/-

The afore calculated enhanced compensation amount be released in favour of the appellant along with interest at the rate of 6% per annum from the date of filing of the instant appeal till actual realization.

Appeal is allowed in the aforesaid terms.

08.04.2019 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No