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

**FAO No.5420 of 2014(O&M)
Date of Decision: 30.04.2019**

Ramesh ....Appellant

Versus

Deepak @ Dalip Kumar and others .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. B.K. Bagri, Advocate
for the appellant.

Mr. Sanjeev Goyal, Advocate
for respondent No.3.

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RAJ MOHAN SINGH, J.(Oral)

[1]. Appellant has preferred this appeal for enhancement of compensation as awarded by the Motor Accident Claims Tribunal, Rewari (for short 'The Tribunal').

[2]. Accident took place on 23.02.2011 in which the appellant sustained grievous injuries on his right palm which ultimately resulted in amputation of right half palm. Appellant remained hospitalized from 23.02.2011 to 03.03.2011. He had to undergo surgery of his hand on two occasions. Recurring expenses in such a situation cannot be strictly maintained mason. Appellant was a Raj Mistri and his daily income was Rs.500/- He became permanent disabled to the tune of 30% on

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account of amputation of right half palm.

[3]. The Tribunal found that the offending vehicle was rash and negligent in causing the accident. Permanent disability was proved by Dr. A.K. Saini, SMO, GH, Rewari while appearing as PW 1. Doctor had proved the disability certificate Ex.PA wherein permanent disability of the appellant was assessed to be 30% on account of amputation through right hand sparing right thumb with stiffness. Appellant has proved on record medical bills Ex.P15 to Ex.P19, Ex.P25 and Ex.P26 and lab reports Ex.P27 to Ex.P29. Sunil Kumar Meena (PW 6) has also proved the medical bills Ex.P30 to Ex.P47. The Tribunal has assessed the medical expenses to the tune of Rs.12,265/-. The Tribunal has also awarded Rs.20,000/- towards pain and sufferings, special diet, attendant charges, transportation and loss of income. An additional amount of Rs.60,000/- was awarded for permanent disability to the tune of 30%. In this way, total amount of compensation to the tune of Rs.92,265/- has been awarded by the Tribunal along with interest @ 6% per annum from the date of filing of the claim petition till final realisation of the amount.

[4]. I have considered the arguments made by learned counsel for the parties.

[5]. On 08.09.2015, service qua respondent Nos.1 and 2 was dispensed with. Thereafter, the said order was recalled and

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respondent Nos.1 and 2 were ordered to be served with the process of the Court. Respondent No.2 was served, but none appeared on his behalf. Similarly, notice issued to respondent No.1 was received back duly served and thereafter, he was proceeded against *ex parte*.

[6]. In case of permanent disability, multiplier method in addition to the permanent disability amount on the principle of Rs.2000/- per percentage has to be resorted to.

[7]. 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 in detail assessed the compensation in case of permanent disability of the injured.

[8]. In ***K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312***, the Hon'ble Apex Court held that in case of permanent disability, the injured is entitled to grant of compensation towards permanent disability as well as 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

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correspondent to reasonableness and should be in consonance with conventional sum. The endeavour should be to award just compensation keeping in view the suffering of the injured person.

[9]. In ***S. Manickam s. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696***, it was ruled by the Hon'ble Apex Court that the determination of just compensation cannot be equated to 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.

[10]. In ***G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another, 2013(3) RCR (Civil) 934***, the Hon'ble Apex in case of grievous injuries of the injured in pelvic region ruled that in case of nature of injury, rendering the injured to be impotent, adequate compensation has to be awarded towards all heads like expenses incurred in treatment including hospitalization, future medical expenses towards hospitalization, medicines, attendant charges etc, pain suffering and trauma, loss of amenities, prospects of marriage, loss of expectation of life and

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loss of future earning. In aforesaid case, the Hon'ble Apex Court awarded a sum of Rs.20.20 lacs.

[11]. In case of ***Rekha Jain Vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996***, the Hon'ble Apex Court in case of 30% disability of face of a film actress held that in the circumstances of the case, the disability should be treated to be 100% functional disability. Loss was assessed on multiplier method keeping in view the age of the victim. As against compensation of 2 lacs assessed by the Tribunal, the Apex Court assessed the compensation of Rs.42,50 lacs.

[12]. In case of ***Neerupam Mohan Mathur Vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422***, it was held by the Hon'ble Apex Court that in case of permanent disability on account of amputation of limb, compensation towards non pecuniary damages has to be awarded. In the said case, on account of amputation of one arm, the services of the claimant were terminated by the employer. There was loss of 100% earning capacity of the claimant. The order of High Court in assessing 70% loss of income was upheld by the Apex Court. An amount of Rs.1 lac towards pain, suffering and trauma was assessed. An amount of Rs.2 lacs was assessed towards loss of amenities and additional amount of Rs.1 lac was assessed towards loss of expectation of life i.e. shortening of the normal

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longevity.

[13]. In case of ***Yadava Kumar Vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** the Hon'ble Apex Court highlighted that a distinction has to be drawn between the 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. Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

[14]. It can be appreciated that the appellant is also entitled to future loss of income on account of permanent disability. Permanent disability has been shown to be 30% in relation to amputation of right hand palm which has been categorized through right hand sparing right thumb with stiffness. The accident took place in the year 2011. The daily wage for a skilled labourer as prevailing in the year 2011 was Rs.5223/-. By taking note of the aforesaid, monthly income of the injured is assessed to be Rs.5200/-. Since permanent disability to the tune of 30% was in relation to a particular limb, therefore, functional disability is taken to be 15% and monthly loss of income comes out to be Rs.780/-. Appellant is entitled to loss of

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future income on account of permanent disability to the tune of Rs.1,21,680/- i.e. (780x12X13). Keeping in view the nature of injuries received by the appellant, some unforeseen medical expenses cannot be ruled out. The Tribunal has awarded an amount of Rs.12,265/-, which in my considered opinion, needs to be enhanced to the tune of Rs.20,000/- in order to meet any such contingency in not maintaining the record. The award of Rs.20,000/- towards special diet, attendant charges, transportation and loss of income is also on the lower side. In my considered opinion, the consolidated amount of Rs.40,000/- can be assessed for the aforesaid heads keeping in view the period of hospitalization and nature of injuries received by the appellant. The award of Rs.60,000/- for permanent disability on the basis of Rs.2000/- per percentage is just and appropriate. If the calculations are made on the aforesaid findings, the total amount of compensation comes out to be Rs.2,41,680/-. The amount of compensation already awarded by the Tribunal is necessary to be deducted from the aforesaid amount and after deducting the same, the enhanced amount of compensation comes out to be Rs.1,49,415/- rounded of Rs.1,50,000/-.

[15]. The enhanced amount of compensation i.e. Rs.1,50,000/- shall carry interest @ 6% per annum from the date of filing of the claim petition till final realisation of the

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amount. Liability to pay the enhanced amount of compensation would remain the same as observed by the Tribunal.

[16]. Disposed of.

30.04.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking **Yes/No**
Whether reportable **Yes/No**

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