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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5008 of 2015
Date of Decision: May 17, 2019

Sukhwant Singh

..... Appellants(s)

Versus

Jagmohan Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.S. Salar, Advocate
for the appellant.

Mr Nitin Jain, Advocate
for respondent no.1.

Service upon respondent no.2 dispensed with
vide order dated 18.02.2016.

Mr. Vinod Gupta, Advocate and
Mr. D.K. Dogra, Advocate
for respondent no.3.

*****

LISA GILL, J.

This appeal has been filed by the appellant-claimant seeking enhancement of the compensation awarded to him vide award dated 17.04.2015, passed by learned Motor Accident Claims Tribunal, Mohali (hereinafter referred to as 'the Tribunal) on account of injuries suffered by him in the motor vehicle accident, which took place on 10.10.2013.

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Learned Tribunal on considering the evidence on record concluded that the appellant suffered permanent disability to the extent of 40% due to the rash and negligent driving of the offending vehicle, by its driver, respondent - Jagmohan Singh. Learned Tribunal while assessing permanent functional disability of the appellant to be 10% , awarded a sum of Rs.14,25,657/- as compensation, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Annual loss of income	31,200/-
2.	Income after applying multiplier of 14	31,200 x 14 = 4,36,800/-
3.	Loss of income	70,000/-
4.	Pain and suffering	20,000/-
5.	Special diet	10,000/-
6.	Physiotherapy	7,000/-
7.	Attendant charges	10,000/-
8.	Medical bills	8,71,857/-
	Total	**14,25,657/-**

Learned counsel for the appellant argues that functional disability of the appellant has been incorrectly assessed by the learned Tribunal whereas evidence on record proves that the appellant has suffered more than 10% of functional disability. Salary of Rs.20,000/- per month, which he was receiving at the time of the accident was reduced to Rs.10,000/- per month as is proved by his employer Dr. Sanjeet Singh Sodhi (PW-3). Moreover, meagre compensation has been afforded under the other heads, which deserves to be enhanced.

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Learned counsel for the insurance company refutes the above said arguments while submitting that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no enhancement. Dismissal of this appeal is prayed for.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

There is no dispute regarding the injuries received by the appellant in the motor vehicle accident, which took place on 10.10.2013, due to the rash and negligent driving of the offending car bearing registration No. PB-65-J-8202 by its driver, Jagmohan Singh-respondent no.1. Dr. Rakesh Kumar, Orthopedic Surgeon, Civil Hospital, Phase-6, Mohali PW-4 (wrongly numbered as PW-3) has proved the disability certificate Ex. P-8, whereby disability of the claimant-appellant is assessed as 40%. It is mentioned that the appellant-claimant was found to be a case of 'fracture of femur right side thigh Sub Trochantric with PFN (Proximal Femoral Nail) implant in situ'. It is further proved from the record that the appellant was initially taken to GMCH, Sector – 32, Chandigarh on 10.10.2013 but later during the day, he was shifted to Fortis Hospital, Mohali, where he remained admitted as an indoor patient till 21.10.2013. Appellant remained admitted in the hospital on various occasions i.e. from 26.10.2013 to 30.10.2013, then from 28.11.2013 to 01.12.2013 and then from 17.01.2014 to 23.01.2014. As per the medical evidence on record, he underwent treatment for multiple fracture on his thigh and wrist as well as dislocation of his jaw line. He also received treatment regarding puncturing of his small intestine. Medical bills to the tune of Rs.8,71,857/- are proved on

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record. Appellant has claimed that he was working as a Marketing Executive and he had to travel extensively, due to the nature of his job. Due to the injuries and the permanent disability suffered by him, he was unable to work.

Dr. Rakesh Kumar, Medical Officer has stated that the disability suffered by the appellant shall affect his working capacity. PW-3 Dr. Sanjeet Singh Sodhi, Proprietor of Dr. Sodhi's Health Care, SCF No.16, Phase - 3/B2, SAS Nagar, Mohali, the employer of the claimant stated that he was earlier paying a salary of Rs.20,000/- per month to the appellant but as his working capacity was reduced, salary was renegotiated to Rs.10,000/- per month. Salary certificate Ex.PW3/A was proved at the same time. It is relevant to note that the income tax return for the assessment year 2013-2014, filed by the appellant on 19.07.2013, reveals his income from his salary to be Rs.1,68,000/- per annum i.e. about Rs.14,000/- per month. Income of the appellant is thus assessed as Rs.14,000/- per month and not Rs.20,000/- per month as claimed. Furthermore, keeping in view the nature of injuries and the disability suffered by the appellant, learned Tribunal has erred in assessing the permanent functional disability of the appellant to the extent of 10%. Functional disability in the given facts and circumstances where the appellant aged 43 years who was working as a Marketing Executive, can reasonably be assessed to be 40% itself.

Loss of income is worked out in terms of the guidelines of ***Sayed Sadiq etc. Vs. Divisional Manager, United India Insurance Company, 2014(1) RCR (Civil) 765***. Functional disability suffered by the appellant is 40% in this case. Therefore, loss of income is assessed as Rs.5,600/- per month (14,000/- x 40%).

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Increase in income on account of future prospects in terms of ***Syed Sadiq's*** case (supra) @ 25% has to be afforded taking the amount to [(5,600+1400 (5,600 x 25%)] = Rs.7,000/- per month i.e. Rs.84,000/- per annum. Age of the appellant was admittedly 43 years at the relevant time, therefore, multiplier of 14 is to be applied. Loss of earnings is, thus, assessed as Rs.11,76,000/- [84,000 x 14].

Loss of income for the period appellant was not able to work as assessed by the learned Tribunal at the rate of Rs.70,000/- is maintained. However, the appellant is entitled to a sum of Rs.50,000/- instead of Rs.20,000/- afforded by learned Tribunal on account of pain and suffering. Appellant is entitled to a sum of Rs.15,000/- each instead of Rs.10,000/- each awarded by learned Tribunal on account of special diet and attendant charges. Appellant is also entitled to Rs.5,000/- on account of transportation charges. He is also entitled to Rs.10,000/- instead of Rs.7,000/- afforded by learned Tribunal for physiotherapy.

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

Sr. No.	**Heads**	**Calculations**
1.	Disability	11,76,000/-
2.	Loss of income	70,000/-
3.	Pain and suffering	50,000/-
4.	Special diet	15,000/-
5.	Attendant charges	15,000/-
6.	Transportation charges	5,000/-
7.	Physiotherapy	10,000/-
8.	Medical bills	8,71,857/-
	Total	**22,12,857/-**

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Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest at the rate of 7.5% per annum instead of 6% on the entire amount from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

May 17, 2019. **(LISA GILL)**
Sunil **JUDGE**

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