

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

FAO 5275-2015

Date of Decision: 22.07.2019

Amar Nath

...Appellant

Vs.

Rajul Hassan and ors.

..Respondents

CORAM: HON'BLE MS.JUSTICE RITU BAHRI

Present: Mr. Ashish Gupta, Advocate for the appellant.

Mr. R.D. Yadav, Advocate
for respondent Nos. 1 and 2.

Ms. Sheenu Sura, Advocate for respondent No.3.

RITU BAHRI, J.

The claimant has come up in appeal against the award of the Tribunal dated 08.04.2015 whereby compensation of Rs.2,45,500/- has been awarded on account of injuries suffered by appellant in a road side accident on 17.11.2013.

FACTS NOT IN DISPUTE

On 17.11.2013, appellant was going on his way to Nuh from his village ujina by his motorcycle bearing No. HR-27B/3534 and at about 5:30 A.M when he reached near PHC turn on Hodal-Nuh road, then a vehicle make TATA 407 No. HR-47-B-0931 being driven by respondent no. 2 in a rash and negligent manner, as a result of this impact, the appellant fell down and received grievous injuries. He was taken to Medical College, Nahar from where he was taken to Sheetal Hospital, Palwal. Due to this accident, appellant become totally disabled. The matter was reported to the police.

On the basis of evidence led by the parties, the Tribunal assessed the compensation as under:

<i>Sr.No.</i>	<i>Head</i>	<i>Amount (₹)</i>
1	Transportation charges	₹5,000/-
2	Compensation for pain and suffering	₹20,000/-
3	Attendant Charges	₹5,000/-
4	Diet and Nutrition	₹5,000/-
5	Loss of Income	₹10,000/-
6	Loss of future prospects of disability (50%)	₹1,00,000/-
7	Medical Expenses	₹1,00,299/-
	Total	₹2,45,299/ (rounded off to Rs.24,45,500/-)

Counsel for the claimant-appellant has referred to statement of P.W.1 Dr. Farooq who proved disability certificate Ex P16. The Doctor assessed the disability at 50% on account of post traumatic moderate painful restrictions of movement at left hip following fracture shaft left femur along with moderate painful restrictions of movement at right knee with quadriceps waisting following fracture upper end both bones right leg with moderate painful restrictions at right wrist following fracture ulna right with muscles waisting in all fractures sites. In his cross examination, he stated that the disability pertains to the particular part of the body and not for the whole body.

Counsel for the respondent-Insurance Company has submitted that the compensation awarded by the Tribunal is adequate and no interference is required.

It is not in dispute that there is disability of 50% which is permanent in nature and appellant was running grocery shop and was unmarried. Thus, it would not be possible for him to do the work. He would

not be able to earn the same amount which he was getting earlier.

Reference at this stage can be made to a judgment of this court in a case of ***Parveen v. Vikram and others, 2016(2) RCR (Civil) 717*** whereby this Court in a case of driver who suffered 70% disability took his disability to be 100% and while referring to the various judgments has observed as under:-

In a judgment by Hon'ble the Supreme Court of India in the case of ***Sanjay Kumar vs. Ashok Kumar and another 2014(1) RCR (Civil) 875***, wherein the claimant who was earning Rs.4500/- per month suffered 70% permanent disability in motor accident, it was held that '*Loss of future prospects' should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment. In that case keeping in mind the young age of victim he was held entitled to 50% of his income as future increase in income.*

In another judgment by Hon'ble the Supreme Court of India in the case of ***Rajan vs. Soly Sebastian and others, 2015(3) RCR (Civil) 962***, wherein the victim was a professional driver, the Tribunal assessed his notional income at Rs.2000/- p.m. It was held that income was not correctly assessed. Income should have been assessed after taking into consideration the relevant Minimum Wages fixed by Government. Income be taken at Rs.3500/- p.m to work out compensation. Victim though suffered 60% bodily disability, but suffered 100% permanent disability with regard to his earning capacity. After considering 50% enhancement for future prospects, the compensation for permanent disability was calculated at (Rs.3500/-+ Rs. 1750/-)x12x17=Rs. 10,71,000/-.

In the case of ***Kavita vs. Deepak and others, 2012 (4) RCR***

(Civil) 273, Victim suffered 100% permanent disability. She lost her

capacity for hearing, understanding, speaking and establishing interaction. The victim required an attendant at all times and continued physiotherapy. Victim was 30 years of age earning Rs.2000/- p.m. Multiplier of 17 was applied. She was also awarded Rs.2000 per month as attendant charges for 25 years. Victim was awarded compensation of Rs.34,38,747/-.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of **Raj Kumar vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101** wherein the Apex Court had laid down the principles for determining the loss and the affect of permanent disability on the actual earning capacity. It would be useful to refer to the relevant paragraphs:-

“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the

actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but

far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

Since the appellant in the present case was running a grocery shop and will face difficulty in now doing his work, his monthly income can be taken at Rs.6000/- per month for determining the compensation. Applying the ratio of the above mentioned judgments, the compensation is re-assessed as under:-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount (₹)</i>
1	Loss of income	Rs.6000/- per month
2	Future prospect	6000x40%future prospect= Rs. 8400/-
3	Disability	8400 X 30% disability qua whole body =Rs.2520/-
4	Multiplier of 16	2520 X 12 X 16 =4,83,840/-
5	Special Diet, Transportation charges and attendant charges	Rs.20,000/-
6	Loss of amenities in life	Rs.1,00,000/-
7	Pain and suffering	Rs.20,000/-
8	Medical Bills	Rs.1,00,299/-
	Total compensation awarded	Rs.07,24,139/-
	Enhanced amount of compensation	724139-245500=Rs.478639/- rounded off to Rs.4,78,000/-

The enhanced amount of compensation of Rs.4,78,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum in view of judgment of Hon'ble the Apex Court in Civil Appeal No. 4528-2019 titled as ***Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019.*** The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

22.07.2019

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Whether Reportable

- Yes

- No