

FAO No. 5948 of 2015 (O&M)

-1-

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

FAO No. 5948 of 2015 (O&M)
Date of Decision: July 11, 2019

Bhoopal

..... Appellants(s)

Versus

Gurjit Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikram Bali, Advocate
for the appellant.

Mr. R.N. Singal, Advocate
for respondent no.3.

LISA GILL, J.

This appeal has been filed seeking enhancement of the compensation awarded to the appellant-claimant vide award dated 06.02.2015, passed by learned Motor Accidents Claims Tribunal, SAS Nagar Mohali (hereinafter referred to as 'the Tribunal).

In the claim petition filed by the claimant-appellant under Section 166 of the Motor Vehicles Act, 1988, it is pleaded that he suffered injuries in a motor vehicle accident, which took place on 03.03.2014. It is stated that the accident took place due to the rash and negligent driving of the truck bearing registration No. HR-68-A-7080, by its driver Gurjit Singh - respondent no.1. The appellant was taken to the Civil Hospital, Kharar by his wife, who was accompanying him and he was thereafter referred to PGI,

FAO No. 5948 of 2015 (O&M)

-2-

Chandigarh where the appellant remained admitted till 06.03.2014. He underwent number of surgeries but ultimately the appellant's foot was amputated. It is pleaded that the appellant is unable to sit or stand without crutches, cannot board a bus or enjoy the amenities of life. Compensation was thus prayed for.

Learned Tribunal on considering the evidence on record concluded that the claimant indeed suffered the injuries as claimed, in the motor vehicle accident, which took place on 03.03.2014, due to the rash and negligent driving of the truck bearing registration No. HR-68-A-7080, by its driver Gurjit Singh-respondent no.1. While holding that the appellant suffered 70% permanent as well as functional disability, a sum of Rs.16,05,000/- was awarded, which is detailed as under:-

<i>Sr.No.</i>		
1.	Age	35 years
2.	Period of hospitalization	3.3.2014 to 6.3.2014
3	Occupation and income	Mason, Rs.6,000/- per month
	<i>Heads of Claim</i>	<i>Amount</i>
4	Pain and sufferings	25,000/-
5	Loss of amenities of life	25,000/-
6	Medicine	2,686/-
7	Pecuniary loss of income	8,06,400/-
8	Cost of artificial limb	1,43,000/-
9	Future increase @ 50%	4,03,200/-
10	Periodical replacement of artificial limb	2,00,000/-
	Total	Rs.16,05,286/- . Rounded of to 16,05,000/-

Present appeal has been filed seeking enhancement of the aforesaid compensation.

FAO No. 5948 of 2015 (O&M)

-3-

Learned counsel for the appellant argues that having lost his right foot, the appellant would be unable to carry on with his vocation of a mason, therefore, functional disability of the appellant should be taken as 100% instead of 70%. It is further contended that there is specific evidence on record to show that the artificial limb will require periodic replacement every 3 to 5 years. Meagre compensation has been awarded in this respect. It is further submitted that income of the appellant has also been assessed incorrectly as Rs.6,000/- per month whereas the appellant was working as a mason at the time of the accident. Even the minimum wages of an unskilled labourer in the State of Punjab at the time of accident were much more. Learned Tribunal, it is contended has awarded very less compensation under the other heads as well. It is, thus, prayed that the present appeal be allowed.

Learned counsel for the respondent-insurance company, however, refutes the said averments and submits that excessive compensation has already been awarded by the learned tribunal. There is no evidence on record to indicate that the appellant was indeed working as a mason at the time of the accident or that he would require periodic replacement of the artificial limb. It is further contended that functional disability of the appellant has been wrongly assessed as 70% and should be reduced. Dismissal of the appeal is, thus, prayed for.

I have heard learned counsel for the appellant and respondent no.3 and have gone through the record.

FAO No. 5948 of 2015 (O&M)

-4-

There is no dispute regarding the injuries received by the appellant in the accident, which took place on 03.03.2014 due to the rash and negligent driving of the truck bearing registration No. HR-68-A-7080, by its driver Gurjit Singh-respondent no.1. The claimant has examined Dr. Rakesh Kumar from Civil Hospital, Phase 6, Mohali as PW-3 to prove the disability certificate Ex.P-4, issued after assessment of the disability of the claimant-appellant. PW-3 Dr. Rakesh Kumar has deposed as under:-

“I have brought the summoned record of Bhoopal son of Banwari Lal who was examined by me on 4.11.2014. The patient is having 70% permanent disability due to amputation of left foot through ankle joint. I have seen disability certificate already on record as Ex.P-4, which is issued by me after assessment of disability of claimant on dated 4.11.2014 vide certification no. 146. The disability assessed is functional disability qua whole body as the left foot of the claimant has been amputated and the patient cannot perform manual work of Mason, labour and painter etc. which requires constant standing, walking, climbing stairs etc. The patient will also not be able to drive two wheeler or four wheeler vehicles.”

Disability certificate issued to the claimant is also categorical. PW-1 Sanjay Kumar, Technician of Deep Artificial Limb Centre, Chandigarh has proved the cost of the prosthesis foot as Rs.1,43,000/-. PW-1 has specifically stated that the same has to be replaced after approximately 4 to 5 years and annual maintenance cost of the prosthesis foot is stated to be Rs.15,000/- to Rs.20,000/-. PW-1 has explained that there may be cheaper prosthesis versions available but the same are of poor quality as they are made of wood and are very heavy, which cause difficulty to the patient in

FAO No. 5948 of 2015 (O&M)

-5-

walking. Despite searching cross-examination, the respondents could not illicit anything in their favour from the testimonies of PW-1 and PW-3. There is indeed nothing on record to suspect the credibility of the said witnesses. Functional disability of the appellant in the given circumstances has been rightly assessed to be 70% by the learned Tribunal. I do not find any ground what-so-ever to interfere in the said finding.

In respect to the income of the appellant as assessed by the learned Tribunal, it is relevant to note that even the minimum wage of an unskilled labourer in the State of Punjab at the time of the accident was more than Rs.6,000/- per month. Learned Tribunal has accepted the appellant to be a mason and there is no challenge to the said finding by any of the respondents. Therefore, treating the appellant to be a mason, he is entitled to the minimum wages of a skilled labourer in the State of Punjab at the relevant time i.e. Rs.8,144/- per month. Accordingly, 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 70% in this case. Therefore, loss of income is assessed as Rs. 5,701/- per month (8,144/- x 70%).

It is an increment of 40% and not 50% which has to be afforded towards future prospects, taking the amount to $[(5,701 + 2280 (5,701 \times 40\%)]$ = Rs.7,981/- per month i.e. Rs.95,772/- per annum. Learned Tribunal has concluded the appellant to be 35 years old at the time of the accident. Therefore, it is a multiplier of 16 that has to be applied in this case. Loss of earnings is, thus, assessed as Rs.15,32,352/- [95,772 x 16].

The appellant is entitled to a sum of Rs.50,000/- instead of Rs.25,000/- afforded by learned Tribunal on account of pain and suffering. Appellant is also entitled to a sum of Rs.50,000/- instead of Rs.25,000/- awarded by the learned Tribunal on account of loss of amenities of life. Amount of Rs.2,686/- and Rs.1,43,000/- awarded by the learned Tribunal on account of medicines and cost of artificial limb is maintained. However, the appellant is entitled to Rs.3,00,000/- instead of Rs.2,00,000/- on account of periodical replacement of artificial limb as awarded by the learned Tribunal.

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

	<i>Heads of Claim</i>	<i>Amount</i>
1.	Loss of earning	15,32,352/-
2.	Pain and sufferings	50,000/-
3.	Loss of amenities of life	50,000/-
4	Medicine	2,686/-
5	Cost of artificial limb	1,43,000/-
6.	Periodical replacement of artificial limb	3,00,000/-
	Total	Rs.20,78,038/-

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 on the entire amount at the rate of 7.5% per annum from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

July 11, 2019.

Sunil

**(LISA GILL)
JUDGE**

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