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

****

**FAO No.529 of 2016 (O&M)
Date of Decision: 28.02.2019**

Aashik

Appellant

Versus

Rukmuddin and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. Vinod Gupta, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 15.04.2015 passed by the Motor Accident Claims Tribunal, Mewat [for brevity 'the Tribunal'] in MACT Case No.6 of 26.03.2014 has been assailed in appeal by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] for injuries sustained in the accident.

The driver, owner and insurer (i.e. New India Assurance Company Ltd.) of vehicle bearing registration No. RJ-02GA-3250 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

Brief facts of the case are that on 21.08.2012, the appellant alongwith Shakunt was going on a motorcycle bearing registration No. HR-52A-0279. The motorcycle was being driven by the appellant. On their way, the motorcycle was hit by the offending vehicle. As a result of impact, the appellant sustained injuries. He was taken to Community Health Centre, Nuh from where he was referred to Safdarjung Hospital, New Delhi.

A claim petition was filed under Section 166 of the Act. In the claim petition it was pleaded that the appellant was 20 years old at the time of accident. It was pleaded that he had sustained 40% permanent disability. The Disability Certificate was produced as Ex.PW4/A. Dr. Farukh, Medical Officer, General Hospital, Nuh deposed as PW-4 to prove the Disability Certificate. As there was nothing on record to show that the disability has affected functional ability of the appellant, the Tribunal awarded ₹2,000/- per percent of disability and awarded ₹80,000/- for disability. In total, the Tribunal awarded ₹2,77,000/- alongwith interest @ 9% per annum. The detail of the amount awarded is as under:-

Loss of ability	₹80,000/-
Medical Expenses	₹1,72,000/-
Transportation & Special Diet	₹10,000/-
Pain and Suffering	₹15,000/-
Total	**₹2,77,000/-**

Learned counsel for the appellant contends that the Tribunal erred in awarding compensation for disability by applying multiplier of ₹2000/- per percent instead of applying multiplier method. He further contends that no amount has been awarded for attendant charges and the amounts awarded under various heads are on the lower side.

Learned counsel for the insurer argues that it has not been proved on record that permanent disability has affected functional ability of the appellant. He defends the award and resists any further enhancement.

In the case of non-fatal accident, pecuniary and non-pecuniary damages have to be awarded. The Supreme Court in case of ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another, 2013(12) SCC 455,*** held as under:-

> *"11. We have heard learned counsel for the parties and carefully perused the record.*
>
> *It is settled law that compensation in personal injury cases should be determined under the following heads:*
>
> ***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).

12. 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."

There is no dispute on the proposition that while awarding the compensation for disability, the multiplier method is to be applied. The Supreme Court in ***Sandeep Khanuja Versus Atul Dande and another 2017(3) SCC 351*** has held as under:

"12. We may observe at the outset that it is now a settled principle, repeatedly stated and restated time and again by this Court, that in awarding compensation the multiplier method is logically sound and legally well established. This method, known as 'principle of multiplier', has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident. Recognition to this principle was given for the first time in the year 1966 in the case of ***Municipal Corporation of Delhi v. Subhagwanti&Ors., (1966) 3 SCR 649*** *Again, in* ***Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal v. Sudhakar&Ors. (1977) 3 SCC 64****, the Court referred to an English decision while emphasising the import of this principle in the following manner:*

> *"4. A method of assessing damages, usually followed in England, as appears from* ***Mallet v. McMonagle 1969 ACJ 312 (HL. England)****, is to calculate the net pecuniary loss upon an annual basis and to "arrive at the total award by multiplying the figure assessed as the amount of the annual 'dependency' by a number of 'year's purchase' that is the number of years the benefit was expected to last, taking into consideration the imponderable factors in fixing either the multiplier or the multiplicand..."*

13. While applying the multiplier method, future prospects on advancement in life and career are taken into consideration. In a proceeding under Section 166 of the Act relating to death of the victim, multiplier method is applied after taking into consideration the loss of income to the family of the deceased that resulted due to the said demise. Thus, the multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased or that of the claimant, as the case may be. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. This Court, in the case of ***U.P. State Road Transport Corporation &Ors.v. Trilok Chandra &Ors. 1996(2) R.R.R. 718 : (1996) 4 SCC 362*** *justified the application of multiplier method in the following manner:*

> *"13. It was rightly clarified that there should be no departure from the multiplier method on the ground that Section 110-B, Motor Vehicles Act, 1939 (corresponding to the present provision of*

Section 168, Motor Vehicles Act, 1988) envisaged payment of `just' compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country."

The multiplier system is, thus, based on the doctrine of equity, equality and necessity. A departure therefrom is to be done only in rare and exceptional cases."

In the present case, there is nothing on record which can be relied upon to work out the percentage of disability vis-a-vis whole body. As the accident occurred in the year 2012, instead of remitting the matter back to the Tribunal at this stage, in view of decision of the Supreme Court in ***Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343,*** 40% permanent disability qua limb is considered as 20% disability qua whole body. The Supreme Court in ***Raj Kumar's*** case (supra), held as under :-

"18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of

clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%."

The occupation and earning of the deceased have not been proved, having a clue from the minimum wages prevalent in the State at the time of accident, earning of the deceased is assessed as ₹5,000/- per month. Since he was 20 years old at the time of accident, multiplier of '18' is applied. Accordingly, compensation for disability is calculated as under:

Monthly Earning	₹5,000/-
Annual Earning	₹60,000/-
Disability assessed @ 20% (20% of ₹60,000/-)	₹12,000/-
Loss of ability by applying Multiplier of '18'	₹**2,16,000/-**

The medical expenses of ₹1,72,000/- are itself an indicator that he remained hospitalized and would have required attendant during hospitalization and thereafter also.

The amount awarded for transportation and special diet i.e. ₹10,000/- is on the lower side. Considering the facts and circumstances of the case, the same needs to be enhanced.

As there was 40% disability qua limb, pain and suffering would continue for rest of the life, thus compensation under the head pain and suffering are enhanced.

In view of above discussion, the compensation is recalculated as under:-

Loss of ability	₹2,16,000/-
Medical Expenses	₹1,72,000/-
Transportation & Special Diet	₹20,000/-
Pain & suffering	₹50,000/-

Total	**₹4,58,000/-**

The award dated 15.04.2015 is modified to the extent that amount of ₹2,77,000/- awarded by the Tribunal is enhanced to ₹4,58,000/-.

The claimants shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

February 28, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes