

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

FAO No.7988 of 2014 (O&M)

Date of decision: 24.09.2019

Sh. Naresh Kumar

....Appellant

Versus

Sh. Manod Kumar and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Arora, Advocate,
for the appellant.

Mr. Amit Kundra, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

CM Nos.26217 & 26218-CII of 2015

For the reasons mentioned in the applications, same are allowed and disability certificate dated 27.11.2015 (Annexure A-1) is taken on record by way of additional evidence.

FAO No.7988 of 2014

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') vide award dated 08.05.2014, on account of injuries received by him in a motor vehicular accident which took place on 24.07.2011.

Brief facts of the case are that on 24.07.2011, claimant-appellant (Naresh Kumar) was going from Panchkula to Zirakpur on his scooter. At about 10.30 P.M., when he reached little ahead of Parshu Ram Bhawan, Sector 12-A, Panchkula, a truck bearing registration No. HP-24-C-

0354 being driven by Manod Kumar-respondent No.1 in a rash and negligent manner, came from behind and struck against the scooter, as a result of which, claimant-Naresh Kumar fell down and received injuries. He was taken to General Hospital, Sector-6, Panchkula, from where, he was referred to PGI, Chandigarh. With regard to the accident, FIR Ex.P43 was registered against respondent No.1-Manod Kumar. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver-respondent No.1 and thus, returned finding on issue no.1 in favour of the claimant. This finding was rightly given on the basis of deposition of Naresh Kumar (PW-1) and Prem Kumar (PW-2), who was an eye witness of the accident and on whose statement, FIR Ex.P43 was registered. Apart from this, claimant has also proved on record documents Ex.P1 to Ex.P42 and Ex.P44 to Ex.P68.

The claimant was working as AC and Fridge Mechanic. On the basis of evidence adduced by the claimant, the Tribunal had assessed the income of claimant as Rs.5000/- per month. In this income 50% addition was made on account of future prospects. By doing so, total income of claimant came to Rs.75,00/- per month i.e. Rs.90,000/- per annum. As per disability certificate, claimant has suffered permanent disability to the extent of 40% in relation to his right lower limb. Tribunal has observed that the disability was not qua the whole body. Accordingly, the functional disability of the claimant was assessed as 15%. At the time of accident, the claimant was aged about 36 years. Accordingly, multiplier of 15 was applied. Loss of income due to disability came to Rs.2,05,200/-. The

compensation was awarded by the Tribunal as under:-

Sr. No.	Heads	Amount
1.	Loss of income	Rs.15,000/-
2.	Transportation to hospital	Rs.10,000/-
3	Diet and nutrition	Rs.10,000/-
4	Medical expenses	Rs.65,138/-
5	Pain and sufferings	Rs.20,000/-
6	Loss of earning capacity due to disability	Rs.2,05,200/-
	Total	Rs.3,25,338/-

Ultimately, the claimant was found entitled to a total compensation of Rs.3,25,338/- along with interest at the rate of 6% from the date of filing of the claim petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

Learned counsel for the appellant has placed on record disability certificate dated 27.11.2015 (Annexure A-1) issued by same doctor i.e. Dr. Sudesh Pebam, who had appeared as PW-3 before the Tribunal. As per this certificate (Annexure A-1), disability of the appellant with respect to the lower limb has been assessed to the extent of 24%.

The Insurance Company-respondent No.3 is not disputing the disability certificate dated 27.11.2015 (Annexure A-1).

Learned counsel for the appellant has further argued that the claimant was working as AC and Fridge Mechanic. Keeping in view the above disability certificate, functional disability cannot be taken less than 40%. In support of his argument, reference has been made to a judgment passed by Hon'ble the Supreme Court in **Raj Kumar vs. Ajay Kumar and another**, 2011 (2) RCR (Civil) (SC) 101.

respondent No.3 has stated that once, the disability has been reduced to 24%, the functional disability cannot be taken qua the whole body.

After hearing learned counsel for the parties, compensation requires to be reassessed keeping in view that as per disability certificate dated 27.11.2015 (Annexure A-1), claimant-Naresh Kumar has suffered disability to the extent of 24% qua the lower limb. Before the accident, claimant was doing the work of AC and Fridge Mechanic. Therefore, reduction in the functional ability to work should be taken as 24% as per judgment passed by Hon'ble the Supreme Court in **Raj Kumar's** case (supra). Income of the deceased is being assessed as Rs.5000/- per month. In this income, 40% increase is made on account of future prospects and total thereof, comes to Rs.7000/- (5000 + 2000). Since, at the time of accident, age of the claimant was 36 years, multiplier of 15 has to be applied. After applying the multiplier of 15, loss of earning capacity of claimant due to disability comes to Rs.3,02,400/- (7000 x 24/100 x 15). Accordingly, keeping in view the peculiar circumstances of the present case, compensation is hereby re-assessed, as under:-

Sr. No.	HEADS	AMOUNT (In Rs.)
(i)	Loss of income	Rs.15,000/-
(ii)	Transportation charges	Rs.15,000/-
(iii)	Special diet	Rs.15,000/-
(iv)	Medical expenses	Rs.65,138/-
(v)	Pain and sufferings	Rs.30,000/-
(vi)	Loss of earning capacity due to disability	Rs.3,02,400/-
(vii)	TOTAL COMPENSATION AWARDED	Rs.4,42,538
(viii)	Enhanced amount of compensation	Rs.4,42,538 – 3,25,338 = Rs.1,17,200/-

The enhanced amount of compensation of **Rs.1,17,200/-** shall be payable within a period of two months from the date of receipt of

certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization in view of the judgment of Hon'ble the Supreme Court in the case of “**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others**”, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019). It is further ordered that the entire amount of compensation shall be paid to the claimant as he is a major.

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

(RITU BAHRI)
JUDGE

24.09.2019

ajp

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