

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

FAO No.561 of 2016 (O&M)
Reserved on:- 10.10.2018
Judgment Pronounced on 11.01.2019

Navjot Singh

.....Appellant

Versus

Harpreet Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

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

Mr. M.B. Jain, Advocate for respondent No.3.

TEJINDER SINGH DHINDSA J.

Navjot Singh, the injured victim is in appeal seeking enhancement of compensation in respect of injuries suffered by him in a motor vehicle accident dated 10.12.2013, due to rash and negligent driving of car bearing registration No.PB-11-ZD(T)-1983.

The Motor Accident Claims Tribunal, Patiala, vide order dated 13.07.2015, has held the claimant/appellant entitled to a compensation amount of Rs.5,62,000/-. The compensation amount has been computed by the Tribunal as follows:-

Sr. No.	Head	Amount awarded
1.	Medical Treatment/expenses	Rs.4,52,000/-
2.	Pain and suffering	Rs.50,000/-
3.	Hospital charges and special diet	Rs.50,000/-
4.	Attendant Charges	Rs.10,000/-
	Total	Rs.5,62,000/-

Learned counsel for the appellant has contended that the compensation amount awarded by the Tribunal is grossly inadequate against the backdrop of the injuries suffered as also the disability element. It is urged that the compensation awarded under the heads noticed hereinabove would need to be substantially enhanced besides the appellant being entitled to be awarded compensation under additional heads.

Counsel for the contesting insurance company has to the contrary supported the award passed by the Tribunal.

It may be stated at the outset that the Tribunal had recorded a specific finding that the accident had taken place due to rash and negligent driving of the offending/insured vehicle and which had hit the motorcycle being driven by the claimant/appellant and on account of which injuries had been sustained. Insurance company has not challenged such findings of the Tribunal and as such this aspect has attained finality.

Furthermore, the liability to pay the compensation amount was held to be joint and several and as such, it is the respondent-insurance company which would be the contesting party herein.

The principles for determination of compensation in the case of permanent/partial disablement have been exhaustively laid down by the Apex Court in ***Raj Kumar Vs. Ajay Kumar and another, 2011 (2) R.C.R (Civil), 101.*** The relevant paragraphs from such judgement are extracted hereunder:-

“6. The heads under which compensation is awarded in personal injury cases are the following:

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).

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.

7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses Item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of nonpecuniary damages Items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses

some difficulty is the assessment of the loss of future earnings on account of permanent disability Item (ii)(a).

8. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("the Disabilities Act", for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

9. The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the

body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body cannot obviously exceed 100%.

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases,

on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.”

In the considered view of this Court the compensation amount would require to be revisited and reassessed in the light of dictum laid down by the Apex Court in ***Raj Kumar's case (supra)***.

In the present case the claimant had produced disability certificate as Exhibit C-35, reflecting a disability to the extent of 60% on account of amputation of his right leg. To prove the disability certificate, claimant/appellant had examined Dr.Harjit K. Singh Chawla, Medical Officer, Civil Hospital, Rajpura, to prove the disability certificate. However, the Tribunal has completely discarded the disability certificate on the reasoning that Dr. Harjit K.Singh Chawla, was not a member of the committee which had issued the disability certificate. In the considered view of this Court such reasoning adopted by the Tribunal cannot sustain. Parties are not at variance that the claimant/appellant had suffered injuries and that amputation of his right leg was on account of the accident that took place on 10.12.2013, involving the offending/insured car. Dr. Harjit K.Singh Chawla, who was medical officer, Civil Hospital, Rajpura, was examined as CW3 and who had made the following statement before the Tribunal:-

“Today I have been deputed by Chairman Disability Board, Civil Surgeon Office, Patiala, to produce the summoned record i.e.disability certificate of Navjot Singh son of Sarabjit Singh, R/o Village Allora Khurdm, Tehsil Nabha, District Patiala. I have seen the original disability certificate

Ex.C35 issued by the Civil Surgeon Office, Patiala. I identify the signatures of the members and Chairman, Assistant Civil Surgeon Patiala, Dr. Parshotam Goyal. The disability as per certificate no.MED/2013/303 dated 21.04.2014 is 60%.”

The statement made by CW3 Dr.Harjit K.Singh Chawla, Medical Office, Civil Hospital, Rajpura, could not have been discarded by the Tribunal.

On the date such statement was recorded CW3 was working as Board Member, Civil Surgeon Office, Patiala. He clearly stated that he had seen the original disability certificate Exhibit C35 and had identified the signatures of the members as also Chairman of the Disability Board. Even learned counsel representing the contesting insurance company does not dispute the injury and amputation of right leg of the claimant/appellant in the accident in question. Even though, learned counsel for the insurance company has placed reliance upon judgment of the Apex Court in ***A.P.S.R.T.C Vs. P.Thirupal Reddy 2005 (12) SCC 189*** to contend that as the doctor who had issued the disability certificate was not examined before the Tribunal concerned, such certificate has to be ignored. However, such judgment is clearly distinguishable and would not apply to the facts of the present case. In ***P.Thirupal Reddy's case (supra)***, the Tribunal concerned had not relied upon a medical certificate of Dr.Sudhakar Reddy, in which physical disability was assessed as 45% of the injured victim. Matter having been taken up to the High Court in appeal, reliance was placed on the disability certificate issued by Dr.Sudhakar Reddy and thereby the quantum of compensation was enhanced. Judgement of the High Court having been assailed, the Apex Court, took notice of the deposition of Dr.K.M. Mitra, who had also medically examined the injured/victim and

had opined that there was only one injury which was grievous and had described the same as '**fracture, deformity of right thigh with swelling**'. In cross-examination, Dr. Mitra had stated that such injury would not cause any permanent disability, if properly treated. It is under such circumstances that the Apex Court took a view that the disability certificate assessing disability as 45% could not have been placed reliance upon when the doctor who issued the same i.e. Dr. Sudhakar Reddy, had not been examined.

In the present case even though member of the disability board/chairman had not been examined by the claimant/appellant while proving disability certificate Exhibit C-35 yet CW3 Dr.Harjit K.Singh Chawla, and who was the Medical Officer, Civil Hospital, Rajpura, had got his statement recorded that he has seen the original disability certificate and identify the signatures of the members as also the Chairman of the Disability Board while assessing the disability as 60%. Amputation of the right leg of the injured victim in the accident is not disputed by the contesting insurance company. Under such circumstances the Tribunal ought to have assessed the fact of the permanent disability on the earning capacity of the injured/claimant and after assessing the loss of earning capacity in terms of percentage of income, it ought to have quantified in terms of money to arrive at the future loss of earning by applying the standard multiplier method employed to determine loss of dependency. Such aspect has been completely overlooked and ignored by the Tribunal.

The claim petition had been filed seeking a compensation to the tune of Rs.30,00,000/-. Claimant/injured had asserted that he was 21 years of age as on the date of accident, was able bodied and was pursuing the Course in SLIET, Longowal. It was further averred that he was earning Rs.10,000/- from private tuition work. However, no evidence had been

adduced to substantiate such plea. Under such circumstances and to compute compensation towards the head of loss of future earning on account of permanent disability, it would be imperative to assess the notional income. It would be safe to presume that as on the date of accident i.e. on 10.12.2013, the minimum wages admissible to an unskilled worker were Rs.5,000/- per month. The notional monthly income of the claimant as such is assessed as Rs.5,000/-. By applying the parameters laid down by the Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil), 1009***, this Court would award 40% addition in income towards further prospects. A multiplier of 18 would be applied keeping in view the age of the claimant/appellant as on the date of accident and as per guidelines furnished in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation & another, 2009 (3) R.C.R. (Civil), 77***.

As per disability certificate Exhibit C-35, the disability element assessed is 60%. Appellant has suffered an amputation of his right leg. What clearly emerges is that even though, appellant was 21 years as on the date of accident but in the future he would be barred from exploring such avenues of employment which require complete physical fitness. Appellant would be limited to explore avenues of employment wherein the job work would be sedentary in nature. Keeping in view the amputation of the right leg suffered by the appellant in the accident and the same being examined in the light of the principles laid down in ***Raj Kumar's case (supra)***, in my considered view the ends of justice would be served, if, compensation for loss of future earnings is assessed by taking loss of earning capacity to the extent of 40%. In this manner the compensation payable to the appellant under the head of pecuniary damages and loss of future earnings on account

of permanent disability would be computed as follows.

Sr. No.	Head	Amount
1.	Notional income per month	Rs.5000/-
2.	40% increase towards future prospects	Rs.5000+2000=7000/-
3.	Annual income	7000x12=Rs.84,000/-
4.	Income after applying multiplier of 18	Rs.84,000x18=15,12,000/-
5.	40% of the total income assessed towards loss of future earnings	Rs.6,04,800/-

Evidence had been led by the claimant/appellant towards medical bills Exhibit C-1 to Exhibit C-33, to the extent of Rs.4,51,738/-. Tribunal has accepted the same and rounded of the figure to Rs.4,52,000/-. Such amount as such does not require any variation and is affirmed.

Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering. Keeping in view the period of hospitalization endured by the claimant/appellant i.e. from 10.12.2013 to 26.12.2013 as also the injuries suffered and which led to the amputation of his right leg the amount awarded by the Tribunal under the heading of pain and suffering/mental agony is found to be much on the lower side. The amount of Rs.50,000/-, awarded by the Tribunal under such head would now stand enhanced to Rs.1,50,000/-.

The appellant was a young man aged 21 years as on the date of accident. On account of the amputation of his right leg there is bound to be a loss of marriage prospects including loss of amenities of life. The Tribunal has not awarded any amount under such head. An amount of Rs.2,00,000/- as such is awarded in favour of the claimant/appellant towards loss of marriage prospects including loss of amenities of life.

The amount of Rs.50,000/- awarded by the Tribunal for

hospitalization charges/special diet and Rs.10,000/- for attendant charges is affirmed.

In view of the above, the compensation amount is reassessed and calculated as follows:-

Sr. No.	Head	Amount
1.	Loss of future earnings on account of permanent disability	Rs.6,04,800/-
2.	Medical bills/treatment charges	Rs.4,52,000/-(as awarded by the Tribunal)
3.	Pain and suffering/mental agony	Rs.1,50,000/-
4.	Loss of marriage prospects including loss of amenities of life	Rs.2,00,000/-
5.	Hospitalization charges and special diet	Rs.50,000/-(as awarded by the Tribunal)
6.	Attendant Charges	Rs.10,000/-(as awarded by the Tribunal)
7.	Total	Rs.14,66,800/-

The afore-calculated enhanced compensation amount be released in favour of the appellant alongwith interest @ 6% per annum from the date of filing of the instant appeal till actual realization.

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

Dated:-11.01.2019
shweta

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