(233) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.7271 of 2015
Date of decision:14.01.2019

Ajmer Singh

…. Appellant

Versus

Sandeep Kumar and others

…… Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Sandeep Kotla, Advocate for the appellant.

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

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B.S. WALIA, J. (ORAL)

[1] Appeal has been filed seeking enhancement of compensation of ₹ 2,50,000/- awarded along with interest @ 7.5% per annum on account of injuries sustained by the appellant in a motor vehicular accident on 03.04.2014.

[2] The learned Motor Accidents Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal') took into account 70% permanent disability of the appellant as also that the appellant was a wayside juice vendor and by taking ₹ 2000/- for per percent of permanent disability awarded a sum of ₹ 1,40,000/- on account of permanent disability, ₹ 20,000/- on account of pain and suffering, ₹ 10,000/- on account of medical expenses, ₹ 70,000/- on account of loss of amenities of life and loss of income etc. and ₹ 10,000/- on account of transportation, special diet and attendant charges, thereby, awarded total compensation of ₹ 2,50,000/-

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along with rate of interest @ 7.5% per annum with effect from the date of claim petition till date of payment.

[3] Learned counsel for the appellant contends that once it is the admitted position that the appellant had suffered 70% permanent disability then compensation ought to have been worked out by taking into account the minimum wages payable to an unskilled worker i.e. ₹ 5800/- per month and taking minimum of 50% of the permanent disability as the functional disability, where after the proportionate income of the appellant to be taken into account should have been applied with multiplier of 13 since the appellant was 15 years of age in view of the decision of Hon'ble the Supreme Court in **Raj Kumar v. Ajay Kumar and another, 2011 (1) SCC 343**. Relevant extract of the said judgment is reproduced as under:-

> ***7.*** *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%.*

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> ***8.*** *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, 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. What requires to be assessed by the Tribunal is the effect of the permanently 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 terns 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 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 (see for example, the decisions of this court in* ***Arvind Kumar Mishra v. New India Assurance Co.Ltd. – 2010 (4) RCR (Civil) 917 : 2010 (6) RAJ 276 : 2010(10) SCALE 298*** *and* ***Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567****).*

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[4] Learned counsel for respondent No.3-Insurance Company fairly conceded that 70% permanent disability can be taken as 35% functional disability and compensation payable worked out in the manner as stated by learned counsel for the appellant.

Learned counsel for respondent No.3 – Insurance Company further admitts that minimum wages as on date of accident in the State of Haryana was ₹ 5800/- per month for an unskilled worker. Accordingly, the compensation payable on account of permanent disability would be 35% of ₹ 5800/- = ₹ 2030 x 12 x 13 (i.e. multiplier) = **₹ 3,16,680/-**. The appellant sustained injuries of closed fracture tibia with fracture fibula proximal 3rd with fracture distal end right radius with fracture ulnar styloid right side and was treated conservatively after admission in Maharaja Aggarsen Medical College & Hospital, Agroha on 03.04.2014 whereafter the appellant was discharged on 11.04.2014. Thereafter on 21.05.2014 appellant was advised arm brace and PTB caste besides walker for partial weight bearing with medicines and physiotherapy. A sum of ₹ 20,000/- was awarded on account of pain and suffering which learned counsel for the appellant contends is on the lower side and that minimum of ₹ 50,000/- ought to have been awarded.

Taking into account the injuries as well as the number of days the appellant remained admitted in hospital, besides, underwent conservative treatment as also on account of his having been advised arm brace, PTB caste and walker, I am of the considered view that a sum of ₹ 35,000/- on account of pain and suffering would be just compensation.

Accordingly, instead of ₹ 20,000/-, a sum of **₹ 35,000/-** is awarded to the appellant on account of pain and suffering.

[5] Likewise, only sum of ₹ 10,000/- was awarded on account of medical expenses whereas as per hospital record only ₹ 280/- was charged

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for the stay and procedure of the hospital. However, taking into account the medical expenses incurred for conservative treatment including for arm brace, PTB caste, walker, medicines, besides, physiotherapy, I am of the view that ₹ 10,000/- awarded on account of medical expenses is on the lower side.

Accordingly, instead of ₹ 10,000/-, a sum of **₹ 20,000/-** is awarded to the appellant on account of medical expenses.

[6] Learned counsel for the appellant further contends that ₹ 70,000/- awarded on account of loss of amenities of life and loss of income etc. is on the lower side and minimum of ₹ 2,00,000/- ought to have been awarded. The above amount has been awarded on guess-work basis.

[7] Learned counsel for respondent No.3-Insurance Company states that the enhancement claimed is highly exorbitant and at best, the appellant can be held entitled to partial increase on account of compensation payable towards loss of amenities of life and loss of income etc.

Taking into account all aspects of the matter, I am of the view that as against ₹ 70,000/- awarded on account of loss of amenities of life and loss of income etc., ends of justice would be met if sum of ₹ 1,00,000/- is awarded on said account.

Accordingly, as against ₹ 70,000/-, awarded on account of loss of amenities of life and loss of income etc., compensation payable on said account is enhanced to **₹ 1,00,000/-**.

[8] Learned counsel for the appellant further contends that compensation of ₹ 10,000/- awarded on account of transportation, special diet and attendant charges is also on the lower side and minimum of ₹ 50,000/- ought to have been awarded on said account.

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Taking into account all aspects of the matter, I am of the view that on account of special diet charges, a sum of ₹ 3500/- per month for three months (i.e. ₹ 10,500/-), on account of medical attendant charges, a sum of ₹ 2500/- per month for three months (i.e. ₹ 7500/-) and on account of transportation charges, a sum of ₹ 3000/- per month for three months (i.e. ₹ 9000/-) i.e. total ₹ 27,000/- would be just and proper compensation.

Accordingly, as against ₹ 10,000/- awarded, compensation payable on account of transportation, special diet and attendant charges is enhanced to **₹ 27,000/-.**

[9] Learned counsel for the appellant further contends that interest had been awarded @ 7.5% per annum whereas it should have been @ 9% p.a. However, I am of the view that the interest awarded does not warrant any interference.

[10] Accordingly, as against compensation of ₹ 2,50,000/- awarded by the learned Tribunal, the appellant is held entitled to ₹ 3,16,680/- + ₹ 35,000/- + ₹ 20,000/- + ₹ 1,00,000/- + ₹ 27,000/- = ₹ 4,98,680/- (i.e. rounded off **₹ 5,00,000/-**) along with interest @ 7.5% per annum with effect from the date of claim petition till date of payment.

[11] Accordingly, appeal is allowed by modifying Award dated 04.09.2015 passed by the learned Tribunal, Fatehabad to the extent as noted above.

(B.S. Walia)
Judge

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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