

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

**FAO No.8143 of 2015
Date of Decision: 27.02.2019**

Dharmender

Appellants

Versus

Rajesh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sunny Namdev, Advocate for
Mr. Saurabh Dalal, Advocate
for the appellant.

Mr. Karam Inder Singh, Advocate
for respondent No.3.

AVNEESH JHINGAN, J (Oral):

The award dated 28.07.2015 passed by the Motor Accident Claims Tribunal, Jhajjar [for brevity 'the Tribunal'] has been assailed by the claimant seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] for the injuries sustained in a motor vehicular accident.

The driver, owner and insurer (i.e. National Insurance company Ltd.) of Container bearing registration No. HR-55J-8684 [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 03.02.2012, Dharmender, aged 38 years alongwith Sombir was going on foot to take a meal.

When they reached on Pulia Beri road, they were struck by offending vehicle, as a result, he sustained grievous injuries including fracture of leg. FIR No.77, dated 03.02.2012 was registered at Police Station Jhajjar.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

The Tribunal after considering the fact that the deceased suffered 30% permanent disability qua the leg on account of fracture, awarded a sum of ₹1,74,240/- alongwith interest @ 7.5% per annum. The detail of compensation awarded is as under:

Loss of ability	₹1,20,000/-
Medical Bills	₹24,240/-
Transportation	₹5,000/-
Pain & Suffering	₹25,000/-

Total	₹1,74,240/-

Learned counsel for the appellant contends that the amounts awarded by the Tribunal are on the lower side. His grievance is that multiplier method was adopted while calculating the compensation for permanent disability. The appellant was working as a driver and due to the injuries sustained, he remained hospitalized, but no compensation for loss of income, special diet and attendant charges was awarded.

Learned counsel for the insurer defends the award and

argues that no evidence has been adduced by the claimant to show that the permanent disability had affected the functional ability. He resists any further enhancement.

In case of non-fatal injuries, pecuniary and non-pecuniary damages have to be compensated. 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.”

Further, in the present case it has been proved that there was 30% permanent disability on account of fracture of leg. No evidence has been adduced to substantiate the fact that the said disability has affected the functional ability of the appellant.

Since accident occurred in the year 2012, instead of remitting back the matter to the Tribunal at this stage, relying upon the decision of the Supreme Court in **Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343**, 30% disability qua limb is treated as 15% qua whole body. The appellant was pleaded to be working as a driver. His income has not been substantiated. Relying upon the minimum wages prevalent in the State at relevant time, his income is assessed as ₹5,100/- per month. Taking the 30% disability qua limb as 15% disability qua whole body and applying multiplier of '16', as the deceased was 38 years of age, the compensation for permanent disability is re-calculated as under:-

For permanent disability	₹1,46,880/-
(₹5,100 x 15% x 12 x 16)	

There is no dispute with regard to the fact that the appellant was operated upon and remained hospitalized, in such

circumstances, an attendant and transportation would have been required during the hospitalization and thereafter also. In addition to the hospitalization, in case of fracture minimum eight weeks is considered as a recovery period. During this period, special diet ought to have been given for speedy recovery.

In view of above discussion, the amount awarded by the Tribunal is enhanced as under:-

For permanent disability	₹1,46,880/-
Medical Expenses	₹24,240/-
Transportation	₹5,000/-
Pain & Suffering	₹25,000/-
Attendant Charges	₹10,000/-
Loss of income	₹10,000/-
Special Diet	₹5,000/-

Total	₹2,26,120/-

The award dated 28.07.2015 is modified to the extent that amount of ₹1,74,240/- awarded by the Tribunal is enhanced to ₹2,26,120/-.

The claimant 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 27, 2019
pankaj baweja

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