

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

FAO No.1822 of 2017 (O&M)

Date of Decision : 07.03.2019

Bijender

....Appellant

VERSUS

Gur Charan Singh & others

...Respondent

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

Present: Mr. Anshumaan Dalal, Advocate for the appellant.
Mr. Vinod Gupta, Advocate for respondent No.4-Insurance Company.
Service of respondent Nos.1 to 3 dispensed with vide order dated 25.02.2019.

B.S. WALIA, JUDGE (ORAL)

1. Appeal has been filed by the claimant seeking enhancement of compensation of ₹5,18,000/- awarded by the learned Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') on account of injuries sustained by him in a motor vehicular accident on 30.01.2014. The appellant was a driver of a LMV and claimed that he was getting salary of ₹9,000/- per month + ₹150/- per day as diet money. The appellant sustained injuries on account of which he remained admitted in PGIMS, Rohtak from 31.01.2014 to 06.02.2014, in Malik Hospital & Sports Trauma Centre, Hansi w.e.f 06.02.2014 till 10.03.2014 and lastly in PGIMS, Rohtak from 28.02.2015 to 06.03.2015 as a case of fracture subtrochanter right with fracture both bone legs right compound grade 3A and fracture of both bone left leg. The appellant was treated through ORIF with DCS for fracture subtrochanter and ORIF with interlocking nail for fracture both bone right leg and open

reduction debridement and fixation with rail road fixation for fracture of both bone left leg. The appellant incurred medical expenses for which a sum of ₹3,22,610.60 rounded off to ₹3,23,000/- was paid. The appellant produced on record disability certificate Ex.P-35 as per which he suffered 25% permanent disability. Although not mentioned in the award but a perusal of the disability certificate produced by learned counsel for the appellant reveals that there was permanent shortening of right lower leg by 2 inches, painful limping and instability in right knee.

2. On the basis of the same, learned counsel for the appellant contends that functional disability has to be assessed as 100% since a person whose one limb has been shortened by 2 inches besides has painful limping and instability in right knee can no longer work as a Driver. Learned counsel further contended that it had come on record before the learned Tribunal that the appellant had lost his job as a Driver and had not been able to get any job as a driver thereafter on account of the accident.

3. The Tribunal apart from awarding a sum of ₹3,23,000/- towards medical expenses, awarded lump sum of ₹1,25,000/- on account of disability and loss of earning for present as well as future by taking into account that in view of disability of 25%, appellant-claimant would not be in a position to perform his duties as an ordinary person and his future earnings would also be drastically affected and that the Tribunal would be failing in its duties if the prayer for granting amount on account of loss of future earnings was not awarded. Apart from the above, a sum of ₹50,000/- was awarded on account of physical pain and mental agony besides, ₹20,000/- on account of attendant, special diet and transport expenses.

4. Learned counsel for the respondent contended that the claim for assessment of functional disability @ 100% was grossly exaggerated and at best, functional disability be assessed at 40%. Learned counsel further contended that the compensation awarded on account of physical pain and mental agony as also attendant charges, special diet expenses and transport expenses were just and fair and did not warrant any interference.

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly, there is shortening of two inches of right lower limb besides, instability of right knee. Moreover, the appellant has complaint of painful limping. In the circumstances, it would not be possible for the appellant to continue to work as a Driver of a LMV.

7. In the circumstances, in view of acceptance of 40% functional disability by learned counsel for the respondent-Insurance Company, the functional disability of the appellant is treated as 40%. The appellant claimed that he was employed on a salary of ₹9,000/- + ₹150 per day as diet money i.e. ₹13,500/- per month. However, in view of the decision of this Court in FAO No.6412 of 2012 (Madhu Rani and others versus Vishesh and others) decided on 8.8.2018 where in the case of accident dated 24.03.2011, involving a Driver, income was taken at ₹8500/- per month, this Court assess the income of the appellant in the instant case at ₹10,000/- per month as against the claimed income of ₹13500/- in view of accident being of 30.01.2014.

8. Since the appellant was 32 years of age at the time of accident, therefore, as per decision of Hon'ble the Supreme Court in **Sarla Verma Vs.**

Delhi Transport Corp. and another, 2009 (3) RCR (Civil) 77, multiplier of

16 would be applicable. Since functional disability has been assessed at 40%, therefore, compensation payable as per the decision of Hon'ble the Supreme Court in **Raj Kumar versus Ajay Kumar** 2011 (1) SCC 343 would work out as under :

- | | | |
|----|-------------------------|---------------------------|
| 1. | Monthly Income assessed | ₹10,000/- |
| 2. | Functional disability | 40% |
| 3. | Compensation awarded | ₹4000x12x16 = ₹7,68,000/- |

9. Accordingly, as against compensation of ₹5,18,000/- awarded by the learned Tribunal, Jind which is stated to have been paid, the appellant shall be held entitled to additional compensation of ₹6,43,000/- on account of disability and loss of earning present and future as against ₹1,25,000/- awarded by the Tribunal, Jind.

The aforementioned amount shall be paid along with interest @ 7.5% per annum on the enhanced amount with effect from the date of claim petition till date of payment.

10. Accordingly, appeal is allowed. Award dated 20.07.2016 passed by the learned Tribunal, Jind is modified to the extent as noted above.

March 07, 2019
ps

(B.S. WALIA)
JUDGE

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