

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

F.A.O. No.3459 of 2017(O&M)

Date of Decision: 03.04.2019

Naresh Kumar

.....Appellant.

Versus

Istkar Hassan and another

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Bhavdeep Singh Mamli, Advocate
for Mr. R.S.Mamli, Advocate
for the appellant.

None for respondent no.1.

Mr. Pradeep Kumar, Advocate
for respondent no.2-Insurance Company.

LISA GILL, J.

Appellant-claimant seeks enhancement of compensation awarded by the learned Motor Accident Claims Tribunal Yamuna Nagar at Jagadhri, vide impugned award dated 27.02.2017, on account of injuries received by him in the motor vehicle accident which took place on 30.11.2014.

Appellant filed a petition under Section 166 of the Motor Vehicles Act, seeking compensation on account of the injuries, which he received in an accident which took place on 30.11.2014 due to the rash and negligent driving of the offending vehicle i.e. tractor trolley bearing registration No. HR-02-AD-5538, by its driver-respondent no.1-Istkar Hassan. FIR No. 269 dated 30.11.2014, under Sections 279, 337, 304-A IPC, Police Station Sadar, Yamuna Nagar, was registered against respondent

no.1-Istkar Hassan, in this respect.

Learned Tribunal on considering the facts and circumstances of the case concluded that the accident in question indeed occurred due to rash and negligent driving of the offending vehicle by respondent no.1-Istkar Hassan. Said finding of the learned tribunal has attained finality.

Learned tribunal in Claim Petition No. 17 of 2014 (claiming compensation on account of injuries received by appellant-Naresh Kumar) while taking note of the disability certificate Ex.P-51, wherein the appellant is reflected to have suffered 86% permanent disability due to amputation of left lower limb above the knee, awarded a sum of ₹8,99,989/- along with interest @ 7.5 % per annum from the date of filing of the claim petition till realisation of the amount to the claimant. Functional disability of the appellant was assessed as 50%. Multiplier of 14 was applied to assess the loss of income. Details of the compensation awarded by the learned tribunal detailed as hereunder:-

Sr. No.	Heads of Claim	Amount
1.	Compensation for expenses incurred on treatment	₹87,469/-
2.	Compensation on account of hospitalization	₹44,000/-
3.	Compensation on account of pain and suffering	₹80,000/-
4.	Compensation on account of disability	₹1,72,000/-
5.	Compensation on account of loss of income	₹5,06,520/-
6.	Compensation on account of loss of amenities and shortening of life	₹50,000/-
	Total	₹8,99,989/-

Learned counsel for the appellant argues that the claimant-

appellant was working as a tailor at the time of the accident. Functional disability of the appellant has been wrongly assessed as 50% only, though, no challenge has been raised to the income of the appellant as assessed by the learned tribunal i.e. ₹6029/- per month. It is contended that nothing has been awarded towards loss of future prospects and compensation under the other heads, is meagre, as well. It is thus prayed that the present appeal be allowed and the compensation awarded to the appellant-claimant be enhanced.

Learned counsel for the respondent-Insurance Company, while refuting the same, submits that compensation has been reasonably assessed by the learned tribunal and there is no scope for any enhancement. Learned counsel prays for dismissal of the appeal.

I have heard learned counsel for the parties and have gone through the record with their assistance.

There is no dispute regarding the injuries suffered by the appellant in the motor vehicle accident which took place on 30.11.2014 due to the rash and negligent driving of the offending vehicle by respondent no.-1-Istkar Hassan. As per disability certificate, Ex.P-51, which is duly proved by PW-5-Dr. Anuj Mangla, the appellant suffered 86% permanent disability due to amputation of his left lower limb, above the knee up to 1/ 3rd of the thigh and multiple fractures of right lower limb with restriction of movement at right ankle along with pain. It is a matter of record that the appellant was admitted in Civil Hospital, Yamuna Nagar, after the accident from where he was referred to the Advance Trauma Centre, PGI, Chandigarh, where he remained admitted upto 21.12.2014. Appellant remained admitted in various

hospitals for 22 days. Appellant while deposing as PW-3 categorically stated that he was doing the work of tailoring and was a specialist in stitching Sherwani, trousers and coats etc. He claimed to be earning ₹22,000/- per month. However, there is no categorical evidence on record to indicate the exact income of the appellant. At the same time, learned tribunal has rightly held that there is no evidence on record to discard or disbelieve the stand of the appellant that he was working as a tailor at the time of the accident. Therefore, his income has been rightly assessed with reference to the minimum wage available to a skilled labourer at the time of the accident i.e. ₹6029/- per month. No serious challenge has been raised thereto.

Learned tribunal has assessed functional disability of the appellant to be 50%. It is relevant to note that a person working as a tailor would necessarily be negatively impacted by the injuries, as suffered by the appellant, as detailed in the foregoing paras. It cannot be accepted that the appellant with the said disabilities, including amputation of his leg and restriction of movement of the other ankle, would be able to carry out the entire gamut of activity, required of a tailor.

In the factual matrix of the case, functional disability visited the appellant is assessed as 75% instead of 50%.

Compensation to the appellant-Naresh Kumar is thus required to be worked out in view of the judgement of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. Loss of income is ₹6029 x 75/100 i.e., ₹4522/- per month. While affording an increase of 25% in the income of the appellant on account of future income, the amount comes to [(4522/- +

(4522 x 25%)] = ₹5653/- per month i.e., ₹67,836/- per annum. Age of the injured/claimant-Naresh Kumar was 45 years as on the date of the accident, therefore, multiplier of 14 has been correctly applied by the learned tribunal. Loss of earnings is, thus, assessed as ₹9,49,704/- [67,836 x 14].

Appellant is entitled to a sum of ₹1,00,000/- instead of ₹80,000/- for pain and suffering. Appellant is also entitled to a sum of ₹75,000/- instead of ₹50,000/- for loss of amenities. Compensation on account of medical treatment and hospitalisation as awarded by the learned tribunal, are maintained i.e. ₹87,469/- and ₹44,000/- respectively. Appellant is further entitled to a sum of ₹20,000/- for attendant charges and ₹15,000/- for special diet, besides ₹8000/- for transportation charges. A sum of ₹70,000/- is also awarded towards prosthetics.

Compensation towards the claimant-Naresh Kumar on account of the injuries and disability suffered by him is thus re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of earnings	₹9,49,704/-
2.	Pain and suffering	₹1,00,000/-
3.	Loss of Amenities	₹75,000/-
4.	Medical expenses	₹87,469/-
5.	Hospitalisation	₹44,000/-
6.	Attendant charges	₹20,000/-
7.	Special diet	₹15,000/-
8.	Transportation charges	₹8,000/-
9.	Prosthetics	₹75,000/-
	Grand Total	₹13,74,173/-

Amount already awarded by the Tribunal to claimant-Naresh Kumar shall stand deducted from the amount of compensation reworked as

above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

03.04.2019
s.khan

[LISA GILL]
Judge

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