

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

**FAO No.8304 of 2017 (O&M)
Date of decision: 30.10.2019**

Baljinder Singh

....Appellant

Versus

National Insurance Co. Ltd. and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Jindal, Advocate,
for the appellant.

Mr. B.S. Walia, Advocate,
for respondent No.1-Insurance Company.

Mr. L.S. Sidhu, Advocate,
for respondent Nos.2 and 3.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'the Tribunal') vide award dated 01.05.2017, on account of injuries received by him in a motor vehicular accident which took place on 02.01.2016.

Brief facts of the case are that on 02.01.2016, at about 7.30 P.M., claimant-appellant (Baljinder Singh) along with Shamsher Singh Sodhi was going from Kalanwali to Talwandi Sabo on a motorcycle No.HR-44-B-1540. The said motorcycle was being driven by Shamsher Singh Sodhi. In the meantime, a car bearing No. HR-26-AT-5289 being driven by Kulwant Singh-respondent No.3 in a rash and negligent manner, came from the opposite side and struck against the motorcycle, as a result of which, Baljinder Singh-claimant received multiple fractures and injuries on his

person, including fracture of his right thigh. He was taken to Civil Hospital, Talwandi Sabo, from where he was shifted to Deol Hospital, Bathinda. With regard to the accident, FIR No.10 dated 18.01.2016 was registered against driver-respondent No.3 at Police Station, Raman. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver-respondent No.3 and thus, returned the finding on issue no.1 in favour of the claimant. This finding was rightly given on the basis of deposition of Baljinder Singh-claimant (CW-2). Kulwant Singh, Driver (RW-2) admitted that he was facing trial in FIR Ex.C-30. He stated that he had paid Rs.50,000/- to Deol Hospital to meet the medical expenses incurred on the treatment of claimant. Ultimately, the claim petition was accepted by the Tribunal and compensation was assessed as under:-

Sr. No.	Heads	Amount (Rs.)
1.	Medical expenditure	Rs.74,000/-
2.	Loss of income during claimant remained admitted in hospital	Rs.10,000/-
3.	Compensation on account of disability of 10%	Rs.20,000/-
4	Future loss of income	Rs.1,00,000/-
5	Special diet	Rs.5000/-
6	Attendant charges	2500/-
	Total	Rs.2,11,500/-

Hence, the claimant was found entitled to a total compensation of Rs.2,11,500 /- along with interest at the rate of 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

Learned counsel for the appellant has argued that as per disability certificate Ex.C31, there was shortening of leg of claimant by one inch. He further argued that compensation for disability should have been granted after applying the method of income criteria.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. Parties are not in dispute with regard to finding given by the Tribunal on issue No.1 to the effect that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver.

Hon'ble the Supreme Court in **Sayed Mehaboob vs. New India Assurance Co. Ltd.**, 2012 (8) RCR (Civil) 721 had examined a case, where the claimant had suffered 86% disability on account of shortening of leg by 2.5 inches. In that case, the appellant was unable to use both his legs for driving. The Tribunal had assessed the functional loss of future earning capacity of the appellant to the extent of 100% and awarded compensation accordingly. On appeal, the High Court assessed the total bodily disability at 30% and reduced the compensation, which was awarded by the Tribunal. Hon'ble the Supreme Court, after taking into consideration the relevant factors, upheld the award passed by the Tribunal and set aside the judgment of the High Court being arbitrary in nature. The aforesaid judgment has been followed by this Court in **Ms. Nisha Rani vs. State of Haryana and others**, FAO-4527-2016 (decided on 20.12.2017). In that case, claimant was 21 years of age at the time of accident and was unmarried. As per disability certificate, she had suffered 30% permanent physical impairment and her left leg had been shortened. Keeping in view the nature of disabilities suffered by the appellant (in that case) and in view of the judgment passed

in **Sayed Mehaboob's case** (supra), the functional loss of future earning capacity of appellant-Nisha Rani was estimated at 50% and compensation was assessed after applying the method of income criteria.

In the facts of the present case, as per disability certificate Ex.C31, there is shortening of left leg of claimant by one inch. Applying the ratio of judgment passed by this Court in **Ms. Nisha Rani's** case (supra), this Court is of the view that disabilities certificate has not been correctly issued in this case. The functional loss of future earning capacity of appellant-Baljinder Singh is being assessed at 50% and the compensation is being assessed by applying the method of income criteria. The accident had taken place on 02.01.2016. As per minimum wages prevalent at that time, income of injured-appellant, who was working as conductor, is assessed as Rs.8700/- per month (i.e. Rs.1,04,400/- per annum) as that of a skilled labourer. Since the claimant was 31 years of age at the time of accident, multiplier of 16 has to be applied. After applying the multiplier of 16, loss of income due to permanent disability comes to Rs.1,04,400 x 50/100 x 16 = 8,35,200/-. Hence, keeping in view the peculiar circumstances, in which the injured-claimant had been put, the compensation is hereby re-assessed as under:-

Sr. No.	Heads	Amount (Rs.)
1	Medical expenditure	Rs.74,000/-
2	Loss of income during claimant remained admitted in hospital	Rs.10,000/-
3	Compensation for loss of earnings on account of permanent disability.	Rs.8,35,200/-
4	Future loss of income	Rs.1,00,000/-
5	Special diet	Rs.10,000/-
6	Attendant charges	10,000/-
7	Pain and sufferings and transportation	Rs.15,000/-

8	TOTAL AWARDED	COMPENSATION Rs.10,54,200/-
	Enhanced amount of compensation	Rs.10,54,200 – 2,11,500 = Rs.8,42,700/-

The enhanced amount of compensation of **Rs.8,42,700/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization in view of the judgment of Hon'ble the Supreme Court in the case of “**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others**”, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019). Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

30.10.2019
ajp

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