

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-7493-2016

Date of decision: 16.12.2019

Raj Thakur

...Appellant

V/s.

Tailu Ram and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ashwani Arora, Advocate
for the appellant.

Mr. Harjinder Singh, Advocate
for respondents No. 1 and 2.

Mr. Pardeep Kumar, Advocate for
respondent No.3-insurance co.

RITU BAHRI, J. (Oral).

The claimant/appellant has come up in appeal against the award of the Tribunal dated 20.07.2015 whereby he has been awarded compensation of Rs.9,92,610/- on account of suffering 60% permanent disability in a road accident which took place on 11.09.2012.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 11.09.2012, the claimant Raj Thakur was going from his house to Rainbow Denim Fctory Village Chaundheri while driving his motor cycle at slow speed and on the left side of the road. When he was going from the side of Lalru towards Derabassi and reached near Bijli Board Lalru at about 8:50 a.m. at that time, a truck bearing registration No. HR-55-B-4275 came at fast speed and struck against the motorcycle of the claimant from behind. The left leg of the

claimant received serious injuries. He was taken to GMCH Sector 32, Chandigarh immediately from where he was taken to PGI, Chandigarh. The accident took place due to rash and negligent driving of truck bearing registration No. HR-55-B-4275 driven by respondent No.1. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

The parties are not in dispute with respect to finding on issue No. 1 that the accident took place on account of negligent driving by the driver of the offending vehicle i.e. truck. This finding has been rightly given in favour of the claimant keeping in view FIR No. 138 dated 11.09.2012 (Ex.P6) under Section 279/337/427 of IPC P.S. Lalru registered against respondent No.1 and copy of challan (Ex.P32). The claimant also appeared as PW2 and corroborated the version given in the FIR.

The claimant was 55 years of age at the time of accident and he was treated at PGI Hospital, Chandigarh as indoor patient w.e.f. 12.09.2012 to 24.09.2012 as per the discharge card (Ex.P7). Dr. Sunny Singla of Civil Hospital, Dera Bassi had proved the disability certificate (Ex.P8) showing 60% permanent disability as the left leg and mid foot of the claimant were amputated and the claimant is not in a position to continue with the work of a gardner or garden contractor with prior efficiency. However the Tribunal assessed the functional disability of the claimant as 25% and awarded the following compensation:-

Sr. No.	HEADS	CALCULATIONS
i)	Assessed income/salary	Rs.20,000/- per month
ii)	Functional disability 25%	Rs.5,000X12X11=Rs.6,60,000/-
iii)	Medical bills (Ex.P15 to Ex.P29)	Rs.37,020/-
iv)	Cost of below knee prosthesis	Rs.2,40,590/-
v)	Pain and suffering	Rs.40,000/-

vi)	Special diet	Rs.5,000/-
vii)	Loss of income	Rs.10,000/-
	TOTAL COMPENSATION AWARDED	Rs.9,92,610/-

Hence, the claimant was found entitled to total compensation of Rs.9,92,610/- along with interest @ 6% 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 insurance company has vehemently argued that the Tribunal had taken the monthly income of the appellant as Rs.20,000/- which is on higher side as he was Horticulture Contractor, having contract with Rainbow Denim Village Chaundheri, SAS Nagar, Mohali. He further stated that as per cross-examination of PW1 Nishant Akshay Singh, Senior Officer in the concern of Rainbow Denim, he admitted that Raj Thakur used to engage 10/15 labourers every month for pursuing his contract work. This witness had not specifically stated with respect to payment made of Rs.78,750/- per month. Finally he proved the payment Ex.P2 and Ex.P4 as per the ledger accounts of company Ex.P3 and Ex.P5. Learned counsel for the insurance company further stated that relevant evidence for assessment of income has been taken the contract showing amount of Rs.78,750/- per month (Ex.P4).

Learned counsel for the appellant, while referring to the entire statement of PW1, contends that appellant had been given payment of Rs.65,250/- per month as per the copy of the contract (Ex.P2). Appellant had been given another contract for Rs.78,750/- per month. The copy of the contract is Ex.P4. He had produced the statemens of ledger accounts of company pertaining to payment to the appellant Ex.P3 and Ex.P5.

The claimant himself had appeared as PW2 and in his cross-examination he stated that 8-10 workers were working under him and he regularly paid provident fund, ESI and welfare fund to the labourers. An amount of Rs.6,000/- approximately was being paid by him for provident fund, ESI and welfare fund. He also stated that he did not maintain any attendance record of 8-10 workers regarding payment of salary.

In the absence of record maintained by PW1, the income of the claimant had to be considered by guess work and the income of Rs.20,000/- considered by the Tribunal is not on higher side. On this aspect, the argument of learned counsel for the insurance company is being rejected and only issue requires consideration is whether after suffering permanent disability of 60%, the Tribunal had considered the functional disability to the extent of 25% only, which is on lower side.

Learned counsel for the insurance company has referred to judgment passed by this Court in ***HDFC Ergo General Insurance Co. Ltd. V/s. Mayank Raj and others*** in which the claimant-injured was a student of 3rd year in Institute of Hotel Management and as per the disability certificate Ex.PW4/A, the disability assessed is 65%. The Tribunal had taken the notional income of the injured as Rs.10,000/-p.m. and also extended 50% future prospect while taking the functional disability to the extent of 30%, the High Court assessed the functional disability to the extent of 35% but without extending benefit of future prospects. Learned counsel for the insurance company has further referred to judgment passed by Supreme Court in ***Anant Son of Sidheshwar Dukre V/s. Pratap Son of Zhamnnappa Lamzane and another***. Even in this case, while assessing the compensation to the injured, the loss of future income has been calculated in

terms of the percentage of the disability as per the judgment of the Supreme Court passed in ***Raj Kumar V/s. Ajay Kumar and others*** 2011(2) R.C.R. (Civil) 101 and the functional disability has been considered as 75% for assessing the future loss of income. The ratio of these judgments does not go against the claimant in the present case as well.

In the present case, the permanent disability had been assessed as 60% as per the disability certificate (Ex.P8) and it was a case of amputation of left leg and mid foot, the functional disability has been taken as 25% which is on the lower side.

Learned counsel for the appellant has referred to judgment passed by Supreme Court in ***Sandeep Khanuja V/s. Atul Dande and another*** 2017 ACJ 979 in which the injured aged 30, was a Chartered Accountant and had suffered 70% permanent disability and the functional disability was also taken as 70% keeping in view that disability had restricted his movement which would adversely affect his work and earning capacity. He has further referred to judgment passed by Supreme Court in ***Syed Sadiq and others V/s. Divisional Manager, United India Insurance Co. Ltd.*** 2014 ACJ 627 in which the injured suffered disability of 24% to upper limb and 85% to lower limb. The Supreme Court assessed permanent functional disability at 85% and further added 50% of income for future prospects keeping in view that the injured was 24 years old and vegetable vendor.

Learned counsel for the appellant argues that if the permanent disability reduces the capacity to do work then the percentage of loss of income should be taken as reflected in the disability certificate keeping in view the aforesaid judgments referred by him.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. It stands established that the claimant has received 60% permanent disability as a result of the accident. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

In the present case, the claimant was 55 years of age and hence no benefit of future prospects is to be given. Hence, to meet the ends of justice, the compensation is hereby reassessed keeping in view the judgment passed by Hon'ble the Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others*, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.20,000/-p.m.
(ii)	Functional disability 60%	12,000X12X11=Rs.15,84,000/-
(iii)	Medical bills	Rs.37,020/-
(iv)	Pain and suffering	Rs.50,000/-
(v)	Special diet	Rs.15,000/-
(vi)	Loss of income	Rs.20,000/-
(vii)	Cost of below knee prosthesis	Rs.2,40,590/-
	TOTAL COMPENSATION AWARDED	Rs.19,46,610/-
	ENHANCED AMOUNT OF COMPENSATION	19,46,610- 9,92,610=Rs.9,54,000/-

The enhanced amount of compensation of **Rs.9,54,000/-** 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 V/s. Shyam Singh Varma and*

others, Civil Appeal No. 4528 of 2019. Remaining conditions of disbursal of amount shall remain unaltered.

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

(RITU BAHRI)
JUDGE

16.12.2019
Divyanshi

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