

FAO No. 2154 of 2017 (O&M)

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

FAO No. 2154 of 2017 (O&M)

Date of Decision: October 30, 2019

Sharwan Kumar

..... Appellants(s)

Versus

Karan Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. P.S. Rana, Advocate
for the appellant.

Service upon respondents no.1 & 2 dispensed with
vide order dated 18.12.2018.

Mr. Vinod Gupta, Advocate
for respondent no.3.

LISA GILL, J.

This appeal has been filed by the appellant-claimant seeking enhancement of the compensation awarded to him vide award dated 29.08.2016, passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') on account of injuries suffered by him in the motor vehicle accident, which took place on 27.10.2014.

Brief facts necessary for adjudication of the case are that a claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by the claimant-appellant seeking compensation on account of the injuries suffered by him in the motor vehicle accident, which took place on

27.10.2014, due to the rash and negligent driving of the offending Alto car bearing registration No. HR-40-E-9628, by its driver Karan Singh-respondent no.1, which led to the amputation of the right leg of the claimant below the knee. Learned Tribunal on considering the evidence on record concluded that the appellant sustained injuries leading to amputation of his right leg in the said motor vehicle accident, caused due to the rash and negligent driving of the offending vehicle, by its driver, respondent no.1 – Karan Singh. Learned Tribunal awarded compensation of Rs.8,68,667/- to the claimant, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Medicines and Medical treatment	7,48,667/-
2.	Loss of earnings for a period of 30 days	30,000/-
3.	Permanent disability	60,000/-
4.	Pain and suffering	30,000/-
	Total	8,68,667/-

Aggrieved from the quantum of the compensation, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the appellant-claimant suffered amputation of his right leg below the knee and suffered permanent physical disability of 60%. The claimant, it is submitted, was working as a driver at the time of the accident. Therefore, his functional disability is not less than 100%. Learned Tribunal, it is submitted, has not awarded any compensation towards loss of future earnings. Meagre compensation, it is submitted, has been awarded under the other heads. It is, thus, prayed that the compensation be enhanced.

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Per contra, learned counsel for the insurance company while refuting the arguments raised by learned counsel for the appellant submits that just and reasonable compensation has been awarded by the learned Tribunal, which calls for no further enhancement. Dismissal of this appeal is prayed for.

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

It is a matter of record that the motor vehicle accident took place on 27.10.2014 at about 8:00 P.M. The claimant was ultimately taken to MAX hospital on 28.10.2014. Ex.P10 is the discharge slip of the claimant, which reveals that claimant was admitted at MAX Hospital, Mohali on 28.10.2014 with “closed midshaft tibia fracture with undisplaced proximal lateral plateau fracture with proximal one third lateral condyle fracture with mangled right foot with suspected vascular compromise with Neuro deficit unknown”. Disability certificate Ex.P8 has been proved by PW7 Dr. Ashwani Kumar, Officiating Civil Surgeon, KCGMCH, Karnal, which reflects disability to the extent of 60%. PW7 in his cross-examination states that disability if calculated qua the whole body is 30%.

The claimant while testifying as PW1 has clearly stated that he is a matriculate and was employed as a driver for driving the car of Shri Rishi Pal, Principal of the Adarsh Public School, Assandh. He produced his driving licence. It is stated that he was appointed as a driver with Rishi Pal since January 2013, earning a salary of Rs.9,500/- per month besides Rs.200/- per day.

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PW6 Rishi Pal produced the summoned record in respect to the employment of the claimant as a driver on his personal car bearing registration No. HR-40-D-3110 since January 2013 to October 2014 i.e. till the date of the accident in question. PW6 deposed that there are about 70 employees in the school which is an English medium school affiliated with C.B.S.E. There are 10 buses for carrying the students and 35 teachers in the school with a strength of 1100 students approximately. Certificate Ex.PW6/A in respect to the salary of the claimant was produced, though it is stated by PW6 that he had not brought the record of the appointment of the claimant with the school. It is denied that document Ex.PW6/A is a false and fabricated document.

Be that as it may, it is evident from the record that the claimant was employed as a driver on the personal car of PW6 Rishi Pal, Principal of Adarsh Senior Secondary School, Assandh. It is not disputed that the claimant-appellant received injuries in the motor vehicle accident, which took place on 27.10.2014, due to the rash and negligent driving of the offending Alto car bearing registration No. HR-40E-9628, by its driver Karan Singh-respondent no.1. Furthermore, amputation of the right leg of the claimant below the knee is not in dispute. Clearly the appellant cannot drive any vehicle in such a situation. PW7 Dr. Ashwani Kumar has specifically opined in this respect. Reference by learned counsel for the insurance company to the remark of PW7 in the cross-examination to the extent that 'possibility of doing the define job with artificial limbs cannot be

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ruled out provided he gets the right of implants accepted by his body' is of no avail. This is so for the reason that PW7 has clearly stated that it is not possible for the patient having amputation of the right lower limb, to drive any vehicle. He has further denied the suggestion that the patient can do his daily routine work and driving with the artificial limbs as he has clearly lost the ability to drive a vehicle, which is proved to be his vocation. Doubtlessly, he can carry on with some other vocation. His functional disability, in the given facts and circumstances, is assessed to be 80%.

PW6 has deposed that the claimant was in receipt of Rs.9,500/- per month as salary and Rs.200/- as daily allowance. It is pertinent to note at this stage that the minimum wage of a skilled labourer in the State of Haryana at the time of the accident was admittedly Rs.9,699/- per month. I am not inclined to accept the contention of learned counsel for the appellant that the appellant was in receipt of Rs.200/- on a daily basis for all the days of the month. However, keeping in view the facts and circumstances of the case, it is considered just and expedient to assess income of the appellant to be Rs.10,000/- per month.

Loss of income is to be worked out in terms of the guidelines of the judgment of Hon'ble Supreme Court in **Sayed Sadiq etc. Vs. Divisional Manager, United India Insurance Company, 2014(1) RCR (Civil) 765**. Functional disability suffered by the appellant is 80% in this case. Therefore, loss of income is assessed as Rs.8,000/- per month (80% of Rs.10,000/-).

It is a matter of record that the appellant was 30 years old at the time of accident. Therefore, 40% increment on account of future prospects is afforded, taking the amount to $[(8,000+3,200 (8,000 \times 40\%)] =$ Rs.11,200/- per month i.e. Rs.1,34,400/- per annum. Multiplier of 17 is to be applied. Loss of future earnings is, thus, assessed as Rs.22,84,800/- $[1,34,400 \times 17]$.

As the loss of earnings have been awarded, the amount of Rs.60,000/- on account of permanent disability is not afforded. The appellant is, however, entitled to a sum of Rs.1,00,000/- each on account of pain and sufferings (instead of Rs.30,000/-) and loss of amenities. Appellant is further entitled to Rs.15,000/- each for special diet, attendant charges and transportation. The amount awarded by the learned Tribunal on account of medical treatment i.e. Rs.7,48,667/- is maintained.

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

Sr. No.	Heads	Calculations
1.	Medical treatment	7,48,667/-
2.	Loss of future earnings on account of permanent disability	22,84,800/-
3.	Pain and suffering	1,00,000/-
4.	Loss of amenities	1,00,000/-
5.	Special diet	15,000/-
6.	Transportation	15,000/-
7.	Attendant charges	15,000/-
	Total	32,78,467/-

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Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed 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 the petition till realization.

Appeal is accordingly disposed of.

October 30, 2019.
Sunil

(LISA GILL)
JUDGE

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