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

FAO No. 16250 of 2018
Date of decision:- 04.12.2019

Ashok Kumar ...Appellant

Versus

Navi Sher and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Anil Ghanghas, Advocate
for the appellant.

Mr. Puneet Jain, Advocate
for respondent/Insurance Co.

RITU BAHRI J. (Oral)

The present appeal has been preferred by the injured-appellant (for short 'the appellant'), against award dated 01.08.2018 passed by the learned Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal') whereby claimant was awarded compensation of Rs.7,20,000/-.

The facts in brief are that on 2.6.2016, claimant Sonu alongwith Ashok had gone to SBI, village Umra for obtaining the documents after death of father of Ashok. Both the claimants were returning on the Hero Honda motorcycle bearing registration No. HR-18/8473 from Umra to their village Barsi at about 11.00/11.30 A.M. When they reached near Gaushala on Hansi-Tosham road, one Haryana Roadways bus bearing registration No. HR-61B/7175 being driven by its driver rashly, negligently and at a very high speed was coming from Tosham side and respondent No.1 hit his bus with the motorcycle. Due to heavy impact, both the occupants of the motorcycle fell down and sustained injuries on their respective persons. Uncle of Ashok namely Bhoop Singh was coming behind the motorcycle and he got admitted the claimants Sonu and Ashok to GH Hansi from where they were referred to GH Hisar but they were got admitted at Sapra Multi-speciality Hospital, Hisar. On the statement of claimant-injured and eye witness Sonu, FIR No. 389 dated 4.6.2016, under sections 279/337/427 IPC was lodged at Police Station City Hansi against respondent No.1.

While assessing the compensation, the Tribunal awarded Rs.5,10,000/- towards medical expenses, Rs.30,000/- towards pain and sufferings, Rs.15000/- towards special diet and attendant, Rs.10,000/- towards transportation expenses, Rs.30,000/- towards loss of income and Rs.1,25,000/- towards permanent disability of 25%. The appellant was awarded total compensation of Rs.7,20,000/-.

Learned counsel for the appellant contends that the compensation awarded to the appellant is liable to be enhanced as the appellant has suffered 25% permanent disability and the multiplier method has to be applied in the present case.

On the other hand, learned counsel for the Insurance Company has opposed the prayer made by learned counsel for the appellant.

At the very outset, reference at this stage can be made to disability certificate (Ex PW4/A) wherein it has been reflected that the appellant had suffered disability of 25% pertaining to head injuries. This certificate was duly proved by doctor and has been issued by Medical Board of General Hospital Bhiwani. The appellant was only 22 years of age at the time of accident and had passed ITI Diploma in Electrical. Thus, in this case multiplier method is to be applied for calculating the compensation by taking the disability as 25% qua whole body.

Reference can be made to a judgment of this Court in a case of

Baldev Raj vs. Jeet Singh and others, passed in FAO No. 387-2004, decided on 07.05.2014 wherein the appellant received injuries in road side accident. The permanent disability was assessed at 8%. This Court enhanced the compensation by applying the multiplier method keeping in view the fact that future earnings are liable to be discontinued by 8%.

It is not in dispute that there is disability of 25% which is permanent in nature and appellant was only 22 years of age at the time of accident.

Reference at this stage can further be made to judgment of Hon'ble the Supreme Court of India in the case of ***Sanjay Kumar vs. Ashok Kumar and another 2014(1) RCR (Civil) 875***, wherein the claimant who was earning Rs.4500/- per month suffered 70% permanent disability in motor accident, it was held that *'Loss of future prospects' should be added to this amount as it cannot be accepted that an embroiderer will not have a future increment. In that case keeping in mind the young age of victim he was held entitled to 50% of his income as future increase in income.*

In another judgment by Hon'ble the Supreme Court of India in the case of ***Rajan vs. Soly Sebastian and others, 2015(3) RCR (Civil) 962,*** wherein the victim was a professional driver, the Tribunal assessed his notional income at Rs.2000/- p.m. It was held that income was not correctly assessed. Income should have been assessed after taking into consideration the relevant Minimum Wages fixed by Government. Income be taken at Rs.3500/- p.m to work out compensation. Victim though suffered 60% bodily disability, but suffered 100% permanent disability with regard to his earning capacity. After considering 50% enhancement for future prospects, the compensation for permanent disability was calculated at (Rs.3500/-+ Rs.

1750/-)x12x17=Rs. 10,71,000/-.

Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court in a case of **Raj Kumar *vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101*** wherein the Apex Court had laid down the principles for determining the loss and the affect of permanent disability on the actual earning capacity. It would be useful to refer to the relevant paragraphs:-

> *"9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.*
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> *10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession*

and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of *amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."*

Since the appellant in the present case was only 22 years and will face difficulty in doing his work, his monthly income can be taken at Rs.8000/- per month for determining the compensation.

Applying the ratio of the above mentioned judgments, the compensation is re-assessed as under by applying the multiplier method:-

HEAD	***COMPENSATION AMOUNT***
Income	Rs.8000 per month
Annual Salary	Rs.8000X12=96,000/-
Future prospects 40%	96000+38400=Rs.1,34,400/-
Multiplier of 18	134400X18=24,19,200/-
Loss on account of 25% disability	2419200 X 25/100=Rs.604800/-
Pain and sufferings	Rs.1,00,000/-
Special Diet, and , Attendant Charges	Rs.15,000/-
Medical Bills	Rs.5,10,000/-
Loss of income	Rs.30,000/-
Transportation	Rs.10,000/-
Total compensation	**Rs.12,69,800/-**
Enhanced amount of compensation	**1269800-720000=Rs.5,49,800/- (rounded off to Rs.5,50,000/-)**

The amount of compensation of Rs.5,50,000/- shall be payable within a period of forty five days 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 realisation, in view of judgment of ***Hon'ble the Apex Court in Civil Appeal No. 4528-2019 titled as Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019***.

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

04.12.2019 (***RITU BAHRI***)
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***