

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

**FAO No.279 of 2021
Decided on : 17.03.2021**

Reliance General Insurance Company Ltd.

... Appellant

Versus

Jasbir Singh and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Sunil Kumar, Advocate
for the appellant.

(The proceedings have been conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J.

The present appeal which has been filed under Section 173 of the Motor Vehicle Act, 1988, is directed against the Award dated 03.03.2020 passed by the Motor Accident Claims Tribunal, Kurukshetra (MACT), whereby against the claim of Rs.80 lakhs, the appellant-Company being insurer of the Harvester Combine, which was involved in a accident has been fastened liability of Rs.20,52,000/- alongwith interest @ 7.5% per annum from the date of filing the claim petition till its realization. The said amount had been assessed on the basis that the claimant had suffered 100% disability in both eyes and, therefore, it had adversely affected his earning capacity completely to the same extent.

Reliance was placed upon the disability certificate (Ex.P1) to come to the conclusion that the claimant-Jasbir who was aged around 40 years had suffered injuries. While adjudicating on the issue of compensation, it was noticed that he remained admitted in the hospital as

indoor patient from 06.10.2017 to 24.10.2017, after the accident had taken place, in the fields where the Combine had been turned towards him and he had come under the tyres of the vehicle. An FIR No.202 dated 14.10.2017 under Sections 279, 337, 338 IPC was also registered against respondent No.2, who was driver of the Combine and he had never contested the petition and was proceeded against ex parte. It was noticed that the claimant was around 41 years old, as his year of birth was 1976 as per Aadhar Card (Ex.P100) and his income was assessed @ Rs.8280/- per month as per the notification in respect to the minimum rate of wages of an unskilled person/labourer w.e.f. 01.01.2017.

Dr. Neetika Bhatnagar, Eye Surgeon, Kalpana Chawla Hospital, Karnal had proved the disability of blindness of both eyes of the claimant and proved disability certificate (Ex.P1) and had stated that the disability is of permanent nature, and, therefore, there was no chance of improvement.

Keeping in view the bill (Ex.P10) showing that he had remained admitted from 06.10.2017 to 24.10.2017, whereby a sum of Rs.3,02,490/- had been charged, apart from other medical bills (Ex.P11 to Ex.P36 and Ex.P45 to Ex.P99) whereby the claimant had spent a sum of Rs.5,81,000/-, the same were held to be proved spent on the treatment of the injured, to assess the amount of physical disability @ Rs.13,91,040/-, which was awarded. The income was taken in view of notification for minimum wages with the multiplier of 14 and keeping in view his age and apart from that Rs.40,000/- had been awarded as pain and suffering

including special diets. Another Rs.40,000/- had been awarded for the amenities of life.

The nature of disability, which the claimant as such had suffered would also mean that he would require a attendant for all times and, therefore, it cannot be said that the amount awarded as such is excessive in any manner. The negligence as such was assessed on account of the fact that a final report had also been prepared by the police under Section 173 Cr.P.C., after investigation and the driver had also been charged for the offence of negligence under IPC for causing injuries. One Mam Chand had been examined as PW-2, who was the eye witness had deposed in support of the negligence of the driver of the Combine and that the claimant as such was sitting on the Dol in the fields when the offending vehicle was turned towards him, which hit the claimant who came under the tyres of the Combine. It was rightly noticed that the driver had not appeared in the witness box to deny the manner of accident and, therefore, keeping in view the factual matrix as such and the rash and negligent act of the driver of the Combine while driving insured vehicle which led to the injuries, issue No.1 was decided in favour of the claimant.

The liability had been fixed on the ground that the Driving Licence (Ex.R1) was valid as such and Ex.R2 would go on to show that the Insurance Policy was in force w.e.f. 10.04.2017 to 09.04.2018 and the accident having been taken place during the currency of the said Insurance Policy on 06.10.2017, the Insurance Company has been held

liable to pay the said amount. Out of the amount awarded as compensation, Rs.14 lakhs was ordered to be deposited in a Fixed Deposit Scheme in the name of the claimants in a nationalized Bank to receive the interest monthly or quarterly in installment to ensure that the amount is not frittered away.

In such circumstances, this Court is of the opinion that the MACT has acted with due prudence while awarding the said amount, keeping in view the facts of the case, which shows that the claimant had become totally handicapped on account of the injury and would require adequate compensation as such to maintain himself and in view of the 100% disability of loss of eye sight and the fact that he would require help as such of a attendant for all times. The amount had rightly been assessed @ Rs.8280/- per month, as per the notification, which showed the minimum rate of wages. No fault as such held to have been occurred while awarding the said amount. Reliance in this regard can be placed upon the judgment of the Apex Court in **Raj Kumar Vs. Ajay Kumar & another 2011 (1) SCC 343**. Relevant portion of the judgment reads as under:

“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.”

Resultantly, there is no merit in the present appeal and the same is dismissed in limine.

March 17, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes