

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

208

=====

IN VIRTUAL COURT

=====

**FAO No. 2028 of 2015 (O & M) with
X-OBJN No. 162-CII of 2015
Date of decision : 19.2.2021**

United India Insurance Company Limited

.....Appellant

Vs.

Lakhwinder Singh and others

.....Respondents/Claimants

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Ram Avtar, Advocate, for the appellant/Insurance Company

Mr. Ravinder Arora, Advocate, for the respondent No.1/claimant/
Cross objector

Mr. Ashok Giri, Advocate, for respondents No.2 and 4

Rajbir Sehrawat, J. (Oral)

This order shall dispose of the above said appeal and the cross objections qua the award dated 22.12.2014, passed by the Motor Accident Claims Tribunal (FTC), Rupnagar (in short 'the Tribunal').

The brief facts, as can be deciphered from the award of the Tribunal are that the injured Lakhwinder Singh filed the claim petition asserting therein that on 7.11.2013 claimant Lakhwinder Singh; along with Gurpreet Singh; was going from Village Singhpura towards Kurali on motor cycle. The claimant was driving that motor cycle and Gurpreet Singh was its pillion rider. The motor cycle was being driven at a moderate speed and with all due care and caution. When they reached near Jagmohan Palace on

Singhpur-Kurali Road, then at about 4:00 p.m., a tractor bearing registration No. PB-10-EH-1227; being driven by respondent No.3 in a rash and negligent manner; came from the opposite side and on the wrong side of the road and struck against the motor cycle of the claimant. Due to the impact, both the persons travelling on the motor cycle fell on the road. Claimant Lakhwinder Singh suffered multiple grievous injuries on his leg and other parts of the body. On account of the injuries, the injured was taken to Chaudhary Hospital, Kurali in the first instance. From there, he was referred to PGI, Chandigarh. While he was under treatment at PGI, Chandigarh, his leg had to be amputated. On account of this accident, FIR No. 242 dated 22.11.2013 was also registered against the respondent driver under Sections 279 and 338 IPC, at Police Station Kurali. It was further asserted that the claimant was a young boy of 22 years of age. He had spent Rs. 5 lakhs on his treatment. He was the only bread earner in the family. On account of the accident and amputation of his leg, the claimant was rendered totally unworthy of any employment. Before that, the claimant was earning @ Rs.15,000/-per month by working as a mason. Hence, the petition was filed claiming an amount of Rs. 50 lakhs as the compensation.

On being put to notice, the respondents put in appearance. Respondents No.1 to 3 in the claim petition filed their joint written statement. It was pleaded in the written statement, inter alia, that the tractor of the respondent was falsely implicated in the accident. The FIR registered against the driver of the tractor was also fabricated one. Beside this, it was asserted that the claim of the claimant was excessive and was an exaggeration in all respects.

The respondent No.4 filed separate written statement, in which

besides taking the routine objections qua maintainability of the claim petition, it was asserted that the owner or driver of the alleged offending tractor did not inform the Insurance company. The driver was not holding a valid and effective driving licence at the relevant time. The tractor was not even having valid registration certificate and fitness certificate on the date of alleged accident. Beside this, it was also asserted that the driver of the motor cycle was not holding a valid driving licence. The claim petition has been filed in collusion with the driver and owner of the tractor. Hence, it was prayed that the claim petition be dismissed.

The claimant led in evidence the documents and examined his witnesses. On the other hand, respondents No.1 to 3 tendered the copy of the insurance policy of the tractor in question as Ex. RW1/A, copy of RC of the tractor in question as Ex. RW1/B and copy of the DL of the respondent No.3 as Ex. RW1/C. Beside this, the affidavit of respondent No.1 was also placed on record. Thereafter, the respondent No.4 tendered the copy of insurance policy of the tractor in question. However, no other evidence was led by respondent No.4 despite availing numerous opportunities. Hence, the evidence of respondent No.4 had to be closed by order of the Tribunal.

After hearing the parties and perusing the record, the Tribunal had taken the income of the injured at Rs.6000/-per month as a labourer. Although the disability certificate placed on record by the injured specifies 60% disability, however, on account of amputation of the leg and consequent loss of earning capacity, the Tribunal had taken the earning disability as 100% and by applying the multiplier of '17', the loss of income of the injured/claimant was assessed to be Rs.12,24,000/-($6000 \times 12 = 72,000 \times 17 = 12,24,000$). Beside

this, the injured/claimant was awarded Rs.30,000/- on account of pain and agony. Another amount of Rs.30,000/-was awarded towards transportation/ attendant charges etc. An amount of Rs.24,000/-was awarded for loss of income during the period of hospitalization. The loss of marriage prospectus of the claimant was compensated by an amount of Rs.30,000/-. The Tribunal also awarded an amount of Rs.1,61,386/- on account of treatment charges. Accordingly, an amount of Rs.14,99,387/- was awarded along with interest @ 6% per annum from the date of institution of the petition till realisation of the said amount. The liability of payment of the compensation was held to be joint and several including that of the Insurance company.

Challenging the above said award, the Insurance company has filed the present appeal. During pendency of the appeal, the claimants have filed the cross objections; claiming enhancement of compensation on various accounts. Hence, both these aspects are being dealt with by this Court jointly.

While arguing the case, the counsel for the Insurance company has submitted that the Tribunal has gone wrong in taking the earning disability to be 100%. Once the certificate placed on record reflected the disability to the extent of 60%, then the Tribunal should have awarded the compensation only by taking the earning disability as 60%. Hence, the Tribunal has wrongly inflated the amount of compensation payable to the claimant. It is further submitted that the claimant has wrongly been granted the compensation on account of loss of marriage prospectus because, subsequently, the claimant has even performed the marriage. Beside this, the insurance company has also filed an application under Order 41 Rule 27 CPC for leading additional evidence to bring on record the information received under RTI Act from the

Registration and Licensing Authority, Nagaland; to assert that the driving licence of the driver or the owner was fake. Hence, it is submitted by the counsel for the Insurance company that this application be allowed and if this evidence is taken into consideration, then the Insurance company will not be under any liability to make payment of any compensation in the present case.

On the other hand, the counsel for the respondent/claimants has submitted that the Tribunal has rightly taken the loss of earning capacity as 100% on account of disability arising due to amputation of the leg. The claimant is rendered totally unworthy of employment on account of the amputation. Hence, the compensation on that account has rightly been granted by the Tribunal. The counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Jakir Hussein v. Sabir and others**, Civil Appeal No. 2006 of 2015 decided on 18.2.2015 to buttress his argument that; in that case; although the physical disability was only 50%, however, the Supreme Court had upheld the award of compensation by taking the loss of earning capacity to the extent of 100%. The counsel has also submitted that there is no reason to allow the additional evidence, as prayed by the counsel for the Insurance company. The Insurance company was given full opportunity to lead the relevant evidence at the relevant time. However, despite availing numerous opportunities, the Insurance company did not lead any evidence to rebutt the driving licence of the driver in question. Hence, now the Insurance company cannot be permitted to re-open the entire case at this belated stage. The counsel has relied upon the judgment of this Court rendered in **FAO No. 8614 of 2014** decided on 9.11.2014 in this regard.

Qua enhancement of the claim, the counsel for the claimants/cross

objector has submitted that the income of the claimant Lakhwinder Singh has been taken by the Tribunal on a lower side. Even if the claimant was to be taken as a semi skilled labourer, then also, at least, the minimum wages prescribed at the relevant time should have been taken as the notional income of the claimant. As per the Punjab Government Gazette dated 5.4.2017, an amount of Rs.6920/- per month was prescribed as minimum wages for the semi skilled labourer. The claimant has led evidence to prove the fact that he was semi skilled labourer. The claimant had produced PW3-Kuldeep Singh in evidence, who had deposed that the claimant was working as a mason with him and he was paying the claimant Rs.500/-per day; besides some other allowances. Hence, even if the actual amount of payment being made by PW3 to the claimant is not proved on record, at least, the factum of the claimant being a semi-skilled labourer has been established on record. Accordingly, the income of the claimant should have been assessed @ Rs.6920/- per month. Beside this, the claimant is entitled to increase of 40% of the assessed income on account of future prospectus. The counsel has relied upon the judgment of the Hon'ble Supreme Court in **Civil Appeal No. 2811 of 2020, Erudhaya Priya v. State Express Transport Corporation Limited** in this regard. The counsel has also submitted that the claimant is entitled to compensation by applying multiplier of '18' instead of '17'. The counsel has relied upon the judgment of the Supreme Court rendered in **National Insurance Company Limited v. Pranay Sethi and others, (2017) 16 SCC 680**, in this regard. Furthermore, the counsel for the claimant has submitted that the Tribunal has awarded very less amount on account of attendant charges, compensation on account of loss of marriage prospectus and also on account of loss of amenities

and pain and sufferings. In the end the counsel has submitted that the claimant would be requiring assistance of an artificial limb throughout his life, therefore, he is entitled to be compensated for that aspect as well. The counsel has also submitted that the Tribunal has wrongly restricted the interest payable on the amount of compensation @ 6% per annum. As per the judgment of the Hon'ble Supreme Court in **Erudhaya Priya's case** (supra), the claimant is entitled to interest @ 9% per annum.

This Court has heard the counsel for the parties and have perused the record.

This Court does not find any substance in the argument of the counsel for the appellant/Insurance company. No doubt, the certificate of disability placed on record shows the disability of the claimant to be 60% only, however, the disability is on account of amputation of the leg of the claimant above the thigh, rendering him incapable of employment in ordinary course. Hence, the Tribunal has rightly taken the loss of earning capacity of the claimant to be 100% on account of the disability in question. This Court finds substance in the argument of the counsel for the claimant in this regard. The counsel for the claimant has rightly relied upon the judgment of the Supreme Court in **Jakir Hussein's case** (supra). Even in that case although the physical disability was only 50%, however, the loss of earning capacity on account of that disability was taken to be 100%. Hence, this Court does not find any illegality in the decision of the Tribunal in taking the loss of earning capacity to be 100% on account of physical disability of the claimant.

So far as the question of validity of the driving licence of the driver of the offending tractor is concerned, it has been a categorical stand of the

Insurance company in their written statement that the said driver did not have the valid driving licence. Therefore, the appellant/Insurance company was well aware about the issue of validity of the licence of the driver of the offending tractor. It was granted numerous opportunities to lead any evidence to substantiate this plea of the company. However, the appellant/Insurance company failed to adduce any evidence on that count. Even the evidence of the insurance company had to be closed by order of the Tribunal. Therefore, having availed more than sufficient opportunities for leading the evidence on the point of validity of the driving licence of the driver of the offending tractor, the Insurance company cannot be permitted to assert now that it did not get proper opportunity to rebutt the driving licence of the driver of the offending tractor. This Court finds force in this argument of the counsel for the claimant that, at this stage, the Insurance company cannot be permitted to reopen the entire issue by permitting to lead additional evidence. This Court finds support on this point from the judgment rendered in **FAO No. 8614 of 2014** decided on 9.11.2014 by this Court. Otherwise also, even now the Insurance company is attempting to lead in additional evidence an information, allegedly received by it from the Registration and Licensing Authority, Nagaland under RTI Act. However, even the said document is totally unsubstantiated. No authenticity can be attached to such information claimed to have been received by the Insurance company as such. Even for proving the said document, the Insurance company would be required to summon the relevant record from the Registration and Licensing Authority. The same procedure could have been; very well; adopted by the Insurance company in the first instance when its evidence was going on. Hence, this Court does not find any justification to

permit additional evidence to be led by the Insurance company at this belated stage. Hence, the application moved by the Insurance company for additional evidence is liable to be dismissed; and is ordered accordingly.

So far as the claim of the claimant qua enhancement of the amount of compensation is concerned, this Court finds substance in the argument of the counsel for the claimant that the annual income of the injured should have been taken at the level of minimum wages prescribed for semi skilled labourer. It has come in evidence by testimony of PW3 Kuldeep Singh, who is stated to be a construction contractor, that the injured was working as a mason with him and that he was paying Rs.500/-per day plus allowances to him. Although the actual payment of any amount to the injured/claimant by the said contractor PW3 Kuldeep Singh may not have been duly proved, however, his testimony, at least, proves one thing; that the claimant was a mason by profession. Mason is specified to be a semi skilled worker under the prevalent notification of the Punjab Government referred hereinabove, which has not even been disputed by the Insurance company. Hence, the notional income of the injured has to be enhanced to Rs.6920/- per month.

This Court finds substance in the argument of the counsel for the claimant that the claimant was entitled to 40% increase on account of future prospectus. This aspect is covered by the judgment of the Supreme Court in **Erudhaya Priya's case** (supra). This Court does not find any reason on record not to grant enhancement on account of future prospectus @ 40%; by following the judgment of the Supreme Court. Beside this, the counsel for the claimant has rightly pointed out that since the age of the injured was 22 years, therefore, the multiplier to be applied in this case is required to be enhanced to

'18' as per the judgment of the Supreme Court rendered in **Pranay Sethi's case** (supra).

There is one more aspect. Although the claimant has been compensated on account of loss of income arising from his disability, however, the Tribunal has not awarded any amount to the claimant on account of disfigurement/physical disability; as such. As per the norms applied by the Courts in this regard, the claimant is held entitled to Rs.2000/-per degree of disability as compensation on account of disfigurement/physical disability. Accordingly, the claimant is held entitled to an amount of Rs.1,20,000/-on account of his disfigurement/physical disability.

This Court also finds that the counsel for the claimant has rightly relied upon the judgment of the Hon'ble Supreme Court rendered in **Erudhaya Priya's case** (supra) qua enhancement of the compensation on account of loss of amenities and enjoyment, as well as, on account of pain and suffering. The amount awarded on these counts also deserves to be suitably enhanced. Hence, following the spirit of the judgments of the Hon'ble Supreme Court, the claimant is held entitled to an amount of Rs. One lakh on account of loss of amenities, mental agony and lost of comfort. Beside this, the claimant is held entitled to an amount of Rs.60,000/- on account of pain and suffering because he had to remain under hospital treatment for about 4 months. Following the judgment of the Hon'ble Supreme Court in the same case, the interest awarded to the claimant have also to be enhanced to 9% per annum. Ordered accordingly.

However, this Court does not find any ground to enhance the amount awarded to the claimant on account of medical bills, marriage

prospectus or attendant charges. That will remain at the level as has been awarded by the Tribunal.

Accordingly, the claimant is held entitled to the compensation as follows :-

Compensation on account of loss of income (by adding multiplier of '18' (6920 x 12 x 18)	= 14,94,720/-
Future prospectus(40% of 14,94,720/-)	= 5,97,888/-
Medical expenses	= 1,61,387/-(unchanged)
Attendant charges	= 30,000 (unchanged)
Marriage prospectus	= 30,000 (unchanged)
Disfigurement/ Physical disability (60 x 2)	= 1,20,000/-
Loss of comfort, amenities and mental agony	= 1,00,000/-
Pain and suffering	= 60,000/-
Total compensation	= 25,93,995/-

On the above said amount, the claimant is held entitled to 9% interest per annum from the date of institution of the claim petition till realisation.

In view of the above, the appeal filed by the Insurance company is dismissed. The cross objections filed by the claimants are allowed in the above said terms.

All the pending applications are dismissed/disposed of accordingly.

(RAJBIR SEHRAWAT)
JUDGE

19.2.2021
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No