

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.490 of 2000
Date of Decision: 04-11-2022

Yesh Paul Malik

..... APPELLANT(S)

VERSUS

State of Haryana & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Ashish Gupta, Advocate, for the appellant.

Mr. Sandeep Singla, Assistant Advocate General,
Haryana.

Mr. Neeraj Khanna, Advocate, for Mr. Deepak Suri,
Advocate, for respondent No.6.

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Tribhuvan Dahiya, J (Oral)

This is claimant's appeal against award passed by the Motor Accident Claims Tribunal, Chandigarh, dated 02.09.1999, for enhancement of compensation by the injured.

2. The facts of the case in brief are that accident in question took place on 07.05.1994 while the appellant-claimant (hereinafter referred to as, 'claimant') was travelling along with other occupants in a Haryana Roadways bus belonging to respondent Nos.1 and 2, being driven by respondent No.3. The Tribunal, after holding the accident to have occurred due to rash and negligent driving of respondent No3, assessed the amount of

compensation payable by respondent Nos.1 and 2 being employer of respondent No.3.

3. The claimant examined himself as PW-2 to prove the injuries suffered on his body as well as his hospitalization in General Hospital, Sector 16, Chandigarh, from 07.05.1994 to 28.05.1994. He has testified that he was operated upon and a nail was inserted in his leg, and that, he was not able to walk briskly, nor could he undertake long walks on foot as his left knee would start aching. His leg has been shortened by $\frac{1}{2}$ or $\frac{3}{4}$ inch and he has to limp while walking. He claimed to be earning about ₹ 12,000 per month as professional income being an Advocate. His professional working was interrupted for 11 months when he remained bed ridden due to the accident. Even after resuming work, his professional income did not reach the earlier levels for quite some time. It has also been testified that he was unable to drive properly and, therefore, had to employ a driver, to whom he was paying about ₹ 2,000 per month.

4. Further, to prove his case, claimant examined PW-1, Dr. N.K. Aggarwal, Orthopaedic Surgeon, General Hospital, Sector 16, Chandigarh. The witness testified that he examined the claimant on 07.05.1994. On X-ray examination, there was a fracture on the left thigh bone on its upper part, for which claimant was operated upon on 17.05.1994. K-nail was inserted and he remained in the hospital care till 28.05.1994. He further testified that on 08.08.1998, he examined the claimant for the purpose of assessing his permanent disability. He found the left lower limb was short by $\frac{1}{2}$ inch and there was a permanent disability of 15%, and the patient/claimant was having difficulty in squatting and sitting cross legged. Besides, he had difficulty in running because of limitation of movement in

left knee joint. He further stated that the claimant will have problem in standing for long periods, and would require help of a driver for driving a vehicle. The disability certificate was proved as Exh.P1.

5. Driver, Naresh Kumar, has been examined as PW-3, who testified that he was employed as driver by the claimant on 10.05.1994 and was drawing a salary of ₹ 1,500 per month up to December 1995. Thereafter, his salary was increased to ₹ 2,000 per month. He also stated that the claimant was not in a position to drive a vehicle.

6. Based on this evidence, the Tribunal found that as per income tax returns, the claimant's income had not decreased. Still, in case an advocate remained confined to bed, his professional income and clientele is bound to decrease. The disability of 15% was *qua* his affected limb only, and, therefore, for whole body the disability would be $15 \times \frac{3}{5} = 9\%$. The amount for expenses of medical bills including physiotherapy and other bills produced/proved on record was found to be ₹ 10,512. The Tribunal awarded an amount of ₹ 40,000 on account of permanent disability; an amount of ₹ 30,000 on account of pain and suffering; an amount of ₹ 20,000 on account of medical and travelling expenses; and an amount of ₹ 30,000 for employment of the driver as well as a maid servant. Assessing the claimant's income as ₹ 5,000 per month, ₹ 55,000 was allowed as compensation for loss of eleven months' earnings. Therefore, in total, the claimant was awarded an amount of ₹ 1,75,000 with interest at the rate of 12% from the date of filing of claim petition till its realization.

7. Learned counsel for the appellant has argued that the claimant is a practicing advocate before this Court and has suffered immensely on account of the permanent disability caused to him due to sole

negligence of respondent No.3. At the time of accident, the claimant was 42 years of age, and had a long professional career ahead. This disability proved a handicap for career advancement.

8. *Per contra*, learned counsel for the respondents has opposed the aforesaid contentions by arguing that neither the claimant's professional income, nor the loss of his earning capacity on account of the permanent physical disability has been properly proved on record. Besides, he has referred to an order dated 21.11.2019 passed by this Court, whereby, on failure of the appellant-claimant to produce his income tax returns on record, this Court ordered that his income as assessed by the Tribunal shall be taken into consideration. Further, to ascertain physical condition of the claimant as on date, he was directed to get himself medically re-examined from a medical board of the Post Graduate Institute of Medical Sciences and Research, Chandigarh (hereinafter referred to as, 'PGI'), which he failed to do. Therefore, learned counsel contends that claimant's income as assessed by the Tribunal only can be taken into consideration, and his physical disability also cannot be believed.

9. Learned counsel for the parties have been heard

10. There is no dispute about the fact that this Court, vide order dated 25.09.2019, directed the claimant to produce his income tax returns for three years prior to the date of accident. Pursuant thereto, claimant filed an affidavit dated 19.11.2019, that despite best efforts the old record of income tax returns could not be traced by him. In these circumstances, this Court ordered on 21.11.2019 that appellant's income shall be taken into

consideration as was assessed by the Tribunal. The order dated 21.11.2019 is reproduced hereunder for reference:

Since, in compliance of order dated 25.09.2019, appellant has miserably failed to produce his income tax returns and has filed an affidavit that these could not be located, therefore, income of appellant shall be taken into consideration as was assessed by the Id. Tribunal.

To ascertain physical condition of appellant-claimant as on date, he is directed to get himself medically re-examined from a medical board of PGIMER, Chandigarh, who would specify the permanent disability, if any, suffered by him and as to what extent his working capacity is reduced, on account of his alleged permanent disablement. Simultaneously, appellant is directed to produce his medical bills alongwith future treatment after passing of the award, if any.

In view of above, in case, appellant appears before PGI, Chandigarh, the Director, PGIMER, Chandigarh would do the needful as per the observations made above.

Adjourned to 03.03.2020, to await the report/certificate.

Registry is directed to send intimation in this regard to the Director, PGIMER, Chandigarh, along with a copy of paper book.

Therefore, the instant appeal is to be decided by taking the appellant-claimant's income to be ₹ 5,000 per month, as assessed by the Tribunal.

11. Regarding the appellant-claimant's physical condition as on date, learned counsel for the claimant informs that re-examination by a medical board, as directed by this Court vide order dated 21.11.2019, could not be done on account of Covid-19 Pandemic. Even if the claimant failed to get himself re-examined, no adverse inference can be drawn against him on that account, since the direction was only to ascertain physical condition of the claimant 'as on date'. So far as his medical condition on the date of accident is concerned, that remains undisputed. He has been assessed by the Tribunal to have suffered 9% disability *qua* whole body. There is no challenge to this finding by the respondents. Even otherwise, the percentage of permanent disability is based on disability certificate, Exh.P1, which has

been duly proved on record by the doctor concerned in his testimony as PW-1.

12. For assessing the amount of compensation payable to the claimant on account of permanent disability of 9% suffered by him, it needs to be ascertained how much functional disability he has suffered on that account. The Supreme Court in *Raj Kumar vs. Ajay Kumar & another*, (2011) 1 SCC 343, has held that the assessment of compensation under the head 'loss of future earning', would depend upon the effect and impact of such permanent disability on his earning capacity. The manner in which the assessment is to be carried out has been mentioned in Para 19 of the judgment, which reads as under:

19. We may now summarise the principles discussed above:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).
- (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.
- (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

It has, therefore, been held that it is to be ascertained as to which of the activities claimant could carry on in spite of permanent disability and which

ones he could not. It is also to be ascertained what was his avocation, profession and nature of work before the accident, as also his age. Based on that and in the light of evidence led, percentage of loss of earning capacity due to permanent disability can be assessed. The assessment is not to be done mechanically only on the percentage of physical disability.

13. In *N. Manjegowda Vs. The Manager, United India Insurance Co. Ltd.*, (2014) 3 SCC 584, the Supreme Court was assessing the compensation payable to a young advocate, about 36 years of age, on account of the accident occurred on 17.04.2005. The advocate had suffered whole body disability of 50% and also the resultant partial sensory loss over his limbs. His loss of earning capacity was treated as 70% and the compensation was assessed by applying multiplier of 16.

14. In view of the law laid down as afore-mentioned, the loss of earning capacity of the appellant-claimant is to be assessed. His age, profession, nature of work, and the related factors, as well as the permanent disability suffered need to be taken into account for that purpose. The unchallenged findings of the Tribunal establish that the claimant's disability of 15% *qua* the affected limb has been found to be 9% *qua* the whole body. At the time of accident, he was 42 years of age, and in active practice as an advocate before this Court. The disability suffered, leading to shortening of leg by ½ inch, and the resultant difficulty in running, squatting and free movements to the claimant, would naturally have affected his professional life as well as the earning capacity. His movements got restricted and expenses increased, besides he had to be dependent on a driver for travelling. The legal profession requires an advocate to be actively moving around, in as well as outside courts, and attending to clients. He was,

therefore, clearly at a disadvantage in competing with his peers in the profession as his functional capacity was impaired. Thus, the adverse effect of permanent disability on the claimant’s professional life, earnings and career cannot be disputed. By taking these circumstances cumulatively, appellant-claimant’s loss of earning capacity due to the disability suffered is treated as 10% of the assessed income. By applying the multiplier of 14, as he was 42 years of age at the time of accident, the amount of compensation towards loss of future earnings is to be assessed. The Tribunal has failed to award any compensation under this head.

15. Accordingly, the loss of future earning to the appellant-claimant is assessed as under:

Sr. No.	Particulars	Amount (₹)
1	Monthly Income	5,000
2	Annual Income (5000x12)	60,000
3	Loss of future earning capacity per annum (10% of prior annual income)	60,000 x 10/100 = 6000
4	Multiplier applicable with reference to age	14
5	Compensation for Loss of future earnings (6000x14)	84,000

16. The award passed by the Tribunal dated 02.09.1999, therefore, stands modified, and the appellant-claimant is held entitled to ₹ 84,000 as compensation for loss of future earnings with interest at the rate of 9% per annum from the date of filing the claim petition till its actual realization, which shall be jointly and severally paid by the respondents as directed by the Tribunal. This is in addition to the compensation already awarded by the Tribunal.

17. Resultantly, appeal filed by the appellant-claimant is disposed of with aforesaid modification in the award passed by the Tribunal.

18. Since the main appeal stands decided, all pending applications, if any, are disposed of as having been rendered infructuous.

(Tribhuvan Dahiya)
Judge

04-11-2022
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No