

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

FAO-1054-2015 (O&M)

Reserved on: 18.08.2022

Date of Decision: 30.09.2022

Gurmeet Singh

..... Appellant

Versus

Dharam Pal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.D.S.Walia, Advocate for the appellant.
Mr. Harish Sharma, Advocate for respondents No.1 & 2.
Mr. Satpal Dhamija, Advocate
for respondent No.3-Insurance Company.

HARKESH MANUJA, J.

The present appeal lays challenge to the award dated 13.10.2014 passed by the learned Motor Accident Claims Tribunal, Panchkula (in brevity, 'the Tribunal'), whereby compensation of Rs.2,50,000/- was awarded to the appellant/claimant (injured) along with interest @ 7.5% per annum.

The brief facts of this case are that on 22.12.2012 at about 7.25 am claimant/ appellant (Gurmeet Singh) was going from Village Kiratpur to HMT Power House, Pinjore on his motorcycle bearing No.HR-49-A-4624 and when he was on Kiratpur-Nalagarh road, a Maruti Swift Car bearing Registration HR-03-L-6719 (hereinafter referred to as 'offending vehicle') being driven by respondent No.1 struck against his motorcycle from right side and due to the impact of accident, the claimant/appellant fell down and sustain multiple and grievous injuries including fracture in his right leg. Respondent No.1 happens to be the Driver of the offending

vehicle, respondent No.2 is the owner; whereas respondent No.3 its insurer.

After going through the claim petition and evaluating the evidence led by both the parties, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of respondent No., therefore, considering the nature of injuries and the follow-up treatment available on record, learned Tribunal awarded compensation in the following manner:-

Sr.No.	Nature	Amount in Rupees
1.	<i>Loss of income on account of absence from duties for six months</i>	<i>Rs.49,000/-</i>
2.	<i>Medical Expenses (medicines)</i>	<i>Rs.1,000/-</i>
3.	<i>Special Diet</i>	<i>Rs.10,000/-</i>
4.	<i>Transport</i>	<i>Rs.10,000/-</i>
5.	<i>Pain and suffering on account of fracture</i>	<i>Rs.10,000/-</i>
6.	<i>Loss of amenities for 30% disability as assessed by the doctor</i>	<i>Rs.50,000/-</i>
7.	<i>Future loss of income</i>	<i>Rs.1,00,000/-</i>
8.	<i>Loss of prospect of marriage</i>	<i>Rs.20,000/-</i>
	Total awarded amount	Rs. 2,50,000/-

With regard to the liabilities, learned Tribunal held that respondents No.1, 2 and 3 i.e. Driver/ owner of the offending vehicle and insurer, respectively, are jointly and severally liable to pay the compensation amount. However, respondent No.3 was directed to indemnify respondents No.1 and 2.

Being aggrieved against the award dated 13.10.2014, the present appeal has been preferred by the claimant/ appellant for enhancement of the compensation.

Learned counsel for the claimant/appellant contends that though claimant/appellant could submit bills of Rs.890/- for the treatment, however, he actually spent Rs.7 Lakhs and therefore, should have been compensated accordingly. He further contends that claimant/appellant has cleared the examination for the post of Constable (Electrician) in ITBP and only fitness test was to be cleared by him which was mere formality. However, due to this accident he could not appear in the fitness test; but in all probabilities he would have been selected and got the salary @ Rs.20,000/- per month, therefore, his future loss of income should have been calculated accordingly. He further contends that assessment of functional disability @ 20% by the learned Tribunal was on the lower side, besides, it having failed to compensate for the loss of future income appropriately as it considered that claimant/appellant was earning the same salary after that accident as he was earning before. He further contends that no compensation has been awarded on account of attendant charges, disability and also the compensation awarded under conventional heads is very meager.

On the other hand, learned counsel of the respondent contents that as the selection of the claimant in ITBP was not final, therefore, there is no point in calculating the compensation as per speculative salary. He further contends that the compensation awarded to the claimant/appellant is sufficient in the facts and circumstances of the case.

I have heard learned counsel for the parties and perused the paper-book and while examining the facts of this case, I need to abide by the principles of law laid down in **R.D.Hattangadi Vs. Pest Control (India) (P) Ltd.**, reported as (1995) 1 SCC 551; **Raj Kumar Vs. Ajay**

Kumar, reported as (2011) 1 SCC (Civ) 164 as well as **Pappu Deo Yadav Vs. Naresh Kumar and others**, reported as AIR 2020 SC 4424.

The arguments raised by the learned counsel for the claimant/ appellant that the selection of the claimant/ appellant in ITBP on the post of constable (electrician) was almost final is a forceful argument and requires due deliberations. Perusal of the records as well as the testimony of PW2 reveals that the claimant/ appellant has not only cleared the written examination; but also cleared the physical efficiency test held on 03.08.2012. Thereafter, he also successfully qualified in the skill test held on 07.11.2012 and after that he was called for medical test to be held on 12.01.2013. However, in the absence of enough material on record that how many vacancies were advertised and how many persons were shortlisted for medical, it cannot be conclusively said that the medical test was merely formality and selection of the appellant was almost final. Also nothing has been brought on record to prove that the appellant was otherwise medically fit in all the aspects being examined by the ITBP for the selection at the post of Constable (Electrician). Hence, no doubt that the appellant has cleared a major hurdle of written test including physical efficiency test and skill test, however, assuming the factum of his selection in ITBP at this stage without medical test would be highly speculative and thus, cannot be held to be final and therefore, his salary cannot be assumed as per that post.

With respect to the future loss of income I find force in the arguments. In this context, it would be appropriate to have a look at the details as delineated in the disability certificate (Ex.PW3/1) as under:-

“This is to certify that Mr. Gurmeet Singh, son of Shri Joginder Singh, age 26 years old Male Registration No.1058, resident of Village Kiratpur, PO Basalon, Tehsil Kalka, Panchkula is a case of RSA on 22.12.12 treated at PGI, Chandigarh for fracture olecranon left side (T.B.W.) fracture tibia right side (ILN) fracture acetabulum right plating with stiffness of right hip with inability to sit cross leg with pain and limp. He is physically Disabled/ Visual disabled/ Speech & Hearing Disabled and has 30% (thirty percent) permanent (physical impairment/ Visual impairment/ Speech & hearing impairment) in relation of his Right lower limb.

NOTE:

- 1. This condition is *not likely to improve.***
- 2. Re-assessment. *Is not Recommended.* ”**

Learned Tribunal, however, held that no loss of future income has occurred due to the reasons—

Firstly, as per the opinion of PW3-Dr.K.K.Bansal, SMO, Sector 6, G.H., Panchkula, the nature of injury shall not hinder the claimant/appellant to do his work of electrician; and

Secondly, it found that the appellant got the similar job and earning the same salary as he was earning before the accident.

I had carefully gone through the testimony of the Doctors, including PW7-Dr.Sandeep Patel, PGI, Senior Resident, Department of Orthopedic, PW10-Dr.Mukesh Jindal, Jindal Diagnostic Centre and specifically PW3- Dr. K.K. Bansal, SMO, G.H. Sector 6, Panchkula, but in his examination-in-chief/ cross-examination, there is no such averment that the present injury will cause no hindrance in the work of the appellant,

therefore, learned Tribunal has misread the evidence on record. The finding recorded by learned Tribunal on the point that claimant/ appellant has got similar job and was earning similar salary and hence he is not entitled for any future loss of income is completely misconceived.

Appellant is working as an electrician in private sector and not in Government Department where his disability will not affect his employment and remuneration being paid to him. In the wake of injuries suffered by the appellant and the permanent disability suffered @ 30% in right lower limb resulting into stiffness of right hip with inability to sit cross-leg with pain & limp, his functional disability should also have been assessed at least equal to the permanent disability i.e. @ 30%, as it cannot be held that it will not affect his efficiency. For now, he might have got another job of similar nature as the employer company might be in immediate need of a electrician, however, there is no surety of job in private sector, and once the current project or the immediate need of the company is satisfied, appellant might be the first person to be thrown out on account of his disability as he will not be able to do his work with as much efficiency as an equally skilled and physically fit person can do. Further at this stage of life, appellant being of young age might not feel that much impact of the injuries or disability, however, it cannot be ruled out that with the passage of time when he will become old it will certainly affect his capacity as on account of injuries, his mobility will be reduced.

With respect to the contention of learned counsel for the claimant/ appellant that though claimant/ appellant incurred expenses to the tune of Rs.7 lacs on his treatment; though he could not submit bills to that effect, but considering the nature of injuries and treatment, higher

compensation should have been awarded on that count. I find no force in this submission of the learned counsel for the claimant/ appellant as the onus to prove the same was on claimant/ appellant and in the absence of any such bills/ documentary proof to that effect, there is no reason to differ with the findings as recorded by learned Tribunal on this point.

As the claimant/ appellant was 25 years of age, compensation on account of loss of prospect of marriage should have been on higher side. Injuries have resulted into permanent disability of 30% of the appellant, which in turn will affect his marriage prospects to a large extent. Sight cannot be lost of the fact that Indian Society is very conservative while arranging the marriages and the physical status and the avocation of the prospective groom are prime considerations. In my considered opinion, on this count as well, the appellant should be adequately compensated and accordingly the same is enhanced from Rs.20,000/- to Rs.50,000/-.

As the claimant/ appellant suffered functional disability, it cannot be denied that he would have required the services of a physiotherapist. Further, considering the nature of injuries which are multiple fractures, I am of the opinion that the appellant required physiotherapy in the past and in future as well, therefore, a sum of Rs.20000/- is being awarded on this account.

In view of the discussions made hereinabove, the appellant is entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	Nature	Amount in Rupees
1.	Annual Income of deceased (Rs.8100x 12)	Rs.97,200/-

2.	Add 40% of Future prospects	Rs.32,400/-
3.	Total Income (Rs.97200/- + Rs.32,400/-)	Rs.1,29,600/-
4.	Multiplier of 18 as per age of 25 years (Rs.1,29,600/- X 18)	Rs.23,32,800/-
5.	Loss of future earning capacity/ income [30% (percentage disability) of total income]	Rs.6,99,840/-
6.	Medical Expenses (as awarded by Id. Tribunal)	Rs.1000/-
7.	Pain and sufferings and mental agony	Rs.10,000/-
8.	Permanent Disability to the extent of 20% (as assessed by the Id. Tribunal)	Rs.20,000/-
9.	Compensation for special diet (Rs.10000/-), Transport (Rs.10,000/)	Rs.20,000/-
10.	Loss of amenities and enjoyment of life	Rs.50,000/-
11.	Loss of income during treatment	Rs.49,000/-
12.	Loss of prospect of marriage	Rs.50,000/-
13.	Physiotherapy	Rs.20,000/-
	Total Compensation	Rs.9,19,840/-
	Amount Awarded by the Tribunal	Rs.2,50,000/-
	Enhanced Amount	Rs.6,69,840/-

The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513, which were approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimant from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

Consequently, the present appeal is disposed off in the above terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

September 30, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>