

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

FAO-4476-2014 (O&M)

Date of Decision: 21.09.2022

Gurjit Singh

..... Appellant

Versus

Karam Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Ashwani Arora, Advocate for the appellant.
Respondent No.1 proceeded ex-parte
vide order dated 02.09.2019.
Mr. D.K. Dogra, Advocate for respondent No.2.

HARKESH MANUJA, J.

The present appeal lays challenge to the award dated 27.01.2014 passed by the learned Motor Accident Claims Tribunal, S.A.S. Nagar, Mohali (in brevity, 'the Tribunal'), whereby compensation of Rs.1,96,475/- was awarded to the appellant/claimant along with interest @ 6% per annum from the date of claim petition till its realization.

Brief facts of this case are that on 30.08.2010 at about 6.00 pm, claimant/ appellant was going from his Village Chhat to Zirakpur on his motorcycle along with on Jasbir Singh as pillion rider. When they were little short from AKM Palace-Zirakpur, a car bearing registration No.DL-2CY-0035 (hereinafter referred to as 'offending vehicle') being driven by respondent No. 1 in a rash and negligent manner, came from opposite side and hit the motorcycle. As a result thereof, claimant/ appellant as well as pillion rider Jasbir Singh fell down on the road and received serious injuries including fracture of right shaft of femur (thigh bone) &

fracture of ankle. Respondent No.1 happens to be the Driver/ owner of the offending vehicle; whereas respondent No.2 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 negligent and rash driving of respondent No.1. In view of the nature of injuries and the evidence that the appellant became permanent disabled to the extent of 29%, learned Tribunal considered the functional disability at 10% and after assessing the income of claimant/ appellant to be Rs.5000/- per month, awarded compensation in the following manner:-

Sr.No.	Nature	Amount in Rupees
1.	Loss of Future income	Rs.1,53,000/-
2.	Medical Expenses	Rs.18,475/-
3.	Pain and sufferings	Rs.10,000/-
4.	Diet	Rs.5000/-
5.	Attendant	Rs.10,000/-
	TOTAL:	Rs.1,96,475/-

With regard to the liabilities, learned Tribunal held that respondents No.1 and 2 i.e. Driver/ owner of the offending vehicle and respondent No.3 i.e. insurer, respectively, are jointly and severally liable to pay the compensation amount. However, since respondent No.1 has not been holding valid driving licence, the first liability was considered to be that of respondent No.2; but it was given right to recover the awarded amount of compensation from respondent No.1.

Being aggrieved against the award dated 27.01.2014, the present appeal has been filed by the claimant/ appellant for enhancement of the compensation.

Learned counsel for the claimant/appellant has contended that considering the nature of injuries and the avocation of the injured, the compensation awarded under the head of “loss of future income” is extremely on the lower side and as the claimant/ appellant was working as a labourer in Dubai and was earning Rs.15000/- p.m., loss of future income should have been awarded accordingly. He further contends that though as per the disability certificate, the claimant/ appellant has suffered 29% permanent disability, however, due to the injuries on his right leg, he cannot bend his knees and has been facing huge difficulty in standing or sitting and therefore, his functional disability should have been considered at least 50%. He further contended that no compensation has been awarded due to “loss of income during treatment” and the compensation awarded under other ancillary heads is also very meager.

On the other hand, learned counsel for respondent No.2 has argued that in the absence of any documentary proof or any testimony that the claimant/ appellant was working as a labourer in Dubai, the income assessed by the learned Tribunal is sufficient. He further contends that the age of the claimant/ appellant was 26 years and learned Tribunal considered him to be a labourer/ self employed, future prospects should have been awarded @ 40%, instead of 50%, and therefore, compensation awarded by the learned Tribunal should be reduced accordingly.

I have heard learned counsel for the parties, perused the paper-book as well as gone through the records of the case. So far as the income of the claimant/ appellant is concerned, learned Tribunal has rightly held it to be Rs.5000/- per month in the absence of any documentary evidence or testimony of any independent person to the effect that he was working in Dubai as a labourer.

However, with regard to the functional disability of the claimant/ appellant, I find force in the argument of learned counsel for the appellant that the same should have been higher than 10% as assessed by learned Tribunal. Regarding this, I deem it appropriate to refer to the statement made by PW3-Dr. Ravi Kumar Preenja, Assistant Professor, Department of Orthopedics, Member Disability Board, GMCH, Sector 32, Chandigarh and relevant portion of the same is extracted hereunder for reference:-

“The patient was found to have suffered 29% disability. Though the sufficient time has been elapsed between the date of injury and the date of assessment of the disability, hence there are no chances for the improvement of the disability of the patient, hence the disability is permanent. After the accident the patient was admitted in GMCH, Sector 32, Chandigarh, on 30.08.2010, in Emergency and thereafter he was operated on 01.09.2010, whereby debridement for compound IIIA femur plus knee wound plus ankle wound plus closer of wound was done. Open reduction and internal fixation of the fracture was done and thereafter he was discharged on 21.9.2010. The disability assessed by the Medical Board, is a functional disability. I had seen the medical record of the patient before the assessment of the disability which shows that the patient for the last

three years had not recovered fully from the injuries sustained by him in the accident therefore because of this condition he might also not had been able to work for the above said period, because of the restriction of movements of joints the patient might also require the services of physiotherapist. For about six months as per the record the patient might had confined to bed and require the services of attendant. The disability is permanent and functional disability and will affect the working capacity of the patient.....”

As per the disability certificate, claimant/ appellant suffered permanent disability to the extent of 29% in relation to right lower limb on account of fractured SOF right side with pain & restriction of movement in right knee. However, for a person who is working as a labourer, a smooth movement of the leg is a necessary part of his functions and if there is a restriction on such movement then it will substantially affect his working capacity and therefore, functional disability should have been considered to be more. Though, in para 19 of the impugned award, the learned Tribunal notices that on account of injuries suffered in accident, claimant would not be able to do his labour work properly and he will be ignored for contracting labour activities, yet assessed the functional disability to an extremely lower side i.e. 10% only. It is settled law that in such cases the effect of permanent disability on the earning capacity of the injured has to be assessed by the Tribunal considering the functional disability, the nature of work he was doing prior to the accident as well the extent of difficulty, he will face in doing the same work or any other work, later in life. In this

regard, reliance can be placed on the judgment of Hon'ble Supreme Court in **Sandeep Khanduja Vs. Atul Dande**, (2017) 3 SCC 351.

Thus, considering the nature of injuries coupled with two operations resulting into the permanent restriction of movement of right knee, the nature of work being carried out by the claimant as well as based on the evidence available on record, in particular, the statement of the PW3- Doctor and the law applicable, I am of the view that the permanent functional disability should not have been assessed less than 33%.

As contended by learned counsel for respondent No.2 and in view of **National Insurance Company Ltd. Vs. Pranay Sethi and others**, 2017(4) RCR (Civil) 1009, the future prospects are awarded @ 40% of the annual income in place of 50%.

So far as the compensation under the head of 'loss of income during treatment' and 'attendant charges' are concerned, I am in agreement with the arguments made by learned counsel for the claimant/appellant. In his unrebutted testimony, Dr.Ravi Kumar Preenja (PW3) has categorically averred that *"for about six months as per the record the patient might had confined to bed and require the services of attendant."* Therefore, the 'attendant charges' as well as the 'loss of income during treatment' should have been considered for a period of six months at least. Further, it has also been averred in the cross-examination of PW3 that *"patient might also require the services of physiotherapist"*, therefore, some compensation should have also been awarded under this head.

Learned Tribunal has also not awarded any compensation on account of other heads like ‘conveyance charges’, and ‘Loss of amenities and enjoyment of life’.

In view of the discussions made hereinabove, considering the nature of injuries, permanent functional disability and the evidence of Doctor, 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.5000x 12)	Rs.60,000/-
2.	Add 40% of Future prospects	Rs.24,000/-
3.	Total Income (Rs.60,000/- + Rs.24,000/-)	Rs.84,000/-
4.	Multiplier of 17 as per age of 27 years (Rs.84,000/- X 17)	Rs.14,28,000/-
5.	Loss of future earning capacity/ income [33% (percentage disability) of total income]	Rs.4,71,000/-
6.	Medical Expenses	Rs.18,475/-
7.	Pain and sufferings and mental agony	Rs.10,000/-
8.	Disability to the extent of 33%	Rs.33,000/-
9.	Compensation for special diet (Rs.5000/-), attendant (Rs.5000 x 6 = Rs.30,000) and conveyance charges (Rs.5000/-)	Rs.40,000/-
10.	Loss of amenities and enjoyment of life	Rs.15,000/-
11.	Loss of income during treatment (Rs.5000/- x 6 = Rs.30,000/-)	Rs.30,000/-
12.	Future medical expenses	Rs.10,000/-
	Total Compensation	Rs.6,09,000/-
	Amount Awarded by the Tribunal	Rs.1,96,475 /-
	Enhanced Amount	Rs.4,12,525/-

The grant of interest @ 6% 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 21, 2022
sanjay

(HARKESH MANUJA)
JUDGE

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