

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

FAO-1852-2016 (O&M)

Reserved on:12.12.2022

Pronounced on:15.12.2022

Harwinder Pal Singh

..... Appellant

Versus

Nirbhai Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Vinay Bajaj, Advocate,
for the appellant.

None for the respondents.

HARKESH MANUJA, J.

The present appeal lays challenge to an award dated 18.11.2015 passed by the learned Motor Accident Claims Tribunal, Bathinda (in brevity, 'the Tribunal'), whereby compensation of Rs.1,60,800/- has been awarded to the appellant/claimant (hereinafter referred to as 'appellant').

In an unfortunate accident on 11.06.2012, appellant suffered permanent disability to the extent of 40%. He filed a claim petition before learned Tribunal praying for grant of compensation to the tune of Rs.20,00,000/- alleging rash and negligent driving on the part of respondent No.1/ driver.

After going through the claim petition and evaluating the evidence led by the parties, learned Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of respondent No.1/ driver and awarded compensation in the following manner:-

Sr.No.	Nature	Amount in Rupees
1.	<i>Loss of Income</i>	<i>Rs.7,800/-</i>
2.	<i>Medical expenses</i>	<i>Rs.1,33,000/-</i>
3.	<i>Pain and suffering</i>	<i>Rs.20,000/-</i>
	<i>TOTAL:</i>	<i>Rs.1,60,800/-</i>

Being aggrieved against the award dated 18.11.2015, the present appeal has been preferred by the appellant/claimant for enhancement of compensation.

Learned counsel for the appellant contends that since the appellant suffered 40% permanent disability in the accident, his functional disability should be considered appropriately. He further contends that no compensation has been awarded under the head of loss of future earnings. He again contends that a meagre amount of Rs.20,000/- has been awarded under the head of ‘Pain and Suffering’ and thus, the same is required to be adequately enhanced. Learned counsel also contends that no compensation has been awarded under other non-pecuniary heads like ‘*loss of amenities and enjoyment of life*’, ‘*permanent disability*’, ‘*marriage prospects*’ etc.

Having heard learned counsel for the appellant and gone through the paperbook, I find force in the arguments advanced by him. The disability certificate has been brought on record as Ex.C-159, which shows that due to this accident the appellant suffered 40% permanent disability qua his whole body. Apparently, learned Tribunal fell into an error while not assessing the functional disability of the appellant. This approach, in my opinion, is completely mechanical and ignores the realities of life. In fact, the Court should not have adopted a stereotype approach.

In the present case, appellant suffered 40% permanent disability qua his whole body in the nature of fracture on right femur and

right wrist joint. It would be very harsh and inappropriate to record that such injury would not cause any effect to his future earning capacity. As a consequence of the said injuries, overall physical as well as mental ability and personality of the appellant would definitely get affected. Though, he could still pursue and carry on with his profession as a lecturer, but the injuries would definitely cause an impediment for him to explore further career opportunities. Thus, it is apparent that income generating capacity of the appellant would undoubtedly be affected, however, considering his profession, it may be not be to the extent of 40%, but it would be safe to assess his functional disability @ 20%.

It is an undisputed fact that the appellant was earning Rs.15,600/- per month, thus, loss of future earning capacity is to be assessed based thereupon. Also, by applying principle of law laid down by Hon'ble Supreme Court in the case of **"Pappu Deo Yadav Vs. Naresh Kumar and others"**, reported as AIR 2020 SC4424 and **"National Insurance Company Vs. Pranay Sethi and others"**, reported as 2017(4) RCR (Civil) 2009, appellant being 24 years of age, future prospects @ 40% should also be granted.

Further, a meager amount of Rs.20,000/- has been awarded under the head of "pain and suffering" and nothing has been awarded on account of 'loss of amenities', 'permanent disability', 'marriage prospects' etc. In the facts and circumstances of this case, it needs to be considered that a serious injury not only permanently imposes physical limitations, but also inflicts deep mental agony upon the victim. As appellant remained hospitalized for almost a week i.e. from 21.06.2012 to 23.06.2012 and further from 09.07.2012 to 11.07.2012, therefore, compensation awarded under the head of "pain and suffering" needs to be enhanced to Rs.

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50,000/- . Apart there from,theappellant would have been able to continue in his life with ease, had this accident not taken place, accordingly, Rs. 20,000 is being granted for ‘loss of amenities and enjoyment of life’. Further, considering his permanent disability to the extent of 40%, a sum of Rs.80,000/- is being awarded on account of permanent disability.

As the appellant is approaching the age of getting married and in view of the disability suffered at this age, 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, Rs.50,000/- is granted on account of loss of prospects of marriage.

In view of what has been stated hereinabove, the appellant shall be entitled for the grant of following compensation:-

Sr. No.	Nature	Amount in Rupees
1.	<i>Annual Income of deceased (Rs.15,600x 12)</i>	<i>Rs. 1,87,200/-</i>
2.	<i>Add 40% of Future prospects</i>	<i>Rs.74,880/-</i>
3.	<i>Total Income (Rs.1,87,200/- + Rs.74,880/-)</i>	<i>Rs.2,62,080/-</i>
4.	<i>Multiplier of 18 as per age of 24 years(Rs.2,62,080/- X 18)</i>	<i>Rs.47,17,440 /-</i>
5.	<i>Loss of future earning capacity/ income[20% (functional disability) of total income]</i>	<i>Rs.9,43,488/-</i>
6.	<i>Medical Expenses</i>	<i>Rs.1,33,000/-</i>
7.	<i>Pain and sufferings</i>	<i>Rs.50,000/-</i>
8.	<i>Loss of amenities and enjoyment of life</i>	<i>Rs.20,000/-</i>
9.	<i>Permanent disability</i>	<i>Rs.80,000/-</i>
10.	<i>Loss of marriage prospects</i>	<i>Rs.50,000/-</i>
11.	<i>Loss of income during treatment</i>	<i>Rs.7800</i>
	Total Compensation	<i>Rs.12,34,288/-</i>
	Amount Awarded by the Tribunal	<i>Rs.1,60,800/-</i>
	Enhanced Amount	<i>Rs.10,73,488/-</i>

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 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 claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claims 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.

December,15, 2022

Anil

(HARKESH MANUJA)

JUDGE

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