

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

FAO-3791-2016 (O&M)

Reserved on 27.09.2022

Date of Decision: October 10, 2022

Deep Chand

..... Appellant

Versus

Kiran Pal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Sanjay Jain, Advocate for the appellant.
Mr. Amrinder Singh Sidhu, Advocate
for respondent No.3-Insurance Company.

HARKESH MANUJA, J.

The present appeal lays challenge to the award dated 10.02.2016 passed by the learned Motor Accident Claims Tribunal, Ambala (in brevity, 'the Tribunal'), whereby compensation of Rs.1,41,600/- was awarded to the appellant/claimant along with interest @ 7.5% per annum.

Brief facts of this case are that on 18.02.2015 claimant/appellant was going towards his home along with co-worker Parveen Saini on motorcycle bearing registration No.HR-54-B-6363. When they reached near the gate of HM Factory, Kala Amb, then at about 8.40 PM, one truck bearing registration no. HP-18-B-0253, coming from Kala Amb side, being driven by respondent No.1, struck their motorcycle and as a result thereof, of both fell down and claimant/appellant received grievous injuries. Respondent No.1 happens to be the Driver; respondent No.2 owner of the offending vehicle; whereas respondent No.3 its insurer.

The appellant being injured filed claim petition before learned Tribunal praying for grant of compensation to the tune of Rs.20 lacs on account of injuries suffered by him in the accident alleging rash and

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negligent driving of respondent No.1. On the other hand, respondents No.1 & 2 denied the factum of accident itself.

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.1. In view of the nature of injuries suffered by the claimant/ appellant which resulted into amputation of left feet with loss of all toes and the evidence that he became permanently disabled to the extent of 20% based on certificate Ex.P7, learned Tribunal awarded compensation in the following manner:-

Sr. No.	Nature	Amount in Rupees
1.	<i>Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.</i>	<i>Rs.78600 plus (1000 per day as indoor patient) Rs.8000/- including all expenses.</i>
2.	<i>20% permanent disability</i>	<i>Rs.40,000/-</i>
3.	<i>Loss of earning during the period of treatment</i>	<i>Rs.5000/-</i>
4.	<i>Future medical expenses</i>	<i>Rs.5,000/-</i>
5.	<i>Damages for pain, suffering and trauma as a consequence of the injuries.</i>	<i>Rs.5,000/-</i>
	<i>TOTAL:</i>	<i>Rs. 1,41,600/-</i>

Being aggrieved against the award dated 10.02.2016, the present appeal has been preferred by the claimant/ appellant for enhancement of the compensation.

Learned counsel for the appellant/ claimant contends that no compensation has been awarded on account of loss of future earning capacity due to injuries, though the appellant suffered 20% permanent disability. He further contends that because of the disability, claimant/ appellant would never be able to work with full efficiency as his mobility has

been restricted on account of amputated forefoot and will always be on the back of the row while seeking work opportunities. He also contends that as claimant/ appellant brought enough material on record to prove that the income of the claimant was Rs.15,100/- per month, in that circumstance, learned Tribunal after assessing the functional disability, should have awarded due compensation under the head '*loss of future earnings*'. He further contents that no compensation has even been awarded under other heads like '*loss of amenities*', '*loss of expectation of life*'. He again contends that learned Tribunal cumulatively awarded Rs.8000/- for attendant, transportation, special diet and follow up treatment, which is on very lower side.

On the other hand, learned counsel for respondent No.3- Insurance Company submits that there is no evidence qua the functional disability of the claimant/ appellant as after recovering from the injuries, he continued in the same job and therefore, considering the injuries suffered by the appellant and other facts and circumstances of the case, he has been adequately compensated and hence, present appeal is liable to be dismissed.

I have heard learned counsel for the parties, perused the paper-book as well as gone through the records of the case 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. I find force in the arguments advanced by learned counsel for the claimant/ appellant. It is an established fact that after the accident, claimant/appellant remained admitted in hospital from

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19.02.2015 to 27.02.2015; surgeries were performed for debridement of wound and suturing of plantar skin under spinal anesthesia and further, his left forefoot was amputated at I.P. joint level. Therefore, it cannot be ruled out that as the left forefoot of the claimant/ appellant has been amputated, it will severely affect his movements and in turn, will surely affect his efficiency as he was working as a Supervisor in a private firm. Considering the nature of injuries suffered by the claimant/ appellant and disability certificate, in the facts and circumstances of this case, I deem it appropriate to keep the functional disability @ 20% which is equal to the physical disability, as delineated in disability certificate.

So far as the income of claimant/ appellant is concerned, sufficient material was brought on record in the form of salary certificate dated 25.03.2015 (Ex.P2); copy of register of Adult workers (Ex.P3) and copy of wages payment register of January and February, 2015 (Ex.P5 & P-6, respectively) to prove that he was earning Rs.15,100/- per month and all these documents were duly corroborated by the testimony of PW2- Manoj Kumar, Accounts Department, M.K. Auto Clutch Company.

Though, during cross-examination, learned counsel for Insurance Company tried to impeach the evidence produced by claimant/ appellant primarily on two counts that they were not stamped by the appropriate authority and also there was over-writing in the registers, however, these objections are required to be negated as the over-writing in the registers did not pertain to the record of the claimant/appellant and for other formal deficiencies, no fault can be attributed to the claimant. Therefore, 'loss of future earnings' should be assessed after considering the salary of the claimant to be Rs.15,100/- per month and functional disability @ 20%, after applying the multiplier of 17. Further, future

prospects @ 40% are also required to be granted in view of the law laid down by the Hon’ble Supreme Court in *Pappu Deo Yadav’s case (supra)*, the appellant being 26 years of age.

I also find force in the arguments raised by the learned counsel for the claimant/ appellant that in view of his hospitalization after the accident; surgeries performed on him and amputation of his left forefoot at I.P. joint level, the compensation awarded under the non-pecuniary heads has been extremely on the lower side and he is required to be compensated appropriately on these counts. Further, a meager amount of Rs.8000/- has been awarded under ‘attendant charges’, ‘special diet’, ‘transportation’ as well as ‘misc. expenses’, jointly but considering the disability suffered by the claimant/ appellant and the facts and circumstances of this case, at least Rs.20,000/- should have been awarded under these joint heads besides a sum of Rs.20,000/- towards pain & sufferings and another sum of Rs.20,000/- on account of loss of amenities and expectation of life.

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.	Annual Income of deceased (Rs.15,100 x 12)	Rs.1,81,200/-
2.	Add 40% of Future prospects	Rs.72480/-
3.	Total Income (Rs.1,18,200/- + Rs.72400/-)	Rs.2,53,680/-
4.	Multiplier of 17 as per age of 26 years (Rs.2,53,680 /- X 17)	Rs.43,12,560/-
5.	Loss of future earning capacity/ income [20% (percentage disability)]	Rs.8,62,512/-

	<i>of total income]</i>	
6.	<i>Medical Expenses (as awarded by learned Tribunal)</i>	<i>Rs.78,600/-</i>
7.	<i>Pain and sufferings</i>	<i>Rs.20,000/-</i>
8.	<i>Disability to the extent of 20% (as awarded by learned Tribunal)</i>	<i>Rs.40,000/-</i>
9.	<i>Compensation for special diet, Transportation, attendant charges & misc. charges</i>	<i>Rs.20,000/-</i>
10.	<i>Future medical expenses (as awarded by learned Tribunal)</i>	<i>Rs.5000/-</i>
11.	<i>Loss of earning during the period of treatment (as awarded by learned Tribunal)</i>	<i>Rs.5000/-</i>
12.	<i>Loss of amenities & expectation of life</i>	<i>Rs.20,000/-</i>
	Total Compensation	Rs.10,81,112/-
	Amount Awarded by the Tribunal	Rs.1,41,600/-
	Enhanced Amount	Rs.9,09,512/-

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.

October 10, 2022
sanjay

(HARKESH MANUJA)
JUDGE

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