

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

FAO-437-2016 (O&M)

**Reserved on: 30.11.2022
Pronounced on: 07.12.2022**

Amandeep Singh @ Amna

..... Appellant

Versus

Bikkar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. L.S. Sidhu, Advocate,
for the appellant.

Ms. Puneeta Sethi, Advocate,
for respondent No.3.

HARKESH MANUJA, J.

The present appeal lays challenge to award dated 04.08.2015 passed by the learned Motor Accident Claims Tribunal, Mansa (in brevity, 'the Tribunal'), whereby compensation of Rs.1,50,000/- has been awarded to the appellant/ claimant along with interest @ 6% per annum.

The appellant/ claimant being injured filed a claim petition before learned Tribunal praying for grant of compensation to the tune of Rs.5,00,000/- on account of injuries suffered by him in the accident alleging rash and negligent driving of respondent No.1. It may be pointed out here that the appellant having been rendered mentally feeble, the claim petition was filed through his father being natural guardian.

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

Sr. No.	Nature	Amount in Rupees
1.	Medical expenses	Rs.10,000/-
2.	Disability	Rs.1,00,000/-
3.	Attendant charges, Transportation and Special Diet	Rs.40,000/-
	TOTAL:	Rs. 1,50,000/-

Being aggrieved of the award dated 04.08.2015, the present appeal has been preferred by the appellant/ claimant for enhancement of compensation.

Learned counsel for the appellant/ claimant submits that no compensation has been awarded by the learned Tribunal on account of loss of earning/future earning capacity taking into consideration the permanent disability suffered by the appellant. He contends that it was specifically pleaded before the learned Tribunal that appellant was earning Rs.31,500 per annum from his work as an agriculture labourer and thus, multiplier method should have been adopted after assessing the functional disability of the appellant. He further contends that compensation of Rs.4 Lakh should have been awarded under non-pecuniary heads in view of Hon’ble Apex Court judgment in “**Malikarjun vs. Divisional Manager, The National Insurance Company Limited and Ors.**” passed in Civil Appeal No.7139 of 2013, as the appellant suffered 50% permanent disability. Learned counsel also contends that though in few years, appellant will be of marriageable age, however no compensation has been awarded on account of loss of marriage prospects.

On the other hand, learned counsel for respondent No.3- Insurance Company submits that there is no evidence qua functional disability of appellant/ claimant, therefore, considering the injuries suffered by him 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 and perused paper-book as well as records of the case. I find force in the arguments advanced by learned counsel for the appellant/claimant. The disability certificate has been brought on record as Ex.P3, which shows that due to this accident the appellant suffered 50% permanent disability. The disability certificate has been verified by Dr. Manav Jindal (M.S. Ortho, Civil Hospital, Mansa), who appeared as PW-4. Therefore, while calculating the pecuniary compensation, learned Tribunal failed to adopt the appropriate mechanism as it neither assessed the monthly income of the appellant nor it determined the functional disability to properly assess his loss of future income.

It was claimed by the appellant before the learned Tribunal, that he was earning Rs. 31,500 per annum from his work as a agriculture labourer. In view of Hon'ble Apex Court judgments in "**Kurvan Ansari @ Kurvan Ali & another vs. Shyam Kishore Murmu and another**" reported as 2022(1) SCC 317, subsequently followed in Special leave petition (CIVIL) No.5345 OF 2019 titled as "**Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto & Ors.**", even in case of non-earning persons, notional income is being taken more than this amount. Be that as it may, in any circumstance, at least this amount has to be taken as his annual income. Further in view of **Pappu Deo Yadav (supra)** and "**National Insurance Company Ltd. Vs. Pranay Sethi and others**", 2017(4) RCR (Civil) 1009, future prospects @ 40% of the annual income are awarded.

Appellant /claimant, in this case, suffered compound fracture of

patilla and left tibia, condgls right, IF of left condgls and TBW patilla and he remained hospitalized from 26.02.2013 to 11.03.2013. As per the disability certificate brought on record as Ex.P3, he suffered permanent disability to the extent of 50% in his leg on account of restricted movement of knee in right leg. Though, disability relates to the right leg of the appellant, however, for a person who is involved in labourer work, it will substantially affect his work and therefore, his functional disability should be considered at least @ 50%.

In view of **Malikarjun's** case (supra), as appellant suffered 50% permanent disability, appellant is granted Rs.4,00,000/- under non-pecuniary heads.

I also find substance in the argument advanced by learned counsel for the appellant that in next few years, he would be of marriageable age, but in view of the disability suffered at this age his marriage prospects would be adversely affected. 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 prospect of marriage.

In this case, through compensation of only Rs.5,00,000/- was prayed for by the appellant before the learned Tribunal, however, to grant just and fair compensation in terms of Section 168 of Motor Vehicle Act, 1988, appropriate compensation needs to be assessed and awarded based on what has been stated hereinabove, accordingly, the appellant shall be entitled for grant of following compensation:-

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Sr. No.	Nature	Amount in Rupees
1.	<i>Annual Income</i>	<i>Rs. 31,500/-</i>
2.	<i>Add 40% of Future prospects</i>	<i>Rs. 12,600/-</i>
3.	<i>Total Income</i>	<i>Rs. 44,100/-</i>
4.	<i>Multiplier of 18 as per age of 17 years (Rs. 44,100/- X 18)</i>	<i>Rs. 7,93,800/-</i>
5.	<i>Loss of future earning capacity/ income [50% (percentage disability) of total income]</i>	<i>Rs.3,96,900/-</i>
6.	<i>Medical Expenses</i>	<i>Rs.10,000/-</i>
7.	<i>Non-Pecuniary Heads (Pain and sufferings, Disability, loss of amenities and enjoyment of life)</i>	<i>Rs.4,00,000/-</i>
8.	<i>Attendant charges, Transportation and Special Diet</i>	<i>Rs.40,000/-</i>
9.	<i>Loss of marriage Prospects</i>	<i>Rs.50,000/-</i>
	Total Compensation	<i>Rs.8,96,900/-</i>
	Amount Awarded by the Tribunal	<i>Rs.1,50,000/-</i>
	Enhanced Amount	<i>Rs.7,46,900/-</i>

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 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.

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

December 07, 2022
anil

(HARKESH MANUJA)
JUDGE

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