IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-972-2014 (O&M)

Date of Decision: 21.09.2022

Jasvir 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.

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HARKESH MANUJA, J.

The present appeal lays challenge to the award dated 07.11.2013 passed by the learned Motor Accident Claims Tribunal, S.A.S. Nagar, Mohali (in brevity, 'the Tribunal'), whereby compensation of Rs.3,32,151/- was awarded to the appellant/claimant along with interest as specified in the award.

Brief facts of this case are that on 30.08.2010 at about 6.00 pm, one Gurjit Singh was going from his Village Chhat to Zirakpur on motorcycle along with appellant/claimant Jasvir Singh as his 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 Gurjit Singh fell down on the road and received serious injuries on his right leg. 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 rash and negligent 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 90%, learned Tribunal considered the functional disability @ 30% 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.	*Medical expenses*	*Rs.15,151/-*
2.	*Special Diet*	*Rs.5,000/-*
3.	*Transport*	*Rs.5,000/-*
4.	*Pain and suffering*	*Rs.10,000/-*
5.	*Disability*	*30%*
6.	*Loss of future earnings*	*Rs.2,52,000/-*
7.	*Reduction in life expectancy*	*Rs.20,000/-*
8.	*Loss of prospect of marriage*	*Rs.25,000/-*
	TOTAL:	*Rs. 3,32,151/-*

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 07.11.2013, the present appeal has been preferred 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" has been extremely on the lower side. He further contends that prior to the accident the appellant was suffering from polio stricken in his right femur and was 65% physically disabled and after this accident, due to injury on the right leg, disability has increased to 90% which is permanent in nature. He further submits that despite 65% disability prior to the accident, the appellant was in a position to work but after the accident, his earning capacity has completely diminished and therefore, loss of future earning capacity should have been taken as 100%. He further contents that as at the time of accident, the age of the appellant was 35 years, therefore, in view of the law laid down in ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, the future prospects should have been awarded @ 40% of the annual income and in view of judgment of Hon'ble Apex Court in ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, multiplier should have been 16. He further contends that no compensation has been awarded due to loss of income during treatment and also submits that the compensation awarded under other heads is also very meager.

On the other hand, learned counsel for respondent No.2 has argued that as the claimant/ appellant already suffered a permanent disability to the extent of 65% due to polio in right lower limb, therefore, the functional disability assessed @ 30% is appropriate and the compensation awarded is just and proper.

I have heard learned counsel for the parties and perused the paper-book. With regard to the functional disability of the claimant/ appellant, I find force in the argument of learned counsel for the appellant. Keeping in view the nature of injuries, the functional disability of the claimant/ appellant should have been higher than 30% as assessed by learned Tribunal. As per the disability certificate, claimant/ appellant suffered enhanced permanent disability to the extent of 90% from initial 65% permanent disability which was on account of polio stricken right lower limb. 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 any restriction on such movement, as claimed by the appellant that he cannot bend his knee on account of 90% permanent disability, then it will substantially affect his working capacity. Though, at the same time, it cannot also be taken to be 100%, as argued by the learnt counsel of the appellant, as the claimant was already suffering from a permanent disability of 65% due to polio stricken right lower limb. As such, considering the facts and circumstances of the present case as well as the nature of injuries suffered by claimant and also the permanent disability, I deem it appropriate to access functional disability @ 50%. It is settled law that in cases like the present one, the effect of permanent disability on the earning capacity of the injured has to be assessed by the Tribunal. Reliance in this regard can be placed on the judgment of Hon'ble Supreme Court in '***Pappu Deo Yadav vs. Naresh Kumar and others', 2020 (4) R.C.R. (Civil) 404*** and relevant para of the same is extracted hereunder:-

> *"11. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some 'proportionate' principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case. ….."*

Learned Tribunal committed an error while keeping the functional disability on lower side by observing that claimant/appellant being a labourer cannot be said to be disabled for earning any kind of livelihood. However, in my opinion if any such plea is taken by respondent No.2 then the same has to be proved by it by leading cogent evidence as observed by the Hon'ble Apex Court in ***Mohan Soni Vs. Ram Avtar Tomar***, reported as 2012 (2) RCR (Civil) 431. The relevant para of which is reproduced hereunder:-

> *"13. Any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. The party advocating for a lower amount of compensation for that reason must plead and show before the Tribunal that the victim enjoyed some legal protection (as in the case of persons covered by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995) or in case of the vast multitude who earn their livelihood in the unorganised sector by leading cogent evidence that the victim had in fact changed his vocation or the means of his livelihood and by virtue of such change he was deriving a certain income."*

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 should have been considered @ 40% of the annual income as well.

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. Claimant/ appellant remained hospitalized from 11.09.2010 to 22.09.2010 and would have remained in bed for sometime thereafter as well to recover from his injuries. Therefore, the 'attendant charges' as well as the 'loss of income during treatment' should have been considered for a period of two months.

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.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 16 as per age of 35 years (Rs.84,000/- X 16)*	*Rs.13,44,000/-*
5.	*Loss of future earning capacity/ income [50% (percentage disability) of total income]*	*Rs.6,72,000/-*
6.	*Medical Expenses*	*Rs.15151/-*
7.	*Pain and sufferings*	*Rs.10,000/-*
8.	*Disability to the extent of 50%*	*Rs.50,000/-*
9.	*Compensation for special diet (Rs.5000/-), attendant (Rs.5000 x 2 = Rs.10,000) and Transport (Rs.5000/-)*	*Rs.20,000/-*
10.	*Loss of amenities and enjoyment of life*	*Rs.15,000/-*
11.	*Loss of income during treatment (Rs.5000/- x 2 = Rs.10,000/-)*	*Rs.30,000/-*
12.	*Loss of prospect of marriage*	*Rs.25,000/-*
13.	*Reduction in life expectancy*	*Rs.20,000/-*
	Total Compensation	*Rs.8,57,151/-*
	Amount Awarded by the Tribunal	*Rs.3,32,151/-*
	Enhanced Amount	*Rs.5,25,000/-*

The grant of interest @ 6% per annum for the first three months 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 for the entire duration 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 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*