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

FAO No.8633 of 2017 (O&M)

Date of Decision: 06.12.2022

Mohd. Rafique alias Rafique Mohd. Alias Mohd. Rafool

..... Appellant

Versus

Ashok Kumar and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rishav Jain, Advocate
for the appellant.

Mr. S. S. Sidhu, Advocate
for respondent No.3.

MANJARI NEHRU KAUL J. (Oral)

CM No.28138-CII of 2017

Prayer in this application is for condonation of delay of 520 days in filing the appeal.

For the reasons recorded in the application, the instant application is allowed and delay of 520 days in filing the appeal is condoned.

However, it is clarified that the appellant will not be entitled to the interest for the delayed period.

FAO No.8633 of 2017 (O&M)

The injured-claimant is in appeal before this Court against the

award dated 20.02.2016 passed by the Motor Accident Claims Tribunal (Additional District Judge), Ludhiana, wherein the following compensation was awarded, on account of the injuries sustained by him in a motor vehicular accident which took place on 07.11.2012.

Sr. No.	Heads		Calculation
1	Total loss of earning capacity	Monthly Income	Rs.4000/-
2		Annual Income	4000 X 12 = Rs.48,000/-
3		30% loss of earning capacity	48,000/100X30 = Rs.14,400/-
4		Multiplier '18'	14,400 X 18 = 2,59,200 Rs.2,60,000 (round figure)
5	Medical Bills		Rs.82,000/-
6	Mental pain, suffering etc.		Rs.1,00,000/-
	Total compensation awarded		Rs.4,42,000/-

The respondents were held liable to pay the amount of compensation to the injured-claimant jointly and severally, along with interest @ 6% per annum, from the date of filing of the petition till realization.

Learned Counsel appearing for the injured-claimant has vehemently argued that the claimant was a 25 year old bachelor at the time of the accident in question. He has submitted that in the accident, the injured-claimant sustained serious injuries for which he underwent several surgeries and his right leg below the thigh was amputated. Learned counsel further submitted that it was a matter of record which stood duly proved before the Tribunal that the claimant had suffered 80% permanent disability on account of the injuries sustained by him in the accident in question. However, the Tribunal while awarding the compensation had ignored the disability certificate (Exhibit P-3), wherein it stood proved

that the disability suffered by the claimant was to the extent of 80% and had instead erroneously taken the functional disability at only 30%.

Learned counsel further submitted that since the claimant was a labourer, the permanent disability suffered by him would naturally always come in his way for the rest of his life particularly in earning his livelihood. Learned counsel submitted that even the income assessed by the Tribunal in the sum of Rs.4000/- per month by treating the claimant as a labourer was less and contrary to the minimum wages notified by the State Government in respect of labourers for the relevant period. Learned counsel submitted that as per the notification by the State Government for the relevant period in respect of labourers, the minimum wages fixed was Rs.5200/-. It was also submitted that the Tribunal failed to make any addition qua future prospects and nothing was awarded to the claimant for loss of marriage prospects and loss of amenities. A prayer was also made to grant compensation to the claimant with respect to medical expenses which he would in all likelihood incur in the future.

Per contra, learned counsel appearing for respondent No.3 was not able to dispute the submissions made by the counsel opposite that as per the State notification, the minimum wages specified in case of labourers for the relevant period was Rs.5200/-. Learned counsel was also not able to dispute that the claimant had suffered permanent disability on account of amputation of his right leg from thigh onwards and as per the disability certificate (Exhibit P-3), the permanent disability had been assessed at 80%.

Learned counsel however submitted that the Tribunal had not erred in assessing functional disability to the extent of 30% with respect to the injuries suffered by the injured-claimant as he would still manage to work as a labourer and earn sufficient income to sustain himself.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court finds merit in the submissions made by learned counsel for the injured-claimant that the monthly income of the claimant should have been assessed at Rs.5200/- per month as per the minimum wages notified by the State Government. This Court also concurs with the submissions made by learned counsel for the injured-claimant that the Tribunal erred in assessing functional disability at 30%. There is no dispute that the injured-claimant has suffered permanent disability to the extent of 80% as his right leg has been amputated. Hence, keeping in view the nature of the permanent disability suffered by the injured-claimant and its effect, the functional disability needs to be re-assessed at 80%.

Further, the Tribunal erred in not making an addition to the extent of 40% to the income of the injured-claimant towards future prospects while assessing his loss of earning capacity.

This Court also deems it appropriate to compensate the injured-claimant in the sum of Rs.1,00,000/- for future medical expenses which he would in all likelihood be incurring.

The compensation thus payable to the injured-claimant would be as follows:-

Sr. No.	Heads		Calculation
1	Loss of future income	Monthly Income	Rs.5200/-
2		Annual Income	5200 X 12 = Rs.62,400/-
2		Future prospects (40%)	Rs.24,960/-
			Total=62,400+24,960=Rs.87,360/-
		Disability 80%	87,360/100 X 80 = Rs.69,888/-
3		Multiplier 18	69,888 X 18 = Rs.12,57,984/-
4	Medical Bills		Rs.82,000/-
5	Loss of amenities.		Rs.1,00,000/-
6	Pain and suffering		Rs.2,00,000/-
7	Loss of Marriage Prospects		Rs.2,50,000/-
8	Future Medical Expenses		Rs.1,00,000/-
	Total compensation awarded		Rs.19,89,984/-

The injured-claimant is, therefore, held entitled to a total sum of Rs.19,89,984/- as compensation along with interest @ 7.5% per annum from the date of filing of claim petition till its actual realization, which shall be paid by the respondents jointly and severally as directed by learned Tribunal.

With these modifications, the instant appeal stands modified and disposed of in the above terms.

06.12.2022

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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No