

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
278 **FAO-3998-2022 (O&M)**
Date of decision: 02.05.2023

Major Singh

...Appellant(s)

Vs.

Iqbal Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Aakash Singla, Advocate
for the appellant.

Mr. Ankur Gupta, Advocate
for respondent No.3.

NIDHI GUPTA, J.

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.20,95,000/- granted by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as "the learned Tribunal") vide Award dated 20.04.2022 passed in MACP No.218 of 2019 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the injured-claimant/appellant had suffered injuries in a motor vehicular accident that took place on 03.03.2019 due to rash and negligent driving of car bearing registration No.CH-04-0414 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal

awarded compensation as above along with interest @ 7% per annum from the date of filing the claim petition till realisation.

3. Learned counsel for the appellant seeks enhancement of compensation inter alia, on the ground:

a) that prior to the accident, the appellant was a Driver.

It is submitted that the appellant had placed sufficient evidence on record to prove his profession/employment as a Driver, yet, learned Tribunal has taken notional income of the deceased as only Rs.10,000/- per month. It is submitted that the appellant was plying students from school to their homes. The appellant had even examined two prosecution witnesses in support of his contention. The appellant had even produced copy of his income tax return (Exhibit CW5/2), as per which income of the appellant was proven to be Rs.2,70,000/- per annum. Despite all the above said evidence, learned Tribunal has taken income of the appellant as only Rs.10,000/- per month. It is submitted that even as per relevant Minimum Wage notification, income of the appellant should have been taken as Rs.10,200/- per month;

b) that right leg of the appellant has been amputated from above the knee. As per Disability Certificate (Exhibit C133), it has been shown that the appellant has suffered 80% disability. Despite the above facts, learned Tribunal has taken functional disability of the appellant as only 50% whereas as per judgment of Hon'ble Supreme Court in **Syed Sadiq Etc. Vs. Divisional Manager, United India Ins. Co. Law Finder Doc ID # 515167**, it should have been taken as 100%;

c) that learned Tribunal has granted only Rs.2 lakh towards pain & suffering which is also inclusive of Rs.1,30,674/- spent by the appellant on his treatment. In view of above facts and circumstances, amount of Rs.69,000/- granted towards pain & suffering is on lower side and the same deserves to be enhanced;

d) that though the appellant remained hospitalised for about 40 days, yet nothing has been granted towards loss of earning. Even nothing has been granted towards transportation.

4. In response, it is submitted by learned counsel for respondent No.3/Insurance Company:

a) that as regards income of the appellant, no doubt the appellant had produced income tax return which depicted his income as Rs.2,70,000/-. However, the said income tax return had been filed for the period after the accident and therefore, the same was rightly not considered by the Tribunal. It is submitted that therefore, learned Tribunal has rightly taken income of the appellant as Rs.10,000/- per month;

b) as regards pain & suffering, it is submitted that no deduction has been made by learned Tribunal on account of medical expenses, and Rs.2 lakh has been granted as compensation towards pain & suffering;

c) it is fairly submitted that appellant is entitled to loss of earning for the period of hospitalisation;

d) as regards permanent disability, it is submitted that learned Tribunal has rightly assessed functional disability of the appellant as 50% as despite amputated leg, the appellant is still able to drive.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties.

7. Perusal of record of the case shows that primarily on the basis of testimony of CW4 Karamdeen, it was proven on record that prior to the accident, the appellant was working as a driver. To prove his income, appellant had placed on record his Income Tax Return (Ex.CW5/2) as per which income of the appellant is shown to be Rs.2,70,000/- per annum i.e. about Rs.22,500/- per month. However, learned Tribunal has discarded this evidence as, the said Income Tax Return is qua the period after seven months from the date of the accident. When confronted with the record, learned counsel for the appellant is unable to deny this fact. Accordingly, in my view, learned Tribunal made no error in assessing notional income as Rs.10,000/- per month on the basis of the relevant Minimum Wage notification dated 28.05.2019, as per which minimum wage of a skilled worker is Rs.10,128.95/- rounded off to Rs.10,000/- per month.

8. There can be no denying that as per the law laid down by Hon'ble Supreme Court in case of **Syed Sadiq (supra)**, in the facts and circumstances of the present case, functional disability of the appellant for assessing loss of future income has to be taken as 100%. In the said case, Hon'ble Supreme Court has held that functional disability of the

injured-claimant has to be assessed on the basis of his ability to pursue his profession/earn his livelihood from the profession which he was following prior to the accident. In the present case, it has been proven on record that the appellant was a driver prior to the accident in question; and it is undisputed on record that the appellant is permanently disabled to the extent of 80% and his right leg has been amputated above the knee. In view of these facts, it is clear that the appellant can no longer continue to be a driver. Therefore, as per **Syed Sadiq (supra)**, functional disability of the appellant for assessing loss of future income has to be taken as 100%.

9. As regards pain & suffering, perusal of para 23 of the impugned Award shows that learned Tribunal has granted “Rs.2,00,000/- as compensation towards pain and sufferings. Towards the medical treatment and in case of artificial limb is to be got installed, a sum of Rs.3,00,000/- towards the said aspect is further accorded.” It is therefore, clear that sum of Rs.1,30,674/- spent by the appellant on his treatment is included in the sum of Rs.3 lakh awarded by learned Tribunal towards medical treatment and in case of artificial limb is to be got installed.

10. Further, it has come on record that the appellant remained hospitalised for a period of 40 days. Thus, as income of the appellant has been assessed as Rs.10,000/- per month, therefore, appellant is entitled to Rs.13,000/- towards loss of earning. Accordingly, compensation payable to the appellant is re-worked as follows:-

Heads	Awarded by MACT	Awarded by this Court
Loss of income	Rs.10,000/-	Rs.10,000/-
Medical bills & artificial limbs	Rs.3,00,000/-	Rs.3,00,000/-
Attendant charges	Rs.1,00,000/-	Rs.1,00,000/-
Special diet	Rs.35,000/-	Rs.35,000/-
Loss of amenities	Rs.2,00,000/-	Rs.2,00,000/-
Pain and suffering	Rs.2,00,000/-	Rs.2,00,000/-
Total	Rs.8,35,000/-	Rs.8,35,000/-
Loss of earning capacity	50%	100%
Functional disability		
Income	Rs.10,000/-	Rs.10,000/-
Multiplier	15	15
Future prospects	40%	40%
Future loss of income	50% x 14000 x 12 x 15	100% x 14000 x 12 x 15
Total	Rs.12,60,000/-	Rs.25,20,000/-
Transportation charges	Nil	Rs.20,000/-
Loss of income during hospitalisation	Nil	Rs.13,334/- (for 40 days @ Rs.10,000/- p.m.)
Grand total	Rs.20,95,000/-	Rs.33,88,334/-
Interest	7% per annum	7% per annum

11. Present appeal accordingly stands **allowed** in above terms.
12. Pending application(s) if any also stand(s) disposed of.

02.05.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No