IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5195-2006 (O&M)
Date of Decision: February 15, 2023

Lakhmir Singh

...Appellant

VERSUS

Ravinder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Arora, Advocate
for the appellant.

Mr.R.C.Gupta, Advocate
for respondent No.3-Insurance Company.

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<u>ARCHANA PURI, J.</u>

Challenge in the present appeal is to the Award dated 12.08.2006 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted, on account of the injuries sustained by appellant-claimant Lakhmir Singh, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.3,78,000/-, besides the grant of interest @6% from the date of filing of the petition, till realization, to the appellant.

Being dissatisfied with the compensation, so granted, the appellant-claimant has filed the present appeal for seeking enhancement of the compensation.

So far as, the fact of accident and manner of its taking place as well as the liability of the driver, owner and insurer of the offending vehicle, to be joint and several, are concerned, it is pertinent to mention that no appeal has been filed by the persons, upon whom the liability has been, so fastened.

In this backdrop, learned counsel for the appellant-claimant has assiduously submitted that appellant-claimant had suffered permanent disability and is unable to perform, even everyday activities and he requires constant support, even for the confined life, he has been forced to live after the accident. Since, he has become invalid, it is submitted that the compensation awarded, in lumpsum, to the extent of Rs.3 lakh, while taking the disability of the injured to be 90% and also for the pain and suffering, is on lower side. Besides the same also, it is submitted that the medical bills have been taken into consideration, only to the extent of Rs.73,000/- and amount granted towards private transportation to the extent of Rs.5,000/- is also on lesser side. Learned Tribunal has not taken into consideration, the impact of permanent disability, upon the life of the appellant-claimant, not only to his income generating capacity but also about non-quantifiable implications, on the life of the appellant-claimant.

Besides the same, learned counsel for the appellant assiduously submitted that looking at the nature of the injuries sustained by the appellant, additional medical exigencies are necessitated and expenses are incurred for regular medical treatment in future. It is submitted that even there is need of expenditure to be incurred, on account of arrangement of prosthetics limbs, during his lifetime, has also not been taken care of. Thus, learned counsel for the appellant has made a prayer for extensive enhancement of the amount, so awarded by learned Tribunal.

On the other hand, learned counsel for the insurance company has refuted the claim of the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. Thus, he submits that the appeal sans merit and deserves to be dismissed.

In ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the Supreme Court held that the '**just**' compensation is adequate compensation and the Award must be just that- '**no less and no more**'. The plea of the victim suffering from a cruel twist of fate, when asking for some more, is not extravagant, but it is for seeking appropriate recompense, to negotiate with the unforeseeable and the fortuitous twists, in his impaired life. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding '**just compensation**'.

A three judges' bench in ***Jagdish Vs. Mohan and others, 2018 (4) SCC 571***, while considering the enhancement of compensation awarded, vis-a-vis, injuries suffered by the victim, a reference has been made to the decision rendered in Laxman vs. Divisional Manager, Oriental Insurance Co. Ltd., 2012 ACJ 191 (SC), wherein, the Hon'ble Apex Court, has held as under:-

> *"(12) The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary*

disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead normal life and enjoy amenities, which we would have enjoyed but for disability caused due to the accident."

Furthermore, while making reference to various case law, it held that the compensation can be granted for disability as well as for loss of future earnings and the first head relates to the impairment of a person's capacity, while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

Thus, considering the same, if the victim of the accident suffers permanent disability, then efforts should also be made to award compensation, not only for the physical frame and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed, but for the disability caused, due to the accident. In ***Jagdish's case (supra)***, the Hon'ble Supreme Court was considering the case of a carpenter, who had sustained injuries and lost both his hands. Therein, considering the serious disability, suffered by him, on account of loss of use of both of this hands, it was observed by the Court, as herein given:-

"........For a person engaged in manual activities, it requires no stretch of imagination to understand that loss of hands is a complete deprivation of the ability to earn. Nothing, at least in the facts of this case, can restore lost hands. But the measure of compensation must reflect a genuine attempt of law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute

> *entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity."*

Considering the facts of the case, the disability, which was worked upon as '90%', was taken to be total disability by the Hon'ble Supreme Court and thereupon, enhancement was made.

Now, reverting to the case in hand. It is specific claim of the appellant-claimant Lakhmir Singh that he had sustained serious injuries in the accident in question, on account of rashness and negligence, on the part of respondent No.1-Ravinder Singh, while driving Tata Tipper bearing registration No.HR-68-7285. It is his claim that he had sustained serious injuries on the right leg. Both arms were fractured, head injuries and other multiple injuries were received by him. His right leg was amputated. Rods were inserted in his arms. Besides the same, it is also his claim that he remained admitted in hospital from 10.11.2004 to 07.12.2004 and furthermore, he had undergone operations. While in the witness box as PW-2, he has tendered into evidence his affidavit Ex.PB, wherein, he has given the details of the injuries, so suffered and also about the amputation of his right leg. Also, the appellant-claimant had examined PW-3 Dr.Umesh Modi, Medical Officer, who had proved the disability certificate of the victim, which is Ex.P23. He deposed about the claimant to be suffering from amputation through right thigh and operated case of fractures of both bones forearm right side and fracture of left humerus, with complaints of pain in forearm and arm and stiffness of right forearm and wrist and of left shoulder. His disability was assessed to be 90%. However, the disability is on the basis of upper limb and lower limb.

Keeping in view the nature of the injuries, so sustained, the disability, so suffered, in view of the age of the appellant-claimant, to be 24 years, at the relevant time and looking at the avocation of running a STD and spare parts shop, reflects travails which the appellant, will have to face in life. The 24 year old's youthful dreams, pertaining to his growth in a private sector and future hopes were snuffed to a great extent by the serious accident. Youngman's impaired condition certainly would have impacted his family members. Their resources and strength are bound to be stressed by the need to provide full time care to the claimant, at least for some period of time, soon after the accident.

Considering the aforesaid circumstances, which the appellant-claimant had to face, on account of injuries sustained in the accident, the attempt should always be made to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his life, on account of his physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count but the functional disability, on account of injury sustained, can always be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the apt observations made by the Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343***, which are herein reproduced:-

> *"10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced shows 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.*
>
> *11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). **We may however note that** in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."*

The test for determining the effect of permanent disability, on future earning capacity involves the following 3 steps, as was laid down in ***Raj Kumar's case (supra)*** and reiterated in ***Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796***, as herein given:-

> *"13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant*

for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions, so that he continues to earn or can continue to earn his livelihood."

At this juncture, also it is apt to make reference to the observations made in ***Pappu Deo Yadav vs. Naresh Kumar and others, (2020) SCC Online 752***, which are herein given:-

"13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court reassessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity."

"20. 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."*

As noted earlier, the impact of earning capacity for the appellant-claimant, by virtue of his disability, must not be measured as a proportionate of his earning capacity. It should be noted that specific claim of the appellant is that he is running a STD and was also running a spare part shop. Though, learned counsel for the insurance company has made reference to the cross-examination of Lakhmir Singh, to make a submission that he still continues to sit on spare part shop, but however, sitting on the spare part shop does not mean that his income generating capacity has not been effected. Looking at the period of hospitalization and also considering the amputation of right leg, till thigh, in itself reflects that the appellant must have remained off work, on account of injuries sustained by him, at least for some period of time. Even, his working efficiency ought to be effected.

No doubt, sitting on the spare part shop, which is run by him, may establish about some kind of work being carried out by the appellant-claimant, but however, his efficiency has been effected. The spare part shop is not to be run while sitting in the shop only. Even, the marketing part has to be taken care of by the person, who runs such kind of shop. The appellant's chances of growth, in this private sector, as compared to normal healthy man, after having become partially invalid, must have been restricted.

Considering all these factors and also considering the kind of the injuries sustained by the appellant-claimant, which relates to amputation of right leg and insertion of two rods in his right arm as well as fracture of left arm, the working capacity of the appellant, must have definitely reduced. His movement had become restricted, which definitely must have have impacted his income generating capacity. Thus, considering all these facts, on account of permanent disability of upper limbs and lower limbs, his functional disability can conveniently be taken to be 80%. As per claim of the appellant-claimant, his earnings at the relevant time was Rs.5,000/- per month. Though, qua the same, besides the assertion, so made, no evidence, as such, has been led, but however, considering the minimum wages, at the relevant time, it shall be appropriate to take his earnings as Rs.3,000/- per month. To the said amount, addition of 40% is to be made as future prospects, which comes to be Rs.1,200/- and total whereof, comes to be Rs.3000+1200=Rs.4200/-. The annual earnings are so worked upon as Rs.4200x12=Rs.50,400/- and by applying the multiplier of '**18**' as held in ***Sarla Verma's case (supra)*** and also multiplying the same with 80% of the disability and dividing the same by 100, as per standard multiply process, on account of the same, the loss is assessed as under:-

Rs.50400x 18 = Rs.907200/-
Rs.9,07,200 x 80/100 =Rs.7,25,760/-

Accordingly, the amount awarded by the Tribunal, on account of disability is now enhanced proportionately from Rs.3 lakh to Rs.7,25,760/-.

Even though, the Tribunal had granted a lumpsum of Rs.3 lakh, on account of disability as well as pain and suffering, but however, both the heads, as such, are bifurcated and as already observed aforesaid, the compensation, on account of disability, as such, has been worked aforesaid. Of course, for the pain and sufferings, the appellant-claimant has undergone, on account of having become extensively invalid, the amount has to be worked upon separately and needs good lot of enhancement. Thus, on account of pain and sufferings, the amount is now taken as Rs.2 lakh. The medical bills, which have been placed on record, are to the extent of Rs.73,000/-. However, on the medical bills, the amount so granted is taken as Rs.73,000/-, as awarded by the Tribunal.

For some period of time, after the accident, the appellant-claimant must have been looked after by a bye-stander or attendant. Though, learned counsel for the insurance company has submitted that no material is produced by the appellant qua actual expenses incurred upon the services of attendant and it is also argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability suffered, besides family members, the appellant ought to be having one attendant to look after him as there was need for assisted living for some period of time. Also, it has to be kept in mind that besides restricted movement of upper limbs, the appellant has also lost one lower limb, on account of amputation of his right leg. Thus, some kind of assistance is always required by the appellant, even for carrying out his day-to-day activities. Thus, on count of attendant charges, a sum of Rs.1 lakh is granted.

The appellant-claimant had remained admitted in hospital for pretty long time and thereafter, for the follow up also, he must be making frequent visits to the hospital. Thus, the amount so granted by the Tribunal, on account of transportation charges is enhanced from Rs.5,000/- to Rs.25,000/-. It is quite obvious that the appellant must have been put to nutritious diet, at least for some period of time, after the accident. Considering the kind of injuries sustained by him, on the count of special diet also, Rs.25,000/- is granted.

Besides the aforesaid, it is pertinent to mention that in case of amputation of right leg, prosthetic limb must be required by the appellant. Learned counsel for the appellant has made reference to Annexure A-1, which is bill, relating to the purchase of Above-Knee Artificial Leg, which is to the extent of Rs.81,000/-.

The Hon'ble Supreme Court in ***Mohd. Sabeer @Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation, 2023(1) RCR (Civil) 349***, while considering the case of injury sustained in a motor vehicular accident and the prosthetic limb required, it was observed that provision has to be made for the purchase and maintenance of the prosthetic limb. Considering the age of the injured, provision for three prosthetic limbs, in his lifetime, was made, apart from the maintenance cost. Thus, taking guidelines from the aforesaid decision, in the present case, the appellant-claimant was young man of 24 years, at the time of accident. He had purchased the prosthetic limb for an amount of Rs.81,000/-. Considering his future need for the replacement of the prosthetic limb and the maintenance thereof, another sum of Rs.5 lakh is granted.

Accordingly, the appellant-claimant is held entitled for compensation as under:-

Permanent disability	**:**	**Rs.7,25,760/-**
Pain & suffering	**:**	**Rs.2,00,000/-**
Medical bills	**:**	**Rs.73,000/-**
Attendant charges	**:**	**Rs.1,00,000/-**
Transportation charges	**:**	**Rs.25,000/-**
Diet and Nutrition	**:**	**Rs.25,000/-**
Purchase and maintenance of prosthetic limb	**:**	**Rs.5,00,000/-**
Total	**:**	**Rs.16,48,760/-**

With the above observations, the present appeal stands allowed. The impugned Award dated 12.08.2006 stands modified, to the extent, as indicated aforesaid. Apart from this modification regarding enhancement of compensation, the interest component, as ordered in impugned Award, shall remain same.

February 15, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**