IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-1249-2016 (O&M)
Reserved on:21.04.2023
Date of Pronouncement:01.05.2023

New India Assurance Company Ltd. ... Appellant

Vs.

Jagbir & others ... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Suvir Dewan, Advocate for the appellant.

None for respondent No.1.

Mr. Pritam Sharma, Advocate for
Mr. Shiv Kumar, Advocate for respondents No.2 and 3.

...

SUKHVINDER KAUR, J.

1. By way of this appeal, appellant/insurance company seeks modification of award dated 21.09.2015 in MVA Petition No.28/ Registration No.289 of 2014 vide which the Tribunal has granted a total compensation of Rs.14,75,000/- on account of injuries received by the claimant/injured Jagbir in the accident in the question along with interest @ 9% per annum from the date of the filing of the claim petition till realization.

2. The relevant facts are that on 30.03.2013, claimant-Jagbir along with his brother Hukam Singh was going to Ballabgarh from Sururpur on motorcycle bearing registration No.HR-29-AB-6798, which was being driven by him at a moderate speed by following the traffic rules. When at about 2 P.M., they reached at Gaunchi turn near meat shop, NIT Faridabad, then bus bearing registration No.DL-1P-B-6476 (hereinafter to be referred to

as 'the offending vehicle') came at a very high speed which was being driven by its driver/respondent No.1, Tek Chand rashly and negligently and hit his motorcycle from the backside. Resultantly, he suffered fractures and multiple injuries on his body. Respondent No.1 fled away from the spot. Hukam Singh took him to B.K. Hospital, Faridabad, where he was examined. But due to serious condition, he was referred to Safdarjung Hospital, New Delhi, where he remained admitted upto 05.04.2013. Thereafter he was admitted at Surya Ortho and Trauma Centre, NIT Faridabad on 05.04.2013 and was discharged on 10.05.2013. FIR bearing No.162, dated 02.04.2013, under Sections 279/337 IPC at Police Station Mujessar (Faridabad) was registered on the statement of Hukam Singh. He had spent a sum of Rs.2 lakhs on his treatment and transportation and more expenses are likely to be incurred on his future treatment.

3. It has also been averred that at the time of the accident, claimant was a young man of 31 years. He was an active person and was having good health and physique and was looking after his family members. He was employed as a Security Guard with Yamaha Company under M/s Tigar Manpower Resources Private Limited and was earning Rs.9000/- per month. But due to the accidental injuries sustained by him, the claimant has become permanently disabled. He is unable to walk, move and run life like a normal person. He has lost his income. It is further averred that the accident had taken place solely on account of rash and negligent driving of respondent No.1 and he being driver, respondent No.2 being owner and respondent No.3 being insurer of the offending vehicle, are jointly and severally liable to pay compensation to the claimant. By way of the claim petition, sum of Rs.10

lakhs along with interest @ 18% from the date of filing of the claim petition till realization has been sought as compensation.

4. Respondents No.1 and 2 (driver and owner of the offending vehicle) respectively have filed a joint written statement taking the preliminary objections regarding cause of action, *locus standi* and maintainability. On merits, the material contents of the petition regarding happening of the accident in the manner as alleged, occupation and income of the claimant and expenses incurred on his treatment, were denied. It was submitted that no accident had taken place with the offending vehicle and the said vehicle has been falsely involved to get the compensation. It was also submitted that respondent No.1, driver of the offending vehicle was having valid and effective driving license at the time of the accident and as such the insurance company is liable to indemnify the owner.

5. Respondent No.3-insurance company in its separate written statement took a similar plea as took by respondents No.1 and 2. In addition, it was submitted that owner of the vehicle had violated the terms and conditions of the insurance policy. The driver was not having valid and effective license and the insurance company is not liable to indemnify the insured. It was further submitted that the alleged accident, if any, had taken place solely due to negligence on the part of the claimant, who was driving the motorcycle negligently and without observing the traffic rules. No accident had been caused by respondent No.1 and a false case had been got registered against the bus bearing registration No.DL-1P-B-6476 to claim compensation in collusion with respondents No.1 and 2 and dismissal of the claim petition was sought.

6. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

7. After considering the evidence available on record and the submissions made on behalf of the appellant, learned Tribunal has partly allowed the claim petition MVA Petition No.28/Registration No.289 of 2014 and awarded a sum of Rs.14,75,000/- as compensation to the claimant along with interest at the rate of 9% per annum from the date of filing of the petition till realization. Respondents No.1 to 3 were held jointly and severally liable to pay the compensation.

8. Feeling dissatisfied with the award dated 21.09.2015, the appellant-claimant has preferred the instant appeal.

9. In the appeal before this Court, vide order dated 12.10.2018, respondent No.1 was ordered to be served through publication. As per the office report respondent No.1 was served through publication but none came present on his behalf. Respondents No.2 and 3 in the present appeal are the proforma respondents.

10. I have heard learned counsel for the appellant/insurance company and have also perused the relevant record.

11. Counsel for the appellant/insurance company has contended that the learned Tribunal while assessing the compensation under the head of loss of income due to permanent disability, has taken the income of the claimant/respondent No.1 as Rs.5000/- per month and has then added 50% of the income to his assessed income towards future prospects relying upon the judgment of the Hon'ble Apex Court in **Sanjay Verma Vs. Haryana**

Roadways, 2014 (1) RCR (Civil) 914. But now as per law laid down in **Raj Kumar Vs. Ajay Kumar & another, 2011 (2) RCR (Civil) 101,** the future prospects that had been added @ 50% of the assessed income are liable to be reduced to 40% of the assessed income. He has also contended that the present claim petition has been filed claiming compensation to the tune of Rs.10 lakhs on account of injuries suffered by the claimant, whereas the learned Tribunal has awarded Rs.14,75,000/- which is liable to be reduced on this score also and prayed that the award of the learned Tribunal may be modified, accordingly.

12. On the other hand, learned counsel for respondents No.2 and 3 did not address any arguments, being proforma respondents.

13. There is no dispute with regard to the finding given by the Tribunal on issue No.1 that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by its driver, in which the claimant/appellant Jagbir had sustained the injuries.

14. Claimant-Jagbir appeared in the witness box as PW7 and has deposed on oath as per the averments made in the claim petition. The accidental injuries on the person of the claimant have also been proved by PW3 Priyanka Bansal, Medical Record Officer, B.K. Hospital, Faridabad who has produced on record the MLR of injured Ex.P4 issued by B.K. Hospital, Faridabad. Perusal of Ex.P4 shows that the claimant was taken to the said hospital with alleged history of road side accident at Gaunchi turn at about 3 P.M.

15. As per the claimant, due to his serious condition, he was referred to Safdarjung Hospital, New Delhi where he remained admitted

upto 05.04.2013 and thereafter he was admitted to Surya Ortho and Trauma Centre, NIT Faridabad on 05.04.2013 and was discharged on 10.05.2013. PW1 Dr. Suresh Arora, Orthopaedic Surgeon, Surya Ortho and Trauma Centre, NIT Faridabad has deposed that on 05.04.2013, patient Jagbir was admitted in the said hospital with multiple injuries received in the road side accident on 30.03.2013. He was operated upon on 15.04.2013, 19.04.2013, 30.04.2013 and 04.05.2013 for amputation of foot and nailing of leg bones. He was discharged on 10.05.2013 and he came for follow up treatment on 10.05.2013, 25.05.2013 and 12.06.2013. This witness has proved the discharge summary of injured as Ex.P1 and has also proved on record the medical certificate Ex.P2 vide which the claimant was advised bed rest

16. The Tribunal has thus rightly held that, from the statement of PW1 and discharge summary Ex.P1, it is established that injured/claimant had suffered grievous injuries in the accident in question and he was operated upon for amputation of foot and nailing of leg bones. As the claimant remained admitted in various hospitals, underwent surgeries for amputation of foot and nailing of leg bones, so he must have endured great mental and physical pain. The Tribunal has rightly held that the claimant is entitled to sum of Rs.1 lakh as compensation on account of pain and sufferings.

17. The medical expenses incurred by the claimant on his treatment have been proved by PW1 Dr. Suresh Arora, Surya Ortho and Trauma Centre, NIT Faridabad and he has proved on record bill Ex.P3 vide which Rs.71,050/- were charged from the claimant. PW5 Gaurav, Salesman, U.K. Medicos, NIT Faridabad has proved the medicine bills regarding purchase of

medicines by the claimant as Ex.P8 to Ex.P48 amounting to Rs.24,862/-. Besides that, the claimant tendered in evidence the bills Ex.P55 to P60 amounting to Rs.1573/-. Thus, the Tribunal has rightly held that keeping in view the above, the claimant is entitled to compensation of Rs.1,01,948/- (rounded to Rs.1,02,000/-) towards the medicine and treatment expenses.

As per the disability certificate Ex.P49, right leg of the claimant below knee upto upper 1/4th was amputated. The Tribunal has thus rightly held the claimant to be entitled to a sum of Rs.1,50,000/- for artificial leg, and Rs.50,000/- towards loss of amenities.

18. PW6 Shri Chand, Clerk from B.K. Hospital, Faridabad brought the original record of disability certificate, Ex.P49 issued in favour of the claimant/Jagbir by the Board of Doctors. A perusal of this disability certificate reveals that claimant had suffered 70% disability in relation to his amputation below knee upto upper 1/4th right leg. The Tribunal has held that the disability suffered by the claimant would certainly effect his earning capacity and he is likely to suffer the same throughout his life. It is further held that the compensation to be awarded to the claimant under the head of loss of income thus has to be assessed keeping in view the percentage by which his earning capacity has been diminished and by applying the suitable multiplier in view of the law laid down by the Hon'ble Supreme Court in **Yadava Kumar Vs. The Divisional Manager, National Insurance Company Ltd., 2010 (4) PLR-242**. It has been held by the Tribunal that though it has been alleged by the claimant that he was employed as a Security Guard with Yamaha Company under M/s Tigar Manpower Resources Private Limited and used to earn Rs.9000/- per month, yet no

record from the employer has been summoned to prove that he was working as a Security Guard. The Tribunal has rightly held that for want of such evidence the above said version of the claimant cannot be accepted and claimant has not been able to prove that he was earning Rs.9000/- per month by working as a Security Guard. So, the Tribunal has rightly assessed his income as Rs.5000/- per month by taking him as a daily wager. Tribunal has further held that the claimant has claimed his age to be 31 years when he instituted the claim petition on 20.02.2014 but when he was examined as PW7 on 15.05.2015 then he got recorded his age as 35 years. So the Tribunal has taken his age to be 33 years on the date of the accident. Thereafter, the Tribunal has added 50% amount to the income of the claimant towards future prospects by relying upon the case of **Sarla Verma Vs. Delhi Transport Corporation & others, 2009 (6) SCC 121, Rajesh & others Vs. Rajbir & others, 2013 ACJ 1403** and **Sanjay Verma Vs, Haryana Roadways, 2014 (1) RCR (Civil) 914** and considered his income as Rs.7,500/- (5000+2500). Thereafter, it has been held by the Tribunal that claimant had suffered disability to the extent of 70% and has calculated the annual loss of income as Rs.63,000/- (5250 X 12). Then the multiplier of 16 was applied and compensation under this head was assessed as Rs.10,08,000/- (63000 X 16).

19. It has been held by the **Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009** that in case the deceased was self employed or on a fixed salary an addition of 40% of the established income towards future prospects would be reasonable, where the deceased was below the age of 40 years. So in the instant case, the Tribunal has wrongly added 50% amount to the income towards future prospects and keeping in view the ratio laid down in the case supra, the increase in income towards future prospects is to be added @ 40%. As such, the salary of claimant to be taken as Rs.7,000 (5000+2000).

Tribunal has also wrongly held that as the claimant had suffered permanent disability to the extent of 70%, so the annual loss of income comes to Rs.63,000/- (5250 X 12). It has been held by the Hon'ble Apex Court in the case of **Raj Kumar (supra)**, that a future loss of earning is not to be assessed on the basis of permanent disability, but on basis of percentage of functional disability i.e. the effect and impact of such permanent disability on his earning capacity – percentage of economic loss, i.e. percentage of loss of earning capacity, arising from a permanent disability will be different from the disability of permanent disability." It was further held that "where the claimant suffered 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 economically apply 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, i.e., percentage of loss of earning capacity, arising from a permanent disability will be from the percentage of permanent disability."

20. Now adverting to the facts of the present case, the claimant in the instant case has suffered 70% permanent disability in relation to his amputation below knee, upto upper $1/4^{th}$ right leg. Undoubtedly, he has lost his right leg and he is unable to perform some of his duties that he could

perform before the accident. But at the same time, it is also to be taken note of, that still he will be able to perform some of them and is still able to engage in some gainful activities. As per the ratio of law laid down in the case supra, loss of income is not to be calculated as per the percentage of disability, but the effect of the disability is to be seen on the future earnings. As in the present case, the claimant is still able to engage in some gainful activities so loss of earning to claimant due to functional disability is assessed as 40% of the annual income and keeping in view the age of the claimant, multiplier of 16 is the appropriate multiplier to be applied in this case. As income of the claimant has been taken as Rs.7,000/- per month (5000+2000) and loss of earning due to functional disability has been taken as 40% of the annual income, so the annual loss of income comes to Rs.33,600/- (2800 X 12). By applying the multiplier of 16, such compensation is assessed as Rs.5,37,600/- (33600 X 16). The amount of Rs.50,000/- that has been granted for loss of amenities appears to be reasonable as loss of future income has also been considered separately and the same is maintained.

21. As the claimant had suffered grievous injuries and his right leg below knee was amputated, so the Tribunal has rightly held that he must have remained out of work for at least 3 months, so loss of income for 3 months is assessed as Rs.15,000/-.

22. A sum of Rs.50,000/- that has been granted by the Tribunal under the head of transportation, special diet etc. appears to be on the excessive side, so compensation of Rs.10,000/- is granted towards special diet and a sum of Rs.10,000/- is granted towards the transportation charges

incurred by the claimant during his treatment. The amount of interest that has been granted @ 9% per annum also appears to be on the higher side and the same is reduced to 7.5% per annum. The compensation that is to be granted to the claimant is re-worked as under:

1.	Loss of future earnings	Rs.5,37,600/-
2.	Medicine and treatment expenses	Rs.1,02,000/-
3.	Cost of artificial leg	Rs.1,50,000/-
4.	Pain and sufferings	Rs.1,00,000/-
5.	Loss of amenities	Rs.50,000/-
6.	Loss of income during period of treatment for 3 months	Rs.15,000/-
7.	Cost of special diet	Rs.10,000/-
8.	Transportation charges	Rs.10,000/-
	Total	**Rs.9,74,600/-**

23. Thus, the respondent/claimant in this appeal is held entitled to the compensation of **Rs.9,74,600/-** along with interest @ 7.5 % per annum from the date of filing of the claim petition till the realization.

Accordingly the appeal i.e. FAO-1249-2016 is partly allowed.

Pending applications, if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

01.05.2023
harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No