

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**214****FAO-4718-2015 (O&M)****Date of decision: 15.03.2023****Surender****...Appellant(s)****Vs.****Ravinder @ Toni & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**Argued By:- Mr. Prashant Singh Chauhan,
Advocate for the appellant.

Mr. Rajbir Singh, Advocate for respondent No.2.

NIDHI GUPTA, J.

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.5,32,200/- awarded by Motor Accident Claims Tribunal, Rewari (hereinafter referred to as "the learned Tribunal") vide Award dated 06.04.2015 passed in MACT No.83 of 2013 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act").

2. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that claimant/appellant had received injuries in a motor vehicular accident that took place on 05.11.2012 due to rash and negligent driving of TATA Safari bearing registration No.HR-14D-7500 (hereinafter referred to as "the offending vehicle") being driven and owned by respondent No.1, and insured by respondent No.2. Learned Tribunal awarded compensation as noted above along with interest @ 7% per

annum from the date of filing the petition till its actual realization. Respondents were held jointly and severally liable to pay the aforesaid compensation amount.

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

a) that appellant had suffered multiple, serious and grievous injuries as a result of the accident in question. He remained admitted in hospital from 05.11.2012 to 12.11.2012 and was operated upon for injuries in chest, fracture of right humerus, fracture of right elbow, and ENT bleeding. Thereafter, the appellant remained admitted in hospital for more than one month for another operation where rod and implants were fixed in his right shoulder. It is submitted that the appellant spent about Rs.6 lakh on his treatment and his treatment is still going on. In view of these facts, compensation as awarded by learned Tribunal is on lower side and deserves to be enhanced;

b) that prior to accident, the appellant was working as a driver with PW7-Shriom s/o Khem Ram and used to drive his tractor and was earning Rs.10,000/- per month along with Rs.100/- as daily expenses. It is stated that the Appellant had placed on record his driving licence Exhibit P63 as per which, appellant was authorized to drive Light Motor Vehicle, Medium Goods Vehicle, Medium Passenger Motor Vehicle, Heavy Goods Vehicle and Heavy Passenger Motor Vehicle. The appellant had also examined above said Shriom as PW7 who had duly deposed that the appellant had been working with him from May, 2011 up to 04.11.2012 and

was earning Rs.10,000/- per month along with Rs.100/- as daily expenses, and due to accident he was no longer able to drive the tractor. It is submitted that therefore, in view of this clear testimony and evidence, learned Tribunal was in error in taking income of the appellant as only Rs.5200/- pm on the basis of relevant Minimum Wage Notification. It is submitted that no evidence in rebuttal was led by the respondents. Learned counsel relies upon judgment of Hon'ble Supreme Court in ***Civil Appeal No.6 of 2001 titled as "S. Kaushnuma Begum & Others Vs. New India Assurance Co. Ltd. & Others"*** to submit that where no evidence in rebuttal is led by respondent, claim of the appellant is accepted. Learned counsel relies upon judgment of Hon'ble Supreme Court in ***Civil Appeal No.7004 of 2019 titled as "Chameli Devi & Others Vs. Jivrail Mian & Others"*** to contend that no further proof regarding income was required to be led by the appellant. It is submitted that in the present case also, respondents had not led any evidence in rebuttal, and therefore, as per abovesaid judgments, claim of the appellant could not have been rejected;

c) that learned Tribunal ought to have granted 50% increase towards future prospects. Learned counsel relies upon judgment of Hon'ble Supreme Court in ***Civil Appeal No.8510 of 2022 titled as "Sidram Vs. The Divisional Manager, United India Insurance Co. Ltd. & Another"*** to submit that even in injury cases future prospects have to be granted. Relevant part of said judgment is reproduced hereinbelow:-

"It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different

tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases – and admits such possibility of future prospects, in case of the victim’s death.”

d) Further, reliance was placed on judgment of Hon’ble Supreme Court in ***Civil Appeal No.1329 of 2017 titled as “Sandeep Khanuja Vs. Atul Dande & Another”*** to submit that even in injury cases, it has been held that multiplier has to be applied. Hon’ble Supreme Court in abovesaid judgment has held as follows:-

*“...Though the High Court recognized this, it did not go forward to apply the principle of multiplier. We are of the opinion that in a case like this and having regard to the injuries suffered by the appellant, there is a definite loss of earning capacity and it calls for grant of compensation with the adoption of multiplier method, as held by this Court in ***Yadava Kumar v. Divisional Manager, National Insurance Company Limited &Anr., 2010(4) RCR (Civil) 155 : 2010(5) Recent Apex Judgments (R.A.J.) 116 : (2010) 10 SCC 341.....”****

e) that amounts granted under various heads are also on lower side and deserve to be enhanced; and even rate of interest should be 12% and not 7%.

4. No other argument is made on behalf of the appellant.

5. Per contra, learned counsel for respondent No.2- Insurance Company submits;

a) that the driving licence of the appellant was not authentic and could not have been relied upon as, admittedly, the appellant belonged to Rewari whereas the driving licence had been issued from Manipur Registration Authority. It is further submitted that the driving license of the appellant had not been verified, and the same had been procured merely to get compensation;

b) that except PW7, no other witness has been examined to prove the alleged employment of the appellant, and even no record in support of the same has been produced by the appellant;

c) that 70% disability of the appellant is only qua the upper limb and as per law, 50% of the disability has to be discounted qua the whole body. Accordingly, appellant can be stated to have only 35% functional disability qua the whole body.

6. In rebuttal, it is submitted by learned counsel for the appellant;

a) that onus to prove veracity of the driving licence was upon the respondents, and the Insurance Company could have summoned Regional Transport Officer to verify the same;

b) that against the argument of respondent No.2 that functional disability of the appellant be taken as only 35%, reliance was placed on judgment of Hon'ble Supreme Court in ***Civil Appeal No.9069 of 2022 titled as "Chandramma Vs. Manager, Regional Office, NCC Ltd. & Another"*** wherein it has been held as under:-

“19. There is no dispute that the appellant suffered from disablement of permanent nature. The disablement has incapacitated her from doing the work which she was capable of doing. The said work was of that of a laborer. Therefore, the Commissioner for Workmen’s Compensation was wrong in holding that the disability of the appellant will have to be treated as 20% disability as the work of an appellant involves lifting heavy weights and the appellant has been rendered incapable from doing such work due to her disability. Hence, the case of the appellant will be covered by the definition of ‘total disablement’, therefore, being 100% disabled.”

c) that in this respect reliance was also placed on judgment of Hon’ble Supreme Court in **Civil Appeal No.1555 of 2022 titled as “Arjun s/o Ramanna @ Ramu Vs. IffcoTokio General Insurance Co. Ltd. & Another”** to submit that where disablement has incapacitated the appellant from doing his job, Hon’ble Supreme Court had taken disability to be 100%. Relevant para of said judgment is reproduced hereinbelow:-

“10. There is no dispute that the appellant suffered from disablement of permanent nature. The disablement has incapacitated him from doing the work which he was capable of doing. The said work was of driving a vehicle. Therefore, the learned Commissioner for Workmen’s Compensation was right in holding that the disability of the appellant will have to be treated as 100% disability. Hence, the case of the appellant will be covered by the definition of ‘total disablement’.”

7. I have heard learned counsel for the parties.
8. a) The learned Tribunal has awarded compensation in following manner:-

HEADS	AMOUNT
Income	Rs.5,200/- per month
Pain and suffering	Rs.10,000/-
Transportation	Nil
Attendant charges	Rs.3,000/-
Loss of earning on account of permanent disability (70% disability @ Rs.2,000/- per	Rs.1,40,000/-

percent of disability)	
Loss of income (for 4 months)	Rs.20,800/-
Special diet	Rs.5,000/-
Medical expenses	Rs.3,43,380/-
Future medical expenses	Rs.10,000/-
Total	Rs.5,32,180/-

b) It is the pleaded case of the appellant that prior to the accident, he was working as a driver with PW7-Shriom s/o Khem Ram and used to drive his tractor and was earning Rs.10,000/- per month along with Rs.100/- as daily expenses. Appellant had placed on record his driving licence Exhibit P63, as per which appellant was holding licence to drive Light Motor Vehicle, Medium Goods Vehicle, Medium Passenger Motor Vehicle, Heavy Goods Vehicle and Heavy Passenger Motor Vehicle. The appellant also examined above said Shriom as PW7 who duly deposed that the appellant had been working with him from May, 2011 up to 04.11.2012 and was earning Rs.10,000/- per month along with Rs.100/- as daily expenses, and due to accident he was no longer able to drive the tractor;

c) However, admittedly, PW7 did not produce any documentary evidence whatsoever, to prove the alleged payment of Rs.10,000/- per month as salary to the claimant. Even the appellant has failed to show any bank account or any other record to prove that he was receiving above said salary of Rs.10,000/- from PW7;

d) From the above facts it undisputedly emerges:- i) that the appellant had worked with PW7 just for few months prior to the accident from May, 2011 to 04.11.2012 i.e. one day prior to the accident; ii) there is no documentary evidence whatsoever on record to prove said

employment of the appellant; iii) there is no documentary proof whatsoever of the salary of Rs.10,000/- per month + Rs.100/- as daily expenses being purportedly received by the appellant during the period from May, 2011 to 04.11.2012. Thus, on the face of it, in my view, employment of the appellant as driver with PW7, cannot be held to have been proved satisfactorily/sufficiently.

e) Accordingly, in view of the above facts, I find that the learned Tribunal correctly assessed notional income of the appellant as Rs.5,200/- per month on the basis of Minimum Wage notification No.8273-397 dated 02.02.2012 of Labour Commissioner, Government of Haryana whereby minimum wages of a skilled labourer for the year 2012 were fixed as Rs.5,237/- per month;

f) Further, admittedly, the appellant resides in/belongs to Rewari, however his driving licence was issued from Manipur Registration Authority. No doubt, the respondent-Insurance Company led no evidence in rebuttal and did not summon Regional Transport Officer to verify the driving licence. Be that as it may, it is not in dispute that the appellant was 39 years of age at the time of accident, and claims to hold a driving licence to drive Light Motor Vehicle, Medium Goods Vehicle, Medium Passenger Motor Vehicle, Heavy Goods Vehicle and Heavy Passenger Motor Vehicle. It would therefore, be plausible that the appellant would be in regular employment as a driver even prior to May 2011. However, no such averment has been made, and even no such record has been produced. As already noticed above, even employment of appellant as a driver with PW7-Shriom remains unproved. In these

circumstances, it cannot be stated that the injuries suffered by the appellant in the accident in question have permanently incapacitated him from doing the work which he was capable of doing as, employment of the appellant as a driver remains unproved on record. Thus, appellant can derive no benefit from the judgments relied upon him in cases of ***Chandramma (supra)*** and ***Arjun (supra)***. For the reasons aforestated, it is reiterated that the learned Tribunal made no error in taking notional income of the appellant as Rs.5200/- per month on basis of relevant Minimum Wage notification;

g) It has been stated by learned counsel for the appellant that due to injuries suffered in the accident, the appellant is 100% disabled. However as per disability certificate Exhibit P62, the appellant is shown to have suffered 70% permanent disability. As per testimony of PW6-Dr. A.K. Saini, Senior Medical Officer, General Hospital, Rewari, *“the aforesaid disability of injured was on account of restricted movement of right shoulder, elbow, wrist and marked deformity of right hand with loss of strength of hand with inability to use right upper limb.”* In view of 70% disability suffered by the appellant, learned Tribunal placed reliance upon judgment of this Court in ***Ram Kiran Goyal Vs. Sub Divisional Engineer, Mechanical 2008 (2) RCR (Civil) 103 (P&H)*** and granted Rs.2,000/- per percent of disability/a total of Rs. 1,40,000/- towards permanent disability. I find the same to be in accordance with law;

h) Though it has been stated by the appellant that he spent Rs.6 lakh on treatment, however he has produced bills Exhibit P4 to Exhibit P61 for a total sum of Rs.3,43,380/- only. As only the said bills were

duly proved by the appellant in accordance with law, the same have been duly reimbursed by learned Tribunal. I find no error in this;

i) Further as per medical record on file, the appellant had suffered chest injury, facture of right humerus, fracture of right elbow and ENT bleeding. Admittedly, the appellant had remained hospitalized in various hospitals and had undergone four operations including affixation of rod and implants in his right shoulder. Admittedly, the appellant has restricted movement of complete right arm with loss of strength of hand. Therefore, in my view, future medical expenses should be enhanced from Rs. 10,000/- to Rs.50,000/-; special diet is enhanced from Rs.5,000/- to Rs.10,000/-; attendant charges are enhanced from Rs.3,000/- to Rs.10,000/-; transportation charges which were not granted by learned Tribunal are granted to the tune of Rs.20,000/-;

j) Accordingly, compensation admissible to the appellant is re-worked as follows:-

HEADS	AMOUNT
Income	Rs.5,200/- per month
Future prospects (40%)	Rs.5,200/- + Rs.2,080/- = Rs.7,280/-
Annual Income	Rs.7,280/- x 12= Rs.87,360/-
Multiplier (15)	Rs.87,360/- x 15= 13,10,400/-
Transportation	Rs.20,000/-
Attendant charges	Rs.10,000/-
Loss of earning (70% disability on account of personal disability @ Rs.2,000/- per percent of disability)	Rs.1,40,000/-
Loss of income (for 4 months)	Rs.20,800/-
Special diet	Rs.10,000/-
Medical expenses	Rs.3,43,380/-
Future medical expenses	Rs.50,000/-
Total	Rs.19,04,580/-
Awarded by MACT	Rs.5,32,200/-
Enhanced by	Rs.13,72,380/-

9. Interest @ 7% is granted on enhanced compensation from date of filing the petition till realization.
10. Accordingly, present appeal stands **partly allowed** in above terms.
11. Pending application(s) if any also stand(s) disposed of.

15.03.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No