IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 9811/2014

Date of decision: 22/02/2023

Moni @ Monu @ Ramesh Kumar

……Appellant

Vs.

Pritam Singh and others

……Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Ekta Thakur, Advocate for the appellant.

Mr. Sagar Aggarwal, Advocate for respondent no.1.

Mr. Harshpreet Singh, Advocate for
Mr. Amrik Singh, Advocate for respondent no.2

Ms.Shamsher Kaur, Advocate for respondent no.3.

Nidhi Gupta, J.

Present appeal has been filed by the injured-claimant seeking enhancement of compensation of Rs.8,97,648/- granted by the learned Motor Accident Claims Tribunal, SAS Nagar (hereinafter referred to as 'the Tribunal') vide Award dated 10.9.2014 passed in MACT Case NO.2/14.01.2012 filed u/s 166 of the Motor Vehicles, Act,1988.

RAJINDER PARSHAD JOSHI
2023.02.22 16:55
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Learned Tribunal upon appraisal of the pleadings and evidence led before it concluded that the injured-claimant/ appellant had been injured in a motor vehicular accident that took place on 30.12.2011 due to rash and negligent driving of truck trailer bearing registration number PB-27-C 4231 (hereinafter referred to as 'the offending vehicle'), owned by respondent no.2, and insured by respondent no.3.

Learned counsel for the appellant submits that compensation awarded to the claimant is liable to be enhanced inter-alia, on the ground that admittedly, the appellant has suffered permanent disability of 60% inasmuch as his right lower leg was amputated below the knee. However, ld. Tribunal has taken the disability of the appellant as only 35%.

It is further submitted that the appellant was a Mason at the time of accident and was earning Rs.9000/- per month. His work as a mason requires standing for long hours however, the amputation has adversely affected his earning capacity and he is now unable to do his work. It is submitted that accordingly his disability ought to have been taken at least 60%, if not 100%. It is further submitted that nothing has been granted on account of loss of amenities, or future prospects; and even amount of Rs.10,000/- granted towards pain and suffering; and Rs.5000/- towards special diet; and Rs.10,000/- towards attendant charges, are on the lower side.

It is further submitted that Tribunal has taken the income of the injured as Rs.6000/- per month on the basis of judgment of Hon'ble Supreme Court in **Minu Rout and another v Satya Pradyumna Mohapatra and others, Law Finder Doc Id # 479300**. It is submitted that the learned Tribunal is in error in taking the income of the appellant as Rs.6000/- on the basis of said judgment as in the said case the date of accident was 2004

RAJINDER PARSHAD JOSHI
2023.02.22 16:55
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whereas, in the present case the date of accident is 30.11.2011. It is submitted that accordingly the income of the deceased should be taken as at least Rs.9000/- per month. Learned counsel places reliance upon another judgment of Hon'ble Supreme Court in the case of **Shivakumar M. v The Managing Director, BMTC, Law Finder Doc Id # 830264** wherein the date of accident was 16.8.2013 and the Hon'ble Supreme Court had assessed the monthly income of the injured claimant therein as Rs.15,000/- per month. It is pleaded that accordingly, as per aforementioned judgment of the Hon'ble Supreme Court the income of the appellant ought to be assessed as at least Rs.9000/-.

Learned counsel for the appellant further refers to Ex.P37 at page 71 of the LCR to submit that the approximate cost of an artificial limb based on the physical built, stump shape and activity level of the appellant, as assessed on 13.5.2013, was Rs.3,29,200/-. It is submitted that the said cost would be many times more ten years later, at the present time. It is further submitted that Ex.P37 was duly proved by PW3 Sanjay Kumar, who was Technician of the Deep Artificial Limb Center, which had recommended above artificial limb for the appellant.

It is further submitted that even as per statement of PW5 Dr. Surinder Singh, SMO Civil Hospital, Kharar, "*appellant has suffered "60% disability as his right lower leg was amputated below knee and he will be having difficulty in doing his daily chores and will not be able to do his mason job efficiently as before. Though his job is of standing nature and now due to this amputation he will have difficulty in doing his job but I cannot say how much percentage he is likely to suffer in his work*". In his cross-examination, said witness has further deposed that "*Injured did not disclose to me regarding his nature of job. I cannot comment whether by using artificial limb the*

RAJINDER PARSHAD JOSHI
2023.02.22 16:55
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claimant could do ordinary work up to some extent. Volt I cannot tell to what extent his working will be improved by using artificial limb. I am working and have signed this certificate in the capacity of Senior Medical Officer of Civil Hospital, Kharar. My qualification is MBBS and MD Bio Chemistry. The opinion of percentage of the disability of right lower limb of the applicant is of Dr. Daljit Singh, Orthopaedician Medical Officer, Civil Hospital, Kharar. It is wrong to suggest that disability certificate is not correctly issued".

Learned counsel also refers to Ex.P5 at page 76 of the LCR which is the disability certificate of the appellant issued by Dr. Daljit Singh, Medical Officer, Civil Hospital, Kharar wherein permanent disability of the appellant has been shown as 60%. In this regard, reliance has been placed upon the judgments of Hon'ble Supreme Court in **G. Dhanasekar v M.D., Metropolitan Transport Corporation Limited, Law Finder Doc Id # 524387**; and **Syed Sadiq etc. v Divisional Manager, United India Ins. Co., Law Finder Doc Id # 515167.**

Per contra, it is submitted by the learned counsel for the respondent Insurance Company that the occupation of the appellant has not been established on record. It is submitted that even as per notification of the State of Punjab at the relevant time, the minimum wages admissible to the appellant would be Rs.4745/- per month being skilled worker. It is submitted that therefore, the learned Tribunal has already taken the income of the injured on the higher side. Learned counsel further refers to statement of the appellant/ PW1, at page 19 of the LCR, wherein in his cross examination he has stated that "…..*I cannot produce any document to prove that I was mason. I have no any written agreement of doing work with any person. I am*

RAJINDER PARSHAD JOSHI
2023.02.22 16:55
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matriculate. I am un-married….” It is submitted that accordingly occupation of the appellant was not proved on record. It is further submitted that the occupation of the appellant is unproven on record also in view of the testimony of PW5-Doctor who in his cross examination at page 33 of the LCR has admitted that the “*injured did not disclose to him regarding his nature of job”.*

The next submission of the learned counsel for the Insurance Company is that the disability certificate Ex.P5/X at page 76 of the LCR has been issued by a Doctor who is an MBBS and MD in Bio Chemistry, and the same has not been signed by any Medical Board and therefore, cannot be relied upon. It is submitted that it is clear that (a) income assessed is more than the minimum wages admissible on that date; (b) appellant has not been able to prove his occupation on record; and (c) the disability has been assessed by the Tribunal by placing reliance upon judgment of Hon’ble Supreme Court in the case of **Raj Kumar v Ajay Kumar and another, Law Finder Doc Id @ 238216** in which case the permanent disability of the claimant therein had been assessed at 45%, however, the Supreme Court had taken the functional disability as 25% and the loss of future earning capacity as only 20%. It is submitted that accordingly the appeal deserves to be dismissed.

In rebuttal, it is submitted by the learned counsel for the appellant that the appellant could not prove his occupation as he is a small time Mason and does not keep record of the jobs undertaken/procured by him like registered contractors.

Heard learned counsel for the parties.

I have given my thoughtful consideration to the submission of both the parties.

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Para 18 of judgment in **Raj Kumar's** case supra reads as under:-

> *"18. The Tribunal has proceeded on the basis that the permanent disability of the injured-claimant was 45% and the loss of his future earning capacity was also 45%. The Tribunal overlooked the fact that the disability certificate referred to 45% disability with reference to left lower limb and not in regard to the entire body. The said extent of permanent disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity, as the disability would not have prevented him from carrying on his avocation as a cheese vendor, though it might impede in his smooth functioning. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after nearly two decades, on the facts and circumstances, to do complete justice, we propose to assess the permanent functional disability of the body as 25% and the loss of future earning capacity as 20%".*

The claimant in the above case was a cheese vendor, who had suffered permanent disability to the extent of 45% and his permanent functional disability has been taken by the Hon'ble Supreme Court as 25% and loss of future earning capacity as 20% .

In the present case, it has been stated that the appellant has not been able to prove on record his occupation as a Mason. However, the appellant belongs to the unorganized sector and it is difficult to prove such jobs undertaken usually on contract/ per-job basis. There is no dispute to the fact that his leg has been amputated due to the accident in question, which will affect his working capacity. Therefore, in my view, in the facts and circumstances of the present case, it will be just and proper to take the permanent disability of the appellant as 50% and loss of future earning capacity is taken as 40%.

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2023.02.22 16:55
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As regards income of the deceased, ld. Counsel for the appellant has placed reliance on judgment in case of **Shivakumar M (supra)** and vehemently urged that income of the appellant ought to be taken as Rs. 9000/- per month at least; whereas ld. Counsel for the respondent Insurance Company has placed reliance on the relevant Minimum Wage Notification to submit that income has already been taken on the higher side, and should have been Rs. 4745/- per month as admissible to a skilled worker as per the said Notification. In my view, the median route of Rs. 6000/- pm taken by the ld. Tribunal is suitable, just and appropriate in the present case.

In respect of contention of the learned counsel for the appellant regarding artificial limb, no bills have been produced by the appellant to show that he has applied for, or taken an artificial limb. On a specific query put to the learned counsel for the appellant that either the permanent disability can be enhanced from 35%, or cost of artificial limb can be awarded to the appellant, as, it would be incongruous to grant both, learned counsel for the appellant categorically states that nothing may be granted towards the cost of artificial limb and permanent disability may be enhanced from 35%.

Accordingly, as a sum total of the discussion above, the present appeal is partly allowed. In my view, it will serve the ends of justice in the present case, if the compensation is reworked as under:-

	Taken by Tribunal	Reworked in the present appeal
Occupation	Mason	Mason
Age	20 years	20 years
Actual income	Rs.6000/- per month	Rs.6000/- p.m.
Loss of earning due to disabilities	Rs.2000 (loss due to 35% disabilities) + Rs.1500 (future	Rs.3000/- (loss due to 50% disabilities) + Rs.2400/- (future

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2023.02.22 16:55
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	prospects) (Rs.3500x12=42,000 (annual loss) multiplier 18 therefore loss of earning capacity= Rs.7.56 lacs	prospects) (Rs. (5400x12x18= 11,66,400/-)
Medical Expenses	Rs.58,648/-	Rs. 58,648/-
Future Medical expenses	Nil	Nil
Attendant charges	Rs.10,000/-	Rs.10,000/-
Litigation expenses	Nil	Nil
Loss of conveyance	Rs.8000/-	Rs.8000/-
Pain and suffering	Rs.10,000/-	Rs.50,000/-
Marriage prospectus	Rs.50,000/-	Rs.50,000/-
Loss of amenities	Nil	Nil
Total	Rs.8,97,648/-	Rs.13,43,048/-
Interest	6%	6%

Disposed of as above.

22/02/2023 **(Nidhi Gupta)**
Joshi **Judge**

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

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2023.02.22 16:55
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