

Deepak

....Appellant

versus

Kulbir Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ashwani Arora, Advocate,
For the appellant.

Mr. Vinod Gupta, Advocate,
For respondent No.2-Insurance Company.

ARUN MONGA, J. (ORAL)

Aggrieved with the inadequate compensation, assailed herein is an Award dated 20.10.2016 rendered by Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal'), seeking enhancement thereof.

2. Succinct facts, as noted by the Tribunal, are as below:

"On 20.09.2015, the claimant Deepak was going from Chunni Kalan to his village Rasulpur while driving a motorcycle at slow speed and on the left side of the road. He was being followed by his brother Sh. Rajinder Kumar, who was on a separate motorcycle. After going on the road leading from Chunni Kalan to Fatehgarh Sahib, they took turn towards Village Rasulpur and when they reached in front of Hero Motorcycle Agency, Chunni Kalan at that time a car bearing No.CH-04-C-7592 came at fast speed from the opposite direction and while coming on the wrong side of the road, it struck against the motorcycle of the claimant. As a result of this accident, the claimant fell on the road along with his motorcycle and received serious injuries on his right leg. He was taken to GMCH-32, Chandigarh. The aforesaid car was being driven by Kulbir Singh, respondent No.1 in a rash and negligent manner. After causing the accident, the driver of the car fled away. A criminal case was registered against Kulbir Singh for causing accident on the basis of statement of Rajinder Kumar."

3. Upon notice of the claim petition, respondent No.1- owner-cum-driver and Respondent No.2-Insurance Company contested the same before the MACT.

3.1. Owner driver pleaded that the accident took place due to rash/negligent driving of claimant himself. The claimant in connivance with Police officials got a

false FIR registered against the driver/owner. Rest of the averments of the claim petition were also denied.

3.2. Respondent No.2-Insurance Company *inter-alia* raised objections that there was no cause of action to institute the claim; the driver of the car was not holding a valid driving license; claim petition suffered from non-joinder and mis-joinder of necessary parties as owner and insurer of motorcycle were not made party. Negligence was on the part of the claimant himself. He was driving the motorcycle in a rash/negligent manner without observing traffic rules. All the averments of the claim were denied too.

4. Based on the rival pleadings, learned Tribunal framed the following issues:

- “1. *Whether the claimant received injuries in an accident caused by respondent no.1 while driving vehicle No.CH-04C-7592 in a rash and negligent manner? OPP*
2. *Whether the claimant is entitled to compensation, if so, from whom and to which extent? OPP*
3. *Whether respondent No.1 was not holding a valid driving licence at the time of accident?OPR*
4. *Relief.”*

5. On appraisal of record/evidence, issuesNo.1 and 2 were have been decided in favour of claimant and issue No.3 against respondent no.2 and in favour of respondent No.1 by the MACT. Consequently, compensation of Rs.20,11,000/- was computed and awarded in favour of the claimant.

6. I have heard the competing contentions of both the learned counsel and have gone through case file with their assistance.

7. Learned counsel for the appellant argues that appellant has suffered a permanent functional disability which will affect his earning capacity for life time due to amputation of right leg. In fact, it should be 100%, he would argue, as he is unable to do anything effectively. At the time of accident appellant was 30 years of age and his disability, as medically assessed, is 80%. He further submits that appellant spent a sum of Rs.2,00,000/- on his medical treatment of the serious injuries suffered by

him in the accident. He is now dependent on others for his livelihood. He also has to purchase an artificial limb from time to time, as it lasts a limited time span. The cost of limb is Rs.3,60,000/- and life of the limb is 5-6 years. Going by the age of appellant, he shall have to purchase the limb at least for 10 times during his life time.

8. Per contra, learned counsel for respondent No.2-Insurance Company would argue that accident took place due to rash and negligent driving of claimant himself. Thus, no compensation is deserved by the claimant.

9. Having heard the rival contentions, first and foremost, since respondent no.2 has not either filed any appeal or cross objections to assail the finding of MACT on issue no.1, its contention of attributing 100% negligence on the claimant is not tenable and is rejected.

10. Having perused the impugned award, at the outset I am of the view that learned Tribunal committed manifest error of law in not according the benefit of applicable minimum wages. The minimum income per month has been computed as Rs.6,000/- per month as against Rs.6,935.32/- per the Notification published in official gazette. Pertinently, it is common knowledge that minimum wages notified by the State Government are invariably on the lower side than the earning capacity or the actual income of a daily wager/labourer. Illustratively, even as on today, the minimum wages for unskilled labourer, as notified, are Rs.9,907.68/- per month, which is about Rs.350/- per day as against hiring of a labourer for not less than Rs.500 to 600/-.

11. Be that as it may, since no evidence of the income has come forth *qua* the earning of the victim, the same is being confined to the notified minimum wages as above.

12. That apart, the Tribunal also committed a mistake in not granting the compensation *qua* the artificial limb (prosthesis), for which the medical evidence Ex. P-29 was placed on record. Estimated cost for the same is Rs.3,60,000/-. As against the same, without recording or without there being anything to the contrary on record

to suggest that estimated cost is less than Rs.3,60,000/-, the Tribunal fell in error in fixing the estimated cost to be Rs.1 lakh. To that extent, the error needs to be rectified.

13. The argument of learned counsel for the respondent-Insurance Company to the contrary is being noted only to be rejected viz., cost of prosthesis can vary from Rs.50,000/- to Rs.5 lakh and, therefore, he suggests that what if the appellant chooses for a lesser valued prosthetic.

14. The absurdity of the said argument is obvious from the fact that, assuming tomorrow, a victim chooses to either go for a higher value than what has been awarded, would it also be a case that either victim should go for further enhancement of the compensation, or vice versa in case he opts for a lesser value, will be the Insurance Company go for recovery of the amount paid in excess, if any? In adversarial matters, at some stage, a quietus has to be given to the litigation. Merely on the basis of conjectures and surmises, the arguments cannot be accepted. It has also come on record that even the artificial limb once put requires a maintenance cost, which may though vary but as per the evidence adduced by claimant, it is borne out that the same is Rs.50,000/- for every five years. The said evidence has also gone unchallenged by the Insurance Company and, therefore, there was no reason for the Tribunal not to believe in the same.

15. *Qua* future prospects, though the Tribunal has awarded for the increase of earning @ 50% for future prospects. However, the same also needs to be re-calculated in view of the Apex Court's judgment rendered in "**National Insurance Co. Ltd. v. Pranay Sethi**", reported as (2017) 16 SCC 680. Given that the age of the victim at the time of accident was 30 years, future prospects ought to have been calculated @ 40%.

16. To sum up, in the light of discussion above, the revised computations are being carried out in terms of the Apex Court renditions in the cases of "**National Insurance Co. Ltd. v. Pranay Sethi**", reported in (2017) 16 SCC 680 read with

“Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others”, reported in **2019 (3) SCC (Cri) 153**, as below:

Injured	Deepak
Date of accident	20.09.2015
Age	30 years
Injuries	Amputation of right leg
Permanent disability	80%
Occupation	Labourer
Minimum wages	Rs.6,935.62 per month
Annual Income	Rs.83,227.44/-
Future prospects @40%	Rs. 33,290/-
Total	Rs.1,16,518/-
Loss of future earning @80% by applying multiplier of 17	Rs.1,16,518 x 80 divided by100x17= 15,84,645/-
Bills (Ex.P10 to P-27)	Rs.49,950/- (as awarded by Tribunal)
Prosthesis Ex.P-29	Rs.3,60,000/- (estimate)
Durability of prosthesis	4 to 5 years
Number of prosthesis which will be required till the age of 60 years	Rs.3,60,000 x6=21,60,000/-
Maintenance and repair cost	Rs.5,00,000/- (lumpsum)
Pain and suffering	Rs.3,00,000/-
Loss of amenities	Rs.1,00,000/-
Attendant (for three months)	Rs.10,000/-
Special diet	Rs. 15,000/- (as awarded by the Tribunal)
Transportation	Rs.10,000 (as awarded by the Tribunal)
Total	Rs.47,29,595/-
Awarded amount	Rs.20,11,000/-
Amount to be enhanced	Rs.27,18,595/- along with interest @6%.

17. Accordingly, the impugned award is modified in terms of the above computations. The balance compensation be paid,with interest @7% p.a. with effect from date of filing claim petition, to the claimant after deducting what has already been paid within a period of 2 months failing which further penal interest @ 3% per

annum shall be leviable in addition to what has already been awarded by the Tribunal below.

- 18. Disposed of accordingly.
- 19. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 25, 2023
Vandana

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