

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**FAO No.2963-2017 (O&M).
Date of Reserve: 10.05.2023
Date of pronouncement: 17.05.2023.**

BhupinderAppellant.

VERSUS

Vajan Singh and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Argued by: Ms. Deepika, Advocate for
Mr. Sandeep Kumar Yadav, Advocate for the appellant.

Mr. Puneet Jain, Advocate for
respondent No.3-Insurance Company.

Sukhvinder Kaur, J.

1. By way of this appeal, appellant/claimant seeks modification of award dated 03.02.2017 in MACT Case No.81 of 2016 vide which the Tribunal has awarded a total compensation of Rs.4,81,000/- along with interest @ 9% per annum from the date of the filing of the claim petition till realization, on account of injuries sustained by him in the accident in question.

2. The relevant facts are that on 24.10.2015, at about 4.00 P.M. while going on foot from Mahabir Chowk towards Singhana Road, Narnaul, when the appellant-claimant reached in front of Nuniwal Petrol Pump, Singhana Road, Narnaul, a truck HYVA bearing registration No.HR-66A-7810 driven by respondent No.1 at a high speed and in a rash and negligent

manner came there and respondent No.1 suddenly turned the said vehicle from divider towards petrol pump, as a result of which he could not control the truck and hit the appellant-claimant from behind. The appellant fell down on the road and his left hand was crushed under the rear wheels of the truck. The accident was witnessed by Naresh son of Mange Ram and other persons. The accident had taken place on account of the rash and negligent driving of the offending vehicle by respondent No.1. Regarding this accident FIR No.455 dated 24.10.2015, under Sections 279, 337 and 338 IPC was registered at Police Station City, Narnaul.

After the accident the appellant-claimant was shifted to General Hospital, Narnaul and after giving first aid and seeing his serious condition, he was referred to higher medical centre and he was taken to SMS Hospital, Jaipur, where he remained admitted from 24.10.2015 to 06.11.2015 as an indoor patient and his left hand was operated upon on 29.10.2015. Thereafter, again the claimant remained admitted in the said hospital from 09.01.2016 to 02.02.2016 and again he was operated upon on 25.01.2016. An amount of Rs.4,00,000/- was spent by him on his treatment etc and his treatment is still going on and more amount is likely to be spent on his future treatment.

3. As per the averments in the claim petition at the time of sustaining injuries in the accident, claimant was aged 30 years and was a driver and owned auto and was also running milk dairy and thereby he was earning Rs.25,000/- P.M. Prior to the accident, the appellant-claimant was enjoying good health and physique, but due to the injuries sustained by him

in the accident in question he has become permanently disabled. He is unable to do any work and is keeping a attendant to look to his needs. He is facing financial hardship and has suffered lot of physical and mental pain and agony and has prayed that compensation of Rs.20,00,000/- be granted to him on account of suffering injuries in the accident in question.

4. Respondents No.1 and 2 (driver and owner of the offending vehicle) respectively filed a joint written statement submitting that no accident had taken place as alleged and the claimant in collusion with the police got registered a false case. The negligence on the part of respondent No.1 has been denied and it was stated that the vehicle in question has been falsely involved in this accident. Denying the factum of injuries sustained by the claimant and the expenses incurred on treatment etc, it was pleaded that respondent No.1, driver of the offending vehicle was holding a valid and effective driving license at the time of the accident and the offending vehicle was insured with respondent No.3, therefore, the insurance company is liable to indemnify the owner.

5. Respondent No.3-insurance company in its separate written statement took preliminary objections that on 24.10.2015 respondent No.1 was not holding a valid and effective driving licence to drive the vehicle in question and the insured while plying the vehicle on hire for commercial use without permit and fitness certificate violated the terms and conditions of the insurance policy. It was further submitted that there is collusion between the claimant and respondents No.1 and 2 to defraud respondent No.3-Insurance Company. On merits, the factum of accident, age,

occupation, income and expenses incurred on the treatment of claimant were denied.

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 allowed the claim petition MACT Case No.81 of 2016 and awarded a sum of Rs.4,81,000/- 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 03.02.2017, the appellant-claimant has preferred the instant appeal.

9. I have heard learned counsel for the appellant/claimant and learned counsel for respondent No.3-Insurance Company and have also perused the relevant record.

10. Learned counsel for the appellant/claimant has contended that the Tribunal has rightly decided issue No.1 but the Tribunal has failed to consider that appellant had been working as a driver before the accident on a tempo owned by his father and has also placed on record his driving license. The claimant has suffered 70% permanent disability on account of fracture of both bones forearm left side with severe stiff elbow, wrist and shoulder with discharging sinus at elbow with scarring of skin with muscle

wasting left upper limb and now he was not able to drive the tempo but by ignoring the said fact, the Tribunal has assessed his loss of earning capacity as 25% only. Tribunal has failed to consider that as the claimant has almost lost his left hand, so his loss of earning capacity should have been assessed by 100% and the future prospects were also to be granted on the income taken by the Tribunal. He has further argued that the Tribunal has considered income of the claimant as Rs.6,000/-P.M. which is on very lower side and even then the minimum wages as assessed by the Haryana Government were Rs.8800/-P.M. The Tribunal has also awarded less amount on account of transportation charges by ignoring the fact that the claimant was admitted as SMS Hospital, Jaipur which is at a distance about 200km from his house at District Mohindergarh. The appellant/claimant had suffered multiple injuries and he was also operated and skin grafting was done but Tribunal has awarded only Rs.50,000/- for pain and sufferings which was not sufficient to quantify the pain and sufferings suffered by the appellant. The less amount has been awarded for attendant charges, nutritious diet and loss of income and same are liable to be enhanced. He has also argued that the Tribunal has not awarded any compensation for loss of amenities and has prayed that the impugned award of the Tribunal may be modified accordingly.

11. On the other hand, it has been contended by learned counsel for respondent No.3-Insurance Company that the functional disability of 25% has been rightly taken by the Tribunal for assessing the loss of earning. He has contended that the 70% permanent disability was not pertaining to

entire body of the appellant and was pertaining to a specific limb only i.e. left arm. In the absence of any evidence, regarding income and occupation of the appellant, his income has been rightly taken as Rs.6,000/- P.M.. He has contended that under the non-pecuniary heads also the adequate compensation has been granted to the appellant and has contended that the present appeal is liable to be dismissed.

12. There is no dispute with regard to the finding given by the Tribunal upon 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 Bhupinder had sustained the injuries.

13. Claimant Bhupinder has himself stepped into the witness box as PW4 and has deposed on oath as per the averments made in the claim petition. He has also produced on record the medical bills Ex.P4 to Ex.P48. PW2-Giriraj Parshad, Medical Record Keeper, SMS Hospital, Jaipur has proved the treatment files Ex.PW2/A and Ex.PW2/B and has also proved the medical bills Ex.PW2/C to Ex.PW2/J.

The Tribunal has held that the claimant is entitled to the treatment expenses including the medical bills and receipts and has held that the total amount of these bills and receipts that have been placed on record comes to Rs.59,849/-. Then it has been observed that as it is not possible for a patient to keep and bring on record each and every medical bill and the Tribunal has awarded a sum of Rs.62,000/- towards costs of treatment and medicines. Keeping in view the fact that some of the medical bills could not have been placed on record, amount under this head is

enhanced to Rs.65,000/-

14. From the evidence on record it transpires that injured/claimant remained admitted at SMS Hospital Jaipur, from 24.10.2015 to 31.10.2015 as an indoor patient and his left hand was operated upon on 29.10.2015. Again the claimant remained admitted at the said hospital from 09.01.2016 to 02.02.2016 and again surgery was conducted on 25.01.2016. Thus from the evidence led by the claimant it stands proved that the claimant had to undergo surgery twice and he remained admitted in the hospital for about 32 days and also suffered disability to the tune of 70%. The Tribunal has awarded a sum of Rs.50,000/- to the claimant on account of pain and suffering but keeping in view the above discussed evidence the amount under this head is enhanced to Rs.60,000/-, as the claimant must have suffered great pain and agony.

15. The accident victim who suffers injuries in the road side accident is unable to travel in the public transport due to such condition and requires special conveyance for going from one place to another. In the instant case also the claimant remained admitted at SMS Hospital, Jaipur and thereafter, also visited the said hospital for the follow up treatment, so keeping it in view and also taking into account the ambulance receipts produced on record by the claimant the Tribunal has rightly awarded Rs.20,000/- as transportation charges to the claimant.

As the claimant remained admitted at hospital and suffered 70% permanent disability of his left arm due to fractures then he must have required an attendant at that time and thereafter to meet his needs so on that

account also the Tribunal has rightly awarded a sum of Rs.15,000/- as the attendant charges.

Due to the grievous injuries sustained by the claimant in the accident he must have been advised to take nutritious diet for his proper recovery so the Tribunal has rightly awarded a sum of Rs.10,000/- under the head of cost of nutritious diet.

16. However, I do not find any substance in this contention raised by learned counsel for the appellant that as the appellant had suffered 70% permanent disability, so for assessing loss of earning, 100% permanent disability is to be considered as he could not carry on with his occupation of being driver.

17. PW3- Dr. Lav Kumar, Medical Superintendent, General Hospital, Narnaul has deposed that a medical board at General Hospital, Narnaul examined the claimant on 31.08.2016 and found him suffering from permanent disability to the tune of 70% on account of old fracture both bones forearm left side; with severe stiff elbow, wrist and shoulder with discharging sinus at elbow with scarring of skin with muscle wasting left upper limb. He has proved the disability certificate as Ex.PW3/A. The Tribunal has held that the doctor has not indicated as to what is the disability to the whole body but as the accepted procedure of reckoning $\frac{1}{3}^{\text{rd}}$ of the disability is stated to the limb as disability to the whole body and thus the disability qua the whole body comes out to 23% and after having some margin for error the disability has been considered as 25% in this case.

18. The Tribunal has also held that claimant has alleged that he was auto driver but has failed to place on record any evidence that he was having his own auto, so his earning has been assessed as Rs.6,000/- P.M.

19. Rightly, no proof regarding the specific income of the claimant and his occupation has been produced on record. But the claimant has produced on record copy of his driving license as Ex.219 and copy of application for heavy vehicle driving license as Ex.221. The perusal of the FIR on record, that was registered pertaining to the accident in question shows that it has also been got recorded therein by the claimant that he was a auto rickshaw driver, so his occupation of being a driver does not appear to be an after thought.

20. It has been held by the Hon'ble Supreme Court in case **Raj Kumar Vs. Ajay Kumar, 2011(2) R.C.R. (Civil) 101** “that 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 percentage 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 different from the percentage of permanent disability.”

21. In the instant case, the appellant has suffered 70% permanent disability in relation to his left arm on account of old fracture both bones forearm left side, with severe stiff elbow, wrist and shoulder with discharging sinus at elbow with scarring of skin with muscle wasting left upper limb.

22. So, keeping in view that the claimant was in the occupation of auto rickshaw driver, then 70% disability of his left arm is likely to affect on his earning capacity, so the the functional disability of 25% that has been assessed by the Tribunal does not seem to be appropriate and the functional disability is taken as 40%.

23. In the absence of any evidence regarding income of the claimant Tribunal has rightly assessed his income as Rs.6,000/- P.M. and as loss of earning due to the functional disability has been taken as 40% of the annual income, so the annual loss of income comes to Rs.28,800/-. Keeping in view the age of the claimant as 30 years, multiplier of '16' has been rightly applied by the Tribunal. So, by applying multiplier of '16', such compensation is assessed as Rs.4,60,800 (Rs.28,800 x 16).

24. As the claimant has suffered permanent disability of 70% regarding his left arm so Rs.20,000/- are awarded to the claimant regarding loss of amenities.

25. As the claimant suffered grievous injuries and suffered

permanent disability of his left arm so he must have remained out of work for at least three months, therefore, loss of income for three months is assessed as Rs.18,000/-.

26. The amount of interest that has been granted by the Tribunal @ 9% per annum though appears to be on the higher side but as no counter appeal or cross objections have been filed by respondent No.3-Insurance Company so it is not being reduced. The compensation that is to be granted to the claimant is re-worked as under:

1.	Loss of future earnings	Rs.4,60,800/-
2.	Loss of amenities	Rs.20,000/-
3.	Treatment and medicines charges	Rs.65,000/-
4.	Transportation charges	Rs.20,000/-
5.	Pain and suffering	Rs.60,000/-
6.	Special nutrition diet charges	Rs.10,000/-
7.	Attendant charges	Rs.15,000/-
8.	Loss of income during treatment	Rs.18,000/-
	Total	Rs.6,68,800/-

27. Thus, the appellant/claimant in this appeal is held entitled to the compensation of Rs.6,68,800/- along with interest @ 9% per annum from the date of filing of the claim petition till the realization. Accordingly the appeal i.e. FAO-2963-2017 is partly allowed.

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

(SUKHVINDER KAUR)
JUDGE

17.05.2023

komal

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