IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(215) **CM-12976-CII-2017 in/and FAO-3975-2017**
Date of Decision : June 02, 2023

Sanjeev Gupta **.. Appellant**

Versus

Daljit Singh and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Meenakshi Bali, Advocate, for
Mr. G.C. Shahpuri, Advocate, for the appellant.

Mr. Abhishek Bansal, Advocate, for
Mr. Ravinder Malik (Ravi), Advocate, for respondent No.1.

Mr. Vinod Gupta, Advocate, for respondent No.3-Insurance Company.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-12976-CII-2017

As prayed for, the application is allowed.

Delay of 01 day in filing the appeal is condoned.

FAO-3975-2017

1. Present appeal has been filed for enhancement of the compensation as fixed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhari vide Award dated 17.10.2016.

2. Learned counsel for the appellant-claimant submits that in an accident which occurred on 17.02.2012, the injury was suffered on both the legs by the claimant and his legs were not only fractured but he became paralytic and was unable to move on his own. Learned counsel for the appellant-claimant further submits that the injuries were suffered not only on the legs but also on the other parts of the body and the injuries were grievous in nature which fact can be noticed that from Yamuna Nagar, he was referred to PGI, Chandigarh for treatment and he remained admitted in PGI from 27.02.2012 to 04.04.2012.

3. Learned counsel for the appellant-claimant submits that though the doctor who was examined, had mentioned that the permanent disability suffered by the claimant is 75% but while computing the compensation, the same has been taken as 25%, which is incorrect. Learned counsel for the appellant-claimant further submits that even otherwise, the future prospects have not been given while computing the amount of compensation and the loss of future income has only been given for a period of two months whereas, the claimant was not able to move for a period of six months after being released from the hospital, so as to take care of his business hence, the Award assessing compensation needs to be modified.

4. On the other hand, learned counsel for respondent No.3-Insurance Company submits that though, the income has been assessed by the Tribunal but the same has been assessed on the basis of income tax return which was filed subsequent to the date of accident and hence, those income tax returns could not have been taken into account for computation of compensation. Learned counsel for respondent No.3-Insurance Company

further submits that even otherwise, as per the doctor report, the appellant was able to sit and could have take care of his shop while sitting there. Hence, the percentage of disability has rightly been taken as 25% by the Tribunal while awarding compensation.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. In the present case, it is a conceded position that both the legs of the claimant were fractured and he became paralytic and he was shifted from Yamuna Nagar to PGI Chandigarh for treatment, wherein, he remained admitted for a period of one and half month. The nature of injuries can be ascertained from the fact that the appellant-claimant remained in hospital for more than for a period of one month.

7. Further, keeping in view the opinion of the doctor which has come on record that the disability suffered by the claimant is 75% and that too permanent in nature. That being so, the Tribunal assessing the compensation by taking the disability as 25% is not at all correct. The disability of the claimant should have been taken at 75% when the same has been described as permanent in nature by the doctor.

8. Further, on account of pain and suffering, only Rs.50,000/- has been awarded whereas, both the legs were fractured and the injuries were suffered on the other parts of body and he became paralytic and that too after remaining in hospital for a period of more than one month hence, under these circumstances, the claimant is entitled for compensation on account of pain and suffering @ Rs.1.5 lacs instead of Rs.50,000/-.

9. Further, the compensation under the heading "future prospect"

has also not been considered by the Tribunal and that too without any valid justification hence, under the said heading also, the appellant-claimant will be entitled for compensation @ 10%.

10. Qua the argument being raised by the Insurance Company that the income has been assessed on the basis of the income tax return filed after the date of accident, it may be noticed that the accident took place in the month of February and the income tax return is always filed at the end of March of a particular year hence, filing of the return after the date of accident, in the present case, cannot be termed to be arbitrary. Hence, the Tribunal has rightly assessed the income of the claimant by taking into account the income tax return filed.

11. At this stage, learned counsel for the Insurance Company submits that the income for the earlier years should have been brought on record. In case, the income tax return produced was being disputed, it was upon the Insurance Company to raise the said objection before the Tribunal with regard to the summoning of the income tax returns of the earlier years. Nothing has been brought to the notice of this Court that any such objection was taken before the Tribunal hence, the assessment of the income in the facts and circumstances of the present case, is perfectly valid and legal and needs no interference by this Court.

13. Keeping in view the above, the compensation for which the claimant becomes entitled for is as under:-

Income	₹13,000/- per month
Permanent Disability-75%	₹9750
Future prospect 10% as per Pranay Sethi	₹975/-

Total	₹9750+₹975= ₹10,725/-
Multiplier-11	₹10725x12x11=₹14,15,700/-
Loss of Amenities	₹1,00,000/-
Pain and Suffering	₹1,50,000/-
Hospitalization	₹1,50,000/-
Attendant charges	₹50,000/-
Loss of income during treatment 13000x6	₹78,000/-
Medical	₹4,38,538/-
Total	₹23,82,238/-
Compensation awarded by MACT	₹12,37,538/-
Enhanced compensation along with interest 7.5% per annum from 08.08.2012 till realization	(₹23,82,238 - ₹12,37,538) = ₹11,44,700/-

14. The present appeal is allowed in above terms.

15. It may be noticed that the interest part given by the Tribunal will remain intact.

June 02, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

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