IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.8126-2016 (O&M).
Date of Reserve: 12.05.2023
Date of pronouncement: 16.05.2023.

Bedi @ Ved Parkash ....Appellant.

VERSUS

Vikas Batra and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Argued by: Mr. Munish Mittal, Advocate for the appellant.

Mr. S.S. Sidhu, Advocate for respondent No.3-Insurance Company.

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Sukhvinder Kaur, J.

1. By way of this appeal, appellant/claimant seeks modification of award dated 04.07.2016 in MACT Case No.54 of 2015 vide which the Tribunal has granted a total compensation of Rs.3,96,040/- 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 the question.

2. The relevant facts are that on 17.01.2014, claimant Bedi @ Ved Parkash alongwith Mahender were going towards Aggarwal Palace, Village Jagdishpura, Ambala Road on a motorcycle bearing Registration No.HR-8H-0521, which was being driven by Mahender and claimant Bedi @ Ved Parkash was a pillion rider on the said motorcycle. At about 8.30 P.M., when they reached near Ekansh Motors Ambala Road, Kaithal, then a Tata Indica Car bearing registration No.HR-12-J/6900 (hereinafter referred

to as the offending vehicle) being driven by respondent No.1-Vikas Batra in a rash and negligent manner came from Ambala side and struck against their motorcycle. Due to the impact of the accident both of them sustained serious multiple and grievous injuries on their person. Respondent No.1 fled away from the spot alongwith his vehicle. In the meantime, Jai Pal son of Pala Ram reached at the spot who took the injured to General Hospital, Kaithal but due to his serious condition claimant Bedi @ Ved Parkash was referred to PGI, Chandigarh, where he was treated and his right leg was amputated twice. He remained admitted at PGI, Chandigarh from 18.01.2014 to 20.01.2014 and again from 06.02.2014 to 09.02.2014 and is still under treatment. He has spent Rs.2,50,000/- on his treatment, medicines, transportation and special diet etc. 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.26 dated 18.01.2014, under Sections 279, 337 and 338 IPC was registered against respondent No.1 at Police Station City, Kaithal.

3. As per the averments in the claim petition at the time of sustaining injuries in the accident, claimant was aged 45 years and was a daily wager and was earning Rs.12,000/- per month. Before accident he was hale and hearty but now he was unable to do work and has become permanently disabled.

4. Respondents No.1 and 2 (driver and owner of the offending vehicle) respectively filed a joint written statement taking the preliminary objections regarding maintainability, cause of action, locus standi, non-

joinder and mis-joinder of necessary parties. On merits, the material contents of the petition regarding happening of the accident in the manner as alleged, occupation and income of the claimant and expenses incurred on his treatment, were denied. It was submitted that no accident had taken place with the offending vehicle and the said vehicle has been falsely involved to get the compensation. It was also submitted that respondent No.1, driver of the offending vehicle was having valid and effective driving license at the time of the accident and the offending vehicle was comprehensively 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 similar pleas as took by respondents No.1 and 2. In addition, it was submitted that the offending vehicle was being used in violation of motor vehicles Act as well as terms and conditions of the insurance policy. The driver was not having valid and effective driving license and the insurance company is not liable to indemnify the insured. It was further submitted that the claimant in collusion with the local police has put up a false story and the claim petition has been filed in order to extract money from respondent No.3. The alleged accident, if any, had taken place solely due to negligence on the part of the driver of the motorcycle himself and dismissal of the claim petition was sought.

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.54 of 2015 and awarded a sum of Rs.3,96,040/- 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 04.07.2016, 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 failed to appreciate the fact that due to the accident right leg of the appellant above knee was amputated and he had suffered 80% permanent disability. But despite that Tribunal has awarded only a sum of Rs.3,96,040/- as compensation to the appellant. Income of the appellant has been considered only as Rs.4,000 P.M. whereas at the time of the accident the minimum wages were Rs.6700/- even for unskilled labourer. Tribunal has failed to consider that in future the income of the appellant would have increased and thus appellant is also entitled for compensation under the head of future prospects. Nothing has been awarded to the appellant under the head of loss of amenities due to amputation of his right leg. The appellant had suffered great pain and agony but Tribunal has awarded only

meagre sum of Rs.20,000/- under the head of pain and sufferings. He has further argued that due to amputation of his right leg the appellant had to take services of the attendant, but nothing has been awarded under the said head. It has been urged that the appellant is still under treatment and requires money for his future treatment. He has contended that the rate of interest that has been awarded @ 9% P.A. is also on the lower side and rate of interest should be enhanced to 18% P.A. and has prayed that 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 already adequate compensation has been granted by the Tribunal. The Tribunal has rightly considered that in the given circumstances of this case, the functional disability for assessing loss of earning is to be assessed as 50%. In the absence of any evidence, regarding income of the appellant, the income of the appellant has rightly been taken as Rs.4,000/- 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 on 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 Bedi @ Ved Parkash had sustained the injuries.

13. Claimant Bedi @ Ved Parkash has stepped into the witness

box as PW2 and has deposed on oath as per the averments made in the claim petition. Naveen Sharma, Medical Record Technician, PGI, Chandigarh had brought the original indoor treatment record of the claimant Bedi @ Ved Parkash and placed on record copy of the same as Ex.P7.

14. PW4-Mohan Lal, employed with Trilok Chemist, PGI, Chandigarh has proved on record the medical bills Ex.P1 to P5. PW5-Ashish Kumar, Pharmacist with Trauma Medicine Store, PGI, Sector-12, Chandigarh has placed on record Ex.P10 to P24 pertaining to the claimant Bedi @ Ved Parkash. PW6-Kuljit Kumar, Associate Professor, ESIC, Medical College and Hospital, Faridabad has proved the disability certificate of injured Bedi @ Ved Parkash Ex.PW6/A. He has deposed that he was member of the Board of Doctors, who had examined Bedi @ Ved Parkash for assessing the disability and as per the documents provided, it was a case of alleged history of roadside accident; his right knee had been amputated and his disability was assessed as 80%. In his cross-examination, he has categorically stated that disability in question has been opined qua a particular limb only. MLR of the injured/claimant has also been proved on record as Ex.P-56.

15. Thus from the evidence on record transpires that injured/claimant had suffered grievous injuries in the accident in question and his right leg above knee was amputated and he has suffered 80% disability qua this limb.

16. The Tribunal has rightly observed that the pecuniary and non pecuniary damages are to be awarded to the claimant on account of his

sustaining injuries in the accident in question.

17. The Tribunal has rightly taken note of the fact that for the accident victim who has suffered injuries in the roadside accident, special conveyance is required, because such victim cannot travel in public transport due to his such condition. But the transportation charges awarded to the tune of Rs.10,000/- by the Tribunal, appears to be on the lower side so the same are enhanced to Rs.20,000/-

Tribunal has assessed the compensation under the head of treatment and medicines as Rs.54,040/- keeping in view the medicines bills and receipts that have been produced on record by the claimant and has held these came to the tune of Rs.54,040/-. But as it is not possible to keep and produce all the bills, so taking this in view, the compensation under this head is enhanced to Rs.60,000/-.

As right leg of the claimant was amputated, so he must have been advised to take the special diet for his proper recovery. But nothing has been granted by the Tribunal on account of special diet and nursing so under this head, Rs.10,000/- are awarded to the claimant.

As the claimant remained admitted at PGI, Chandigarh and his right leg was amputated and he must have required an attendant at that time and thereafter, so Rs.10,000/- are awarded to the claimant on account of the attendant charges.

The claimant remained admitted at PGI, Chandigarh from 18.01.2014 to 20.01.2014 and again from 06.02.2014 to 09.02.2014 and his right leg was amputated, so he must have suffered great pain and agony. But

Tribunal has awarded only Rs.20,000/- under the said head, which is enhanced to Rs.50,000/-.

As right leg of the claimant above knee was amputated, so Rs.20,000/- are granted to the claimant on account of the loss of amenities.

18. I do not find any substance in this contention raised by learned counsel for the appellant that as the appellant suffered 80% permanent disability, so for assessing loss of earning, 80% permanent disability is to be considered.

19. From the disability certificate Ex.PW6/A, the permanent disability of the claimant has been assessed as 80% as his right leg above knee was amputated. But it has been categorically admitted by PW6 in his cross-examination that disability in question has been opined qua a particular limb only, meaning thereby that this disability was not pertaining to the entire body.

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 from the percentage of permanent disability."

21. In the instant case, the appellant has suffered 80% permanent disability in relation to amputation of right leg above knee.

22. Tribunal has taken the income of claimant/injured as Rs.4,000/- P.M. by treating him as a casual labourer and has held that due to amputation of his right leg, the number of opportunities for working as a casual labour would become less, as he would not be able to perform each and every kind of job. In these circumstances, functional disability for assessing loss of earning in case of claimant has been assessed as 50%. In the absence of any relevant evidence regarding income and occupation of the claimant, the Tribunal has rightly considered his income as Rs.4,000/- P.M. by treating him as a casual labourer. As income of claimant has been taken as Rs.4,000/- P.M. and loss of earning due to the functional disability has been taken as 50% of the annual income, so the annual loss of income comes to Rs.24,000/- (2,000 x 12). Keeping in view that the age of the claimant was 45 years, multiplier of '13' has been rightly applied by the Tribunal. So, by applying multiplier of '13', such compensation is assessed as Rs.3,12,000/-

23. As claimant has suffered grievous injuries and his right leg

above knee was amputated and he must have remained out of work for at least three months, therefore, loss of income for three months is assessed as Rs.12,000/-.

24. 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.3,12,000/-
2.	Loss of amenities	Rs.20,000/-
3.	Treatment and medicines charges	Rs.60,000/-
4.	Transportation charges	Rs.20,000/-
5.	Pain and suffering	Rs.50,000/-
6.	Special diet and nursing charges	Rs.10,000/-
7.	Attendant charges	Rs.10,000/-
8.	Loss of income during treatment	Rs.12,000/-
	Total	Rs.4,94,000/-

25. Thus, the appellant/claimant in this appeal is held entitled to the compensation of Rs.4,94,000/- along with interest @ 9% per annum from the date of filing of the claim petition till the realization. Accordingly the appeal i.e. FAO-8126-2016 is partly allowed.

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

(SUKHVINDER KAUR)
JUDGE

16.05.2023
komal

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