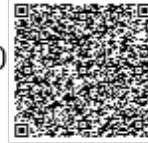


2024:PHHC:136870



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

FAO-3066-2007 (O&M)

Date of Decision: September 27, 2024

Ishwar Singh

...Appellant

VERSUS

Umed Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Jitender Dhanda, Advocate
for the appellant.

M.Suman Jain and Mr.Man Mohan, Advocates
for respondent No.3.

ARCHANA PURI, J.

The appellant is in appeal aggrieved by the Award dated 2303.2007 passed by learned Motor Accident Claims Tribunal, thereby, claiming inadequacy of compensation, granted to him, on account of injuries sustained, in a motor vehicular accident.

The facts germane, to be noticed, are as follows:-

That, on 19.06.2001, the appellant was proceeding from his village Kanwari to Hisar for attending his duties in CCS HAU, Hisar, in truck bearing registration No.HNH-3477, driven by respondent No.1-Umed Singh. When the said vehicle reached near Canal Rest House, Hisar, the appellant-claimant requested respondent No.1 to stop the vehicle and upon stopping of

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the vehicle, the appellant was dropped there. When, the appellant was in the process of moving towards CCS HAU, Hisar, respondent No.1-Umed Singh started his truck and drove the same in a rash and negligent manner, without observing the traffic rules and struck into the appellant-claimant, as a result whereof, the appellant was run over by rear wheel of the said vehicle. There were crush injuries on his abdomen, legs and other parts of the body. In the meantime, Ramesh s/o Tara Chand, r/o village Bhagana, came there and witnessed the accident and also shifted the injured to General Hospital, Hisar. The accident had taken place due to rash and negligent driving of truck bearing registration No.HNH-3477, as a result whereof, the appellant sustained injuries and became 100% disabled.

Also, further it was asserted that the appellant was 31 years old, at the relevant time and he was working as labourer/beldar in CCS HAU, Hisar and his earnings were Rs.5,000/- per month. As a result of the injuries sustained in the accident in question, appellant-claimant was firstly admitted in General Hospital, Hisar on 19.06.2001, where he was medically examined and thereafter, he was shifted to Jain Orthopedics Hospital, Hisar, where, he remained admitted from 19.06.2001 to 23.08.2001. He was operated upon for the injuries of the legs and his right leg was amputated below the hip.

Respondents had made appearance and had filed respective replies. Respondents No.1 and 2-driver and owner have denied the accident in toto and respondent No.3-insurance company had also resisted the claim of the appellant and denied about the accident to have taken place, as projected and further also disputed the maintainability of the claim petition.

After framing of the issues, evidence was adduced. On



appraisal of the evidence, brought on record, more particularly of PW-3 Dr.Joginder Kapoor, Medical Officer, who proved the disability certificate, learned Tribunal considered the disability, as mentioned in the disability certificate Ex.P40, to be 100%, but however, in view of the cross-examination of the aforesaid witness, concluded about the disability assessed for the whole body to be 45%. Thereupon, considering the medical bills etc. and the extent of disability, the total amount of compensation awarded by learned Tribunal was to the extent of Rs.2,01,000/-, which in the tabular form is herein given:-

Medical expenses	:	Rs.65,000/-
Pain & suffering, mental shock and agony	:	Rs.10,000/-
Special diet	:	Rs.10,000/-
Attendant charges	:	Rs.9,000/-
Loss of income	:	Rs.5,000/-
Transportation	:	Rs.5000/-
Disability	:	Rs.90,000/-
Total	:	Rs.2,01,000/-

Furthermore, learned Tribunal had fastened the liability upon all the respondents, in the capacity of being driver, owner and insurer of the offending vehicle.

Feeling aggrieved by the inadequacy of the compensation, the appellant had filed the present appeal for seeking enhancement of the compensation.

So far as, the factum and manner of taking place of the accident, as well as the liability, fastened upon the respondents, is concerned, suffice to consider that the same has not been challenged by any of the respondents



made liable and therefore, there is no necessity to further dwell upon these aspects.

However, the 'work on' of the compensation, as detailed aforesaid, definitely calls for re-determination.

Before proceeding further, it shall be appropriate to make beneficial reference to decision rendered in *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, wherein, the Hon'ble Supreme Court held that the '**just**' compensation is adequate compensation and the Award must be just that-'**no less and no more**'. The plea of the victim suffering from a cruel twist of fate, when asking for some more, is not extravagant, but it is for seeking appropriate recompense, to negotiate with the unforeseeable and the fortuitous twists, in his impaired life. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the Courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding '**just compensation**'.

In this backdrop, reference is also made to *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*, wherein, the Hon'ble Supreme Court, had lucidly set out the principles for grant of compensation in cases of permanent physical functional disability as follows:-

“10. Where the claimant suffers a 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 mechanically apply the 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, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

*11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in **Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Yadava Kumar v. National Insurance Co.Ltd.**)*

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13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

14. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed



around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of “loss of future earnings”, if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity.

As to how the compensation, in case where permanent disability of the injured affects his functional disability is to be assessed, has been considered by the Courts, time and again. The reference in this regard is made to decision rendered in ***Jagdish Vs. Mohan and others, 2018 (4) SCC 571***, wherein, the Hon’ble Supreme Court, was considering the case of a carpenter, who had sustained injuries and lost both his hands. Therein, considering the serious disability suffered by him, on account of loss of both his hands, it was observed by the Court, has herein given:-

“.....For a person engaged in manual activities, it requires no stretch of imagination to understand that loss of hands is a complete deprivation of the ability to earn. Nothing, at least in the facts of this case, can restore lost hands. But the measure of compensation must reflect a genuine attempt of law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our



law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.”

Considering the facts of the case, the disability, which was worked upon as '90%', was taken to be total disability by the Hon'ble Supreme Court and thereupon, enhancement was made.

In ***Sri Anthony Alias Anthony Swamy vs. Managing Director, KSRTC, 2020(2) RCR (Civil) 846***, the Hon'ble Supreme Court, considered the inadequacy of the compensation, as asserted by the injured, on account of injuries sustained in the motor vehicular accident. The left leg of the injured was amputated and it was observed that physical disability of the lower limb was assessed as 75%, which was about 37.5% of the whole body. In appeal, the disability was assessed by the Hon'ble High Court as 25% of the whole body only. However, Hon'ble Supreme Court, while considering the injured to be working as manual labourer, for which, he required use of both of his hands, had made an observation that the accident had left the injured with one useless hand, which will severely affect his ability to perform work as a coolie or any other manual work. While awarding compensation, it was observed, that it has to be kept in mind, that the appellant is to do manual work for the rest of his life, without full use of his left hand and this is bound to affect the quality of his work and also his ability to find work, considering his disability. Thus, while computing loss of future income, the disability was taken as 68% and thereupon, the



compensation was re-determined.

Even, in *Sarnam Singh vs. Shriram General Insurance Co. Ltd. & Ors*, 2023 LiveLaw (SC) 498, the Hon'ble Supreme Court had made reference to *Mohan Soni vs. Ram Avtar Tomar and others, 2012 (2) SCC 267*, wherein, the injured was working as cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed as 60%. The Tribunal assessed the compensation, taking the loss of earning at 50%, on the theory that he can do some other work while sitting. Also, it was observed that this finding was not disturbed by the High Court, regarding loss of income on account of disability. However, considering the injured to be 55 years of age and that it may be difficult for him to find a job, it was also observed that in fact, any physical disability, resulting from an accident, has to be judged with reference to the nature of the work being performed by the person, who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. The Court enhanced the loss of earning capacity from 50% to 90%.

Applying the aforesaid principle, in the case under consideration in Sarnam's case (supra), while taking into consideration the injured to be working as gunman, on account of amputation of his right leg, above knee, he was terminated. Considering his age to be 50 years and 5 months, at the time of accident, the Hon'ble Court held that learned Tribunal was right in assessing the loss of earning capacity of the appellant as 100%



and assessed the compensation accordingly.

In this backdrop, now reverting to the case in hand, it is specific version of the appellant-claimant that he was working beldar/labourer, in CCS HAU, Hisar. While in the witness box, he has categorically stated that he was working on daily wages in HAU, Hisar and he used to get Rs.80 per day. Considering this vocation followed by the appellant-claimant, on account of having suffered amputation of left leg at hip joint, definitely, his capacity to do manual work is severely affected. Perhaps, with one leg, he would not be in a position to do manual work, for rest of his life. Considering the same and loss of future income, disability should be taken to be 100% and not 45%, as assessed by learned Tribunal. In this regard, reliance is placed upon the ratio in ***Raj Kumar's case (supra)***.

Considering the same and the vocation followed by the appellant, the loss of monthly earnings, in modest estimate, are taken as Rs.2400/-. However, no deduction on the count of 'personal expenses' ought to be made, as the appellant is survivor in the accident with severe injuries, resulting into permanent disability. In this regard, beneficial reference is made to decision rendered in ***Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others, 2023(3) RCR (Civil) 573***.

To the aforesaid amount of Rs.2400/-, addition of 40%, on the count of 'future prospects' ought to be made, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, and thus, the total earnings comes to be Rs.2400+960=Rs.3360/- per month, annual whereof, comes to be Rs.3360x12=Rs.40,320/-.



Considering the age of appellant-claimant-Ishwar Singh to be 31 years, as per *Sarla Verma's case (supra)*, the appropriate and suitable multiplier is '16' and thus, on the count of disability, the compensation awarded is **Rs.6,45,120/-(Rs.40,320x16)**.

The claimant remained admitted in the hospital for a sufficiently long time. The total of the medical bills, proved in evidence, qua his treatment is **Rs.65,000/-** and the same has been rightly awarded.

Looking at the kind of injuries sustained by the appellant-claimant and amputation, undergone by him, all the time, he must have required constant help, to lead 'assisted living'. Considering the same, even though, he must have been looked after by his family members, but it is quite obvious his family members ought to have taken care by diverting their own time, from any form of gainful employment, which could have generated some income. Considering the same, on the count of 'attendant charges', the amount granted by learned Tribunal, to the extent of Rs.9000/- is too meagre, which calls for enhancement and thus, stands enhanced to **Rs.2,00,000/-**.

Likewise, on the count of 'transportation', the compensation of Rs.5,000/- awarded by learned Tribunal, is too meagre. During the period of hospitalization, which was to the extent of 2½ months, definitely, various rounds must have been made by the family members to the hospital to take care of the appellant-claimant and even, after discharge, various trips must have been made to the hospital, by the appellant for medical care. Considering the same, the compensation on the count of 'transportation' stands enhanced to **Rs.40,000/-**.



Obviously, during the period of treatment and some time thereafter, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, the compensation is enhanced to **Rs.60,000/-**.

The appellant-claimant, on account of the injuries sustained, apart from becoming physically invalid, must have passed through a very traumatic state of mind, while considering his future to have been jeopardised, on account of amputation of his leg. Considering this invalidity suffered by the appellant, on the count of ‘pain and suffering’, the compensation of Rs.10,000/- awarded by learned Tribunal, now stands enhanced to **Rs.2,00,000/-**.

Thus, on various counts, as detailed aforesaid, the compensation to be granted to appellant-claimant-Ishwar Singh, is re-computed, as herein given:-

1.	Loss of earnings	Rs.6,45,120/-
2.	Medical Bills	Rs.65,000/-
3.	Attendant charges	Rs.2,00,000/-
4.	Transportation charges	Rs.40,000/-
5.	Special diet	Rs.60,000/-
6.	Pain and suffering	Rs.2,00,000/-
	Total	Rs.12,10,120/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.12,10,120-2,01,000=Rs.10,09,120/-**.On the enhanced amount of compensation, i.e. **Rs.10,09,120/-**, claimant-Avtar Singh shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the appeal, till realization of



the enhanced amount of compensation.

Accordingly, the impugned Award dated 23.03.2007 stands modified, to the extent, as indicated aforesaid. The remaining all terms, with regard to the liability fastened upon the respondents as well as the manner of disbursal, shall remain the same, as ordered by learned Tribunal.

In view of the aforesaid observations, the present appeal stand allowed.

September 27, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No