

FAO-1171-2009 (O&M)

2024-PHHC:172539



FAO-1173-2009 (O&M)

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

**Date of decision : 12.11.2024
FAO-1171-2009 (O&M)**

Bhagwan Chand

....Appellant

Versus

Kulwant Singh &ors.

....Respondents

FAO-1173-2009 (O&M)

Hem Raj

....Appellant

Versus

Kulwant Singh & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. N.S.Ghuman, Advocate for the appellant.

Mr. Hitesh Sood, Advocate for respondent-PRTC.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.5-Ins. Company.

PANKAJ JAIN, J.(ORAL)

1 These two appeals are at the behest of dissatisfied claimants seeking modification of the award to the extent of enhancement in the compensation.

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2 FAO No.1171 of 2009 is at the behest of Bhagwan Chand arising out of MACT case No.173 dated 23.09.2003.

3 FAO No. 1173 of 2009 is at the behest of Hem Raj who filed MACT case No.181 of 29.09.2003.

4 In all 4 claim petitions including the aforesaid 2 claim petitions were decided by common award.

5 For sake of convenience necessary facts are being culled out from ***FAO No.1171 of 2009*** at the behest of Bhagwan Chand. As per the claimants Bhagwan Chand and others hired goods carrier to take their apples to Patiala. On morning of 03.09.2003 while they were going to Patiala along with the apples in a goods carrier, the vehicle they were travelling in met with an accident on account of rash and negligent driving of respondent No.1-Kulwant Singh. Bhagwan Chand who was working as Patwari in D.C. Office Shimla suffered multiple injuries. His left leg was amputated above knee and his other leg was fractured. The other appellant Hem Raj also suffered fracture in right leg and other serious injuries. Tribunal answered issue regarding rash and negligent driving in favour of the claimants. The dispute in the present appeal relates to issue No.3 i.e. quantum of compensation. Bhagwan Chand has been awarded compensation by the Tribunal observing as under :-

“20. As per Disability Certificate (Ex.P2), Bhagwan Chand was a case of amputation bilateral upper third (R) leg with fracture both bones (L) leg, un-united infected with moderate limitation of (L) knee movements and permanent disability was assessed to the extent of 90 percent with

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respect to both lower limbs. When he appeared in the witness box, he was brought on the back of another person and he could not even stand. He is a Government employee and there is nothing to suggest that his salary was reduced on account of the accident. Though, there is no financial loss on account of disability but still compensation is to be awarded to him as he has become handicapped and taking into consideration the nature of disability he suffered, a lump sum amount of Rs.1,80,000/- is assessed on account of permanent disability suffered by him and thus, in all Bhagwan Chand is entitled to recover Rs.2,25,000/- by way of compensation”.

6 It is not in dispute that Bhagwan Chand is a Government servant. There is nothing on record to show that he suffered loss of future income on account of injuries/disability suffered in the present accident. Disability suffered by him as per disability certificate Exhibit P2 is 90% in respect of legs/limbs. Meaning thereby he stands crippled from his legs for whole of his life. Tribunal has awarded him a lump sum amount of Rs.1,80,000/- for the disability suffered. In the considered opinion of this Court, the amount awarded for 90% disability is too meager and the same needs to be enhanced to a sum of Rs.3,00,000/-. Only Rs.30,000/- has been awarded on account of pain and suffering, the same also needs to be enhanced to Rs.1,50,000/-. Nothing has been paid on account of loss of amenities. Rs.2,00,000/- are awarded under the said head. Award *qua* Bhagwan Chand is modified accordingly.

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7 While awarding compensation to appellant Hem Raj Tribunal observed as under :-

“30. Hem Raj suffered injuries and is entitled to actual expenses borne by him on his treatment. The amount calculated from the Bills placed in file (Ex.P10) comes to Rs.6325/-, rounded off to Rs.6300/- which the claimant is entitled to recover.

31. As per Discharge Card (Ex.P9), he remained admitted in PGI, Chandigarh from 19.01.2004 to 02.02.2004. Thus, he remained under pain and agony and on that account he is awarded a sum of Rs.20,000/-.

32. He further awarded a sum of Rs.10,000/- on account of conveyance and attendant charges etc.

33. He suffered permanent disability to the extent of 40 per cent on account of fracture of both bones (R) leg with fracture (R) with mild limitation of (R) knee and severe limitation of (R) ankle movements Hem Raj has deposed in his affidavit that his annual income was Rs.42,000/- but there is no cogent evidence regarding his income. Again there is nothing on the file to suggest that he suffered any loss of income on account of the injuries suffered by him. Therefore, a lump sum amount of Rs.80,000/- is assessed on account of permanent disability suffered by him. Thus, he is entitled to recover Rs.6300/- on account of actual medical expenses; Rs.20,000/- on account of pain and suffering; Rs.10,000/- on account of conveyance, special diet and attendant charges etc; and Rs.80,000/- on account of permanent disability and in all Rs.1,16,300/-.

34. Sushma one of the claimant in claim petition No. 182 of 2003 appeared in the witness box as PW-2 and filed her affidavit deposing therein that her Husband Raj Kumar used to earn Rs.12,000/- per month from Farming She also placed on record, a certificate (Ex.P7) issued by Naib Tehsildar mentioning therein that the income of the deceased was Rs.1,50,000/- per year.”

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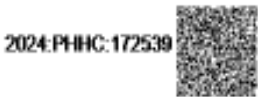
8 Rs.6,300/- have been awarded as medical expenses on actual basis. The same needs no modification. It has come on record that he remained admitted in PGIMER, Chandigarh from 19.01.2004 to 02.02.2004 and suffered permanent disability to the extent of 40%. Tribunal awarded him a lump sum amount of Rs.80,000/- for loss of future income and Rs.20,000/- under the head of pain and agony. The Tribunal erred in applying guess work. It has come on record that appellant was travelling in a goods carrier to sell his agricultural produce i.e. apples. He has claimed an income of Rs.42,000/- per annum. The date of accident is 03.09.2003. For the said year notified minimum wages of a skilled worker are Rs.2,310/- thus this Court has no hesitation in treating his income as Rs.3,500/- per month as claimed. Claimant is an agriculturist by profession. He is engaged in physical work. Due to accident he suffered 40% permanent disability. Thus loss of income has to be assessed by treating his functional disability to the extent of 100%. Thus loss of future earning is assessed as under :-

$$\text{Rs.3,500} \times 12 = \text{Rs.42,000/-}$$

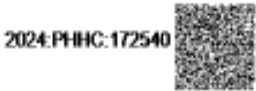
9 He is entitled to 40% future prospects. He was 49 years of age. The amount awarded for pain and suffering of Rs.10,000/- needs to be enhanced to Rs.50,000/-. Multiplier of 13 needs to be applied.

10 The award qua Hem Raj is modified accordingly.

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- 11 The enhanced compensation would carry interest @7.5% per annum from the date of filing the claim petition till realization.
- 12 Disposed off accordingly.
- 13 A photocopy of this order be placed on the file of the connected case.

12.11.2024
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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