2024:PHHC:036358

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

605-A **FAO-6918-2011 (O&M)**
Date of Decision: 13.03.2024

NAND LAL .... Appellant

VERSUS

KANWAR SINGH & ORS. .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Nagar, Advocate for the appellant.

Mr. Dheeraj Narula, Advocate for respondents No.1 and 2.

Mr. Rajneesh Malhotra, Advocate and
Ms. Manvi Verma, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the claimant-appellant aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Sirsa vide award dated 22.04.2011.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

3. The Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Amount towards loss of income 90% permanent disability	Rs.1,80,000/-
2	Medical expenses	Rs.1,82,858/-
3	Cost of artificial limb	Rs.1,20,000/-
4	Mental Agony, Trauma and tension	Rs.20,000/-
5	Calcium diet	Rs.4,000/-
6	Attendant charges	Rs.4,000/-
7	Transportation charges	Rs.4,000/-
8	**Total Compensation**	Rs.5,14,858/-
9	**Interest**	**9% per annum**

4. Learned counsel for the claimant-appellant has contended that the claimant-appellant is a retired Head Master and was 70 years of age at the time of the accident and was hale and hearty. After the accident he became dependent upon the others. It is further the contention that the claimant-appellant had suffered permanent disability to the extent of 90% as per the disability certificate (Ex.PW3/A) and that keeping in view the nature of injuries suffered by the claimant-appellant, a multiplier method ought to have been applied and the income of the claimant-appellant ought to have been assessed. It is further the contention of the learned counsel that no amount has been awarded towards future prospects. The learned counsel would further contend that the claimant-appellant remained admitted in hospital from 04.02.2009 to 28.02.2009 and from 04.03.2009 to 30.03.2009 and hence the amount awarded towards special diet, attendant charges and transportation charges is also on the lower side. It is further the contention that the amount of Rs.1,20,000/- awarded towards cost of artificial limb is also on the lower side. In support of his contentions he has relied upon judgments in the cases of **Pappu Deo Yadav vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** and **Reliance General Insurance Co. Ltd. vs. Rohit Kumar & Ors. [2017 (7) AD (Delhi) 602]**.

5. *Per contra* the learned counsel for respondent No.3-Insurance Company has vehemently argued that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

6. Heard the learned counsel for the parties.

7. In the present case admittedly the claimant-appellant has suffered multiple grievous injuries and his right leg was amputated. Though the Tribunal while relying upon the disability certificate (Ex.PW3/A) assessed the disability of the claimant-appellant as 90%, however, functional disability of the claimant-appellant has not been assessed. In view thereof, this Court deems it fit to assess the functional disability as 90%.

8. Hon'ble the Supreme Court in the case of **Pappu Deo Yadav** (supra) has held as under :

> *"12. In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the Pranay Sethi principle).*
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> *13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court re-assessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only*

one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity."

9. In view of the law laid down in the case of **Pappu Deo Yadav** (supra), a multiplier method is applied in the present case keeping in view the functional disability suffered by the claimant-appellant. The accident had taken place on 04.02.2009 and the minimum wage for an unskilled worker at

the relevant point of time was Rs.4,100/- per month, hence, the income of the claimant-appellant is assessed as Rs.4,100/- per month. A multiplier of ‘5’ would be applicable as per the age of the claimant-appellant who was 70 years of age at the time of the accident. The claimant-appellant would not be entitled to future prospects keeping in view the age of the deceased. Further, the amount of Rs.1,20,000/- awarded towards costs of artificial limb is certainly on the lower side. The prosthetic limb was fixed in the year 2009 and would certainly require to be changed in future. Taking a cue from the judgment in the case of **Rohit Kumar** (supra) wherein an amount of Rs.7,00,000/- was awarded towards cost of the artificial limb in the year 2017, I deem it appropriate to award an amount of Rs.10,00,000/- towards costs of the artificial limb and its future maintenance. It has come on the record that the claimant-appellant remained admitted in hospital for 52 days i.e. from 04.02.2009 to 28.02.2009 and from 04.03.2009 to 30.03.2009 and would have required an attendant for the said period. Attendant charges are also awarded for 52 days @ Rs.4,100/- per month, which was the minimum wage at the relevant time, which comes to Rs.7,106/-. The amount of Rs.4,000/- awarded by the Tribunal under the head special diet is on the lower side and the same is enhanced to Rs.25,000/-. The amount of Rs.20,000/- awarded under the head pain and suffering is on the lower side and the same is enhanced to Rs.2,00,000/-. An amount of Rs.4,000/- awarded by the Tribunal towards transportation charges is enhanced to Rs.30,000/-. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.4,100/-
2	Annual Income	[Rs.4,100 x 12] = Rs.49,200/-
3	Loss of annual Income on account of 90% permanent disability	Rs.44,280/-
4	Loss of income after applying multiplier '5'	[Rs.44,280/- x 5] = Rs.2,21,400/-
5	Pain and suffering	Rs.2,00,000/-
6	Special Diet	Rs.25,000/-
7	Attendant charges	Rs.7,106/-
8	Medical expenses	Rs.1,82,858/-
9	Transportation	Rs.30,000/-
10	Costs of Artificial limb and its maintenance in future	Rs.10,00,000/-
11	**Total Compensation**	**Rs.16,66,364/-**

10. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5 % per annum from the date of filing of the claim petition till the realization of the entire amount.

11. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

13.03.2024 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO