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

1.

FAO-3608-2017 (O&M)**Date of Decision : 03.12.2024**

Reliance General Insurance Company Ltd

... Appellant(s)

Versus

Priyanka Das & Ors

... Respondent(s)

2.

FAO-5436-2017 (O&M)

Priyanka Das

... Appellant(s)

Versus

Suresh & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Akshay Jindal, Advocate with
Mr. Vijayveer Singh, Advocate
Mr. Paras Money Goyal, Advocate
Mr. Vipul Sharma, Advocate
for the appellant in FAO-3608-2017 and
for the respondent No.3 in FAO-5436-2017.

Mr. A.S. Sidhu, Advocate
for respondent No.1 in FAO-3608-2017 and
for the appellant in FAO-5436-2017.

Mr. Jyotsna Saini, Advocate for
Mr. Ashish Yadav, Advocate
for the respondents No.2 and 3 in FAO-3608-2017 and
for the respondent Nos.1 and 2 in FAO-5436-2017.

ALKA SARIN, J. (Oral)

1. The present order shall dispose off the above noted two appeals.

The parties are being referred to as Insurance Company, claimant and owner and driver for the sake of clarity. FAO-3608-2017 has been filed by the Insurance Company and FAO-5436-2017 has been filed by the claimant aggrieved by the quantum of compensation.

2. The factum of the accident is not in dispute, however, both the Insurance Company and the claimant are aggrieved by the quantum of compensation which has been awarded. Brief facts need to be noticed in this regard. The claimant was admittedly working as Deputy Group Manager with IBM Daksh, Cyber City Gurgaon and as a result of the accident she received serious injuries. On account of injuries received by her, the claim petition (MACP/1969/2014) was filed. As per the record, the accident occurred on 10.04.2011. The claimant was shifted to Anand Hospital, Garh Road, Meerut. The record of the hospital has been proved by PW5 - Harish Kumar, Public Relation Officer. As per the record, there was a complete loss of vision. After discharge from Anand Hospital, she was admitted in Fortis Hospital, Noida from 12.04.2011 to 11.06.2011. Her case summary is Ex.P21. The claimant besides suffering injuries to both the eyes also suffered a pelvic fracture and degloving injury over perineal region with third degree friction burns over bilateral gluteal region. Later on, when her injuries to her pelvic region did not heal, she was admitted to Kailash Hospital and Heart Institute, Noida where she remained admitted from 11.06.2011 to 26.08.2011 (Ex.P18), 21.06.2012 to 22.06.2012 (Ex.P19) and 09.08.2012 to 20.08.2012 (Ex.P20). Her discharge summaries are Ex.P18 to Ex.P20. She was operated there for her fracture on the pelvic region. Thereafter, she remained admitted in Nitin Hospital, Patiala as per her discharge summary (Ex.P22) from 08.09.2012 to 09.09.2012. PW3 - Dr. Peush Sahni, Professor & Head department of GI Surgery and Liver and Transplantation has proved on record the certificate (Ex.P2) given by him that she sustained an injury to the pelvis and rectum in 2011 and she had

been investigated at a number of places and had also undergone one attempt at restoration of continuity of large intestine. However, attempt at restoration failed and she was presently on a permanent stoma. It had also been certified that in addition she had a possible communication between the rectal stump and wound in her lower back. It was also stated in his cross-examination that the bowel continuity could only be restored after 2-5 years on an invention of any new technology. It was further stated that though with the stoma, she could move around, but the disability and inconvenience would be a matter of consideration. PW1 - Dr. Radhika - proved on record the disability certificate (Ex.P1) showing 100% disability of the claimant. Though it was sought to be projected that since she was working on a computer and was continuing her job, hence, she could not be deemed to be 100% disabled. However, the claimant appeared as PW9 and it has come in her cross-examination that she works on a computer through a special software provided to her by the company. She specifically stated that she cannot see at all. The claimant has been under treatment since the date of the accident and her injuries have not healed.

3. The Tribunal in the present case has awarded the following compensation :

Sr.No.	Heads of Claim	Amount (Rs.)
1	Hospitalization, pain and suffering, nature of fracture, surgeries etc.	Rs.2,00,000/-
2	Medical expenses	Rs.35,48,798/-
3	Attendant charges	Rs.1,00,000/-
4	Special Diet	Rs.50,000/-
5	On account of loss of salary/income	Rs.4,76,500/-
6	Physical disability and loss of future income	Rs.90,78,000/-
7	Loss of amenities of life and disfiguration	Rs.50,000/-
8	Loss of prospects of marriage	Rs.50,000/-
	Total	Rs.1,35,53,298/-

4. Learned counsel for the Insurance Company would contend that the functional disability, in the present case, has been taken as 60% which is on the higher side keeping in view the fact that the claimant is still continuing to work at IBM and admittedly her salary has also increased.

5. *Per contra*, the learned counsel for the claimant would contend that though the claimant is continuing to work at IBM, however, she has not got any promotion since the time of her accident. It is further the contention of the learned counsel that, as has been noticed by the Tribunal, she is working through a special software provided to her by the company and that she cannot see at all. It is further the contention of the learned counsel that in view of the fact that she has a lower back injury, she is visually disabled and has a permanent stoma, she requires an attendant 24x7 and infact requires an attendant to assist her in walking. It is further the contention of the learned counsel that no amount has been awarded towards future medical expenses keeping in view the fact that the stoma bag needs to be changed every two weeks. It is further the contention of the learned counsel that the amounts awarded towards pain and suffering, loss of amenities of life, loss of marriage prospects are on the lower side. It is further the contention of the learned counsel that no amount has been awarded towards loss of future prospects and that while calculating a multiplier of '15' has been applied instead of '16'.

6. In the present case, as a result of the injuries received by the claimant, she is not only visually disabled, but has also suffered an injury to her lower back and to her pelvic region and rectum, as a result of which she has a permanent stoma. No doubt the claimant is continuing to work at her

place of work i.e. IBM where she was working before the accident took place, however, it has come in evidence and, as has been noticed by the Tribunal, that she is working on a specially created software provided to her by the company. The disability certificate (Ex.P1) which has been issued by Dr. Rajendra Prasad Centre for Ophthalmic Sciences, All India Institute of Medical Sciences, Ansari Nagar, New Delhi states that the claimant has post-traumatic bilateral (blindness) occipital gliosis and qua her right eye, it has been mentioned as HMCF (hand movement close to face) and qua the left eye, it has been mentioned as FCCF (finger counting close to face). She has been assessed as 100% visually handicapped. Ex.P2 is the certificate issued by the Department of Gastrointestinal Surgery, All India Institute of Medical Sciences, Ansari Nagar, New Delhi which reads as under:

“This is to certify that Ms. Priyanka Das was seen in the Department of Gastrointestinal Surgery in 2014 for a possible restoration of continuity of her large intestine.

She had sustained an injury to the pelvis and the rectum in 2011. Since then she has been investigated at a number of places and has also undergone one attempt at restoration of continuity of her large intestine. However, the attempt at restoration failed and she is presently on a permanent stoma. In addition she has a possible communication between the rectal stump and a wound in her lower back.

Ms. Das was evaluated with an endoscopic examination, MRI with contrast and a local examination. These revealed a lack of mucosa in the posterior aspect of the rectal stump. In view of her other injuries and the present status of the rectal stump, it was not considered feasible to restore continuity of her large bowel. Hence, she is

likely to require a permanent stoma for the rest of her life. She was also evaluated for her orthopaedic disability by the Orthopaedic Surgeon and by the Physiotherapist for a brace/exercises/support device but neither were considered likely to help her current disability.”

The condition of the claimant has clearly been stated by the two doctors who appeared as PW1 and PW3. Keeping in view the physical condition of the claimant, her disability which has been assessed as 60% appears to be on the lower side. No doubt the claimant is continuing her work at IBM, however, even as per the letter issued by the company which has been appended with the application being CM No.4895-CII of 2018 in FAO No.5436 of 2017 for additional evidence, the claimant who joined the organization/company in 2003 had till 2018 secured only four promotions. It has further been categorically stated in the said letter that it is a matter of fact that the claimant had lost out on her career growth due to the accident. The Insurance Company has chosen not to file a reply to the said application. The letter has been issued by the authorized signatory of Concentrix Daksh Services India Private Limited on the letter-head and there is no reason to disbelieve the said letter. Keeping in view the additional evidence which has been led in FAO No.5436 of 2017 vide CM No.4895-CII of 2018, this Court deems it fit to assess the disability of the claimant as 80%. The argument of the learned counsel for the Insurance Company, therefore, stands rejected and that of the learned counsel for the claimant qua the disability stands acceptedly partly.

7. Hon'ble the Supreme Court in the case of **Pappu Deo Yadav vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** 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).

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.”

8. Keeping in view the nature of the disability as discussed above and applying the principle as laid down in **Pappu Deo Yadav’s** (supra), a multiplier method would be applicable in the present case.

9. Since there is no dispute qua the income of the claimant as assessed by the Tribunal as Rs.84,057/- per month after deducting her tax etc., the same is maintained. Further, keeping in view the fact that the claimant was treated as a permanent employee at her place of work, an addition to the extent of 50% is made towards loss of future prospects. A multiplier of ‘16’ would be applicable in the present case keeping in view the age of the claimant.

10. The Tribunal has awarded an amount of Rs.1,00,000/- under the head attendant charges. Keeping in view the nature of the disability and the condition of the claimant, she would require two attendants a day and taking the minimum wages as prevalent at the time of the accident for a skilled worker which was about Rs.5,000/- (rounded off) and applying a multiplier of ‘16’, the claimant is awarded an amount of Rs.19,20,000/- (Rs.5,000 x 2 x 12 x 16).

11. The Tribunal has awarded an amount of Rs.50,000/- towards special diet. The same is enhanced to Rs.2,00,000/- keeping in view the fact that the claimant has got a permanent stoma and would require special diet for the rest of her life. No amount has been awarded towards future medical

expenses. Keeping in view the nature of injuries received and the disability and the fact that continuous medical care would be required, this Court deems it appropriate to award an amount of Rs.10,00,000/- towards future medical expenses. No amount has been awarded towards transportation. An amount of Rs.1,50,000/- is awarded towards transportation. The Tribunal has awarded an amount of Rs.2,00,000/- under the head pain and suffering. The same is enhanced to Rs.10,00,000/- keeping in view that it is a case of life long suffering for the claimant. Qua loss of amenities of life, an amount of Rs.50,000/- has been awarded by the Tribunal and the same is enhanced to Rs.2,00,000/-. The Tribunal has awarded loss of income for 05 months, however, it has come in the evidence that the claimant stayed away from work for 19 months and hence loss of income would be for 19 months instead of 05 months. Accordingly, an amount of Rs.15,97,083/- (Rs.84,057/- x 19 months) is awarded on this account. The Tribunal has only awarded a paltry amount of Rs.50,000/- towards loss of marriage prospects. The same is enhanced to Rs.5,00,000/-. An amount of Rs.35,48,798/- awarded by the Tribunal towards medical expenses is maintained. Accordingly, the reworked compensation is as under :

Sr.No.	Heads	Compensation Awarded
1	Monthly income	Rs.84,057/-
2	Annual Income	[Rs.84,057 x 12] = Rs.10,08,684/-
3	Loss of annual Income on account of 80% disability	Rs.8,06,947/-
4	Future prospects 50%	[Rs.8,06,947+4,03,474] = Rs.12,10,421/-
5	Multiplier ‘16’	[Rs.12,10,421 x 16] = Rs.1,93,66,736/-
6	Attendant charges	Rs.19,20,000/-

7	Special Diet	Rs.2,00,000/-
8	Future Medical Expenses	Rs.10,00,000/-
9	Transportation charges	Rs.1,50,000/-
10	Pain and suffering	Rs.10,00,000/-
11	Loss of amenities of life	Rs.2,00,000/-
12	Loss of income for 19 months	Rs.15,97,083/-
13	Marriage prospects	Rs.5,00,000/-
14	Medical bills	Rs.35,48,798/-
	Total Compensation	Rs.2,94,82,617/-

12.

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 realization of the entire amount.
13.

In view of the above discussion, FAO-3608-2017 filed by the Insurance Company is dismissed and FAO-5436-2017 filed by the claimant is allowed. Accordingly, the impugned award passed by the Tribunal stands modified. Pending applications, if any, also stand disposed off.

03.12.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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