

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3470 of 2021(O&M)
Date of Order:05.03.2024

National Insurance Company Limited

Versus

.Appellant

Subodh Kant and Others

..Respondents

FAO No.3812 of 2022(O&M)

Subodh Kant Yadav

Versus

.Appellant

Aas Mohd. and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Gupta, Advocate
 for the appellant (in FAO-3470 of 2021)

 Mr. Atul Yadav, Advocate
 for the appellant (in FAO-3812-2022)

 Mr. Ankush Choudhary, Advocate
 for the claimant/Subodh Kant (in FAO-3470-2021)

ANIL KSHETARPAL, J

1. On 20.02.2024, the learned counsel representing the parties
were heard at some length and the following order was recorded:-

“On 15.02.2024, the following order was passed:-

 “1.These two cross-appeals have been filed to
 challenge the correctness of the amount of
 compensation awarded by the Motor Accident
 Claims Tribunal, Gurugram (hereinafter referred
 to as “the Tribunal”) on account of the injuries
 suffered by Subodh Kant Yadav (appellant in First
 Appeal Order No.3812 of 2022).

 2. The learned counsel representing the parties

have been heard at some length.

3. The learned counsel representing the insurance company submits that the award passed by the Tribunal is erroneous on the following three grounds:-

I) The Tribunal has increased the income of the claimant by 50% on account of future prospects, though he was entitled to 40% increase.

II) The Tribunal has assessed the loss of income @ 90%, though, the claimant has suffered disability of 64%. He submits that though there is an amputation of right leg below knee of the claimant, who is 23 years old boy, however, he claims to be working as a Pharmacist running a shop and, therefore, the loss of income, keeping in view the nature of his work, to the extent of 90% is excessive.

III) The Tribunal has granted ₹10,00,000/- towards pain and suffering, transportation, special diet and loss amenities of life, which is also excessive.

4. The learned counsel representing the claimant submits that Subodh Kant Yadav, aged about 23 years, has suffered grievous injuries in the accident resulting in amputation of his right leg. He will have to lead a life of cripple. However, he prays for a short accommodation to further prepare the case.

5. List on 20.02.2024, in the urgent list.

6. No further request, written or oral, for grant of an adjournment, shall be entertained.

7. A photocopy of this order be placed on the file of another connected case.

Learned counsel representing the parties have

again been heard at some length.

Learned counsel representing the claimant has drawn the attention of the Court to the findings recorded by the Motor Accident Claims Tribunal, Gurugram in para 18, 19 and 20 of the award. He further submits that the Tribunal has erred in assessing the income of the claimant @ Rs. 9,500/- per month while ignoring that the claimant was licensed Pharmacist, who had opened his pharmacy in the area of Pataudi, District Gurugram. He further submits that not only the right leg below knee of the claimant was amputated but he also suffered multiple grievous injuries and as per disability certificate, there is restricted movement of shoulder to the extent of 12%.

Keeping in view the aforesaid facts, learned counsel representing the parties are requested to prepare a convenience note while identifying the issues, which require adjudication.

List on 23.02.2024, in the urgent list, for final disposal.

A photocopy of this order be placed on the file of connected case.”

2. In these two cross appeals, the parties are neither disputing the correctness of the findings of fact arrived at by the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') with respect to the manner in which the accident took place nor the findings of the Tribunal with regard to rash and negligent driving of the driver of Trola Truck is assailed. The parties have challenged the correctness of the assessment made by the Tribunal.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along

with the requisitioned record of the Tribunal.

4. The Tribunal has assessed that the claimant-Subodh Kant Yadav is entitled to total compensation of Rs.52,86,967.65/-. The amount has been arrived at in the following manner:-

Sr.No.	Heads	Awarded by the claims Tribunal
1.	Income of the injured	Rs.9518.49/- P.M.
2.	Treatment including medicines	Rs.16,09,333-304845=13,01,488/-
3.	Loss of earning due to disability (i) during the period of treatment (ii) loss of future earnings	(a) Rs.19,9,888.29 (b) Rs.27,75,591.36
4.	Loss of amenities of life	Rs.2,00,000/-
5.	Multiplier	18
6.	Pain and suffering	Rs.5,00,000/-
7.	Transportation, special diet and attendant charges	Rs.1,00,000/-
8.	Loss of prospects of marriage	Rs.1,00,000/-
9.	Cost of Artificial limb	Rs.10,000/-
10.	Future Medical Expenses and Attendant Charges	Rs.1,00,000/-
11.	Total compensation	Rs.52,86,967.65
12.	Rate of interest awarded	6%

5. The first argument put forth by the Insurance Company has substance. The learned counsel representing the claimant does not dispute this fact. Hence, the increase in the income of the claimant on account of future prospects shall be 40% and not 50%.

6. With regard to the second argument of the Insurance Company, the learned counsel relies upon the judgment passed by the Supreme Court in **Raj Kumar vs. Ajay Kumar,(Civil Appeal No.8981 of 2010 (Arising out of SLP(C) No.10383 of 2007), decided on 18.10.2010.**

It is evident that the claimant, a 23 years old boy, suffered

amputation of his right leg below knee on account of the accident. At the relevant time, the claimant was running a pharmacy in the area of Pataudi, District Gurugram. He had opened the pharmacy after taking permission from the concerned authorities. At the time of the accident, he was not a qualified pharmacist and he had hired another qualified person to work for him. The Tribunal has assessed the loss of income @ 90% of his earning capacity. The Insurance Company contends that the amount assessed by the Tribunal is excessive.

8. Per contra, the learned counsel representing the claimant submits that the income assessed by the Tribunal is wrong. He submits that though the Medical Board has certified that the claimant has suffered disability of 64%, however, the functional disability of the claimant is not less than 90%.

9. This court has considered the submissions of the learned counsel representing the claimant.

10. The claimant is running a pharmacy. The learned counsel representing the claimant submits that the claimant's wife has now got the pharmacist's licence. However, the claimant is now permanently functionally disabled. His entire life lies ahead of him. He was only 23 years old when he lost his lower right leg.

11. Keeping in view the aforesaid facts, the claimant's functional disability is assessed at 64% as per the assessment by the Medical Board. The Tribunal's award to that effect shall stand modified.

12. With regard to the third argument, it may be noted that the Tribunal has awarded Rs.10,00,000/- towards pain and suffering, transportation, special diet and loss amenities of life. This court does not

find it appropriate to interfere in the aforesaid finding. However, the claimant was already married, he shall not be awarded Rs.1,00,000/- as awarded by the Tribunal on marriage prospects. Hence, the same shall be deemed as not granted.

13. The learned counsel representing the claimant submits that the Tribunal has erred in assessing his income at par with a skilled worker i.e. Rs.9518.49 per month particularly when the claimant was running a pharmacy in the area of Gurugram. The appellant has produced the licence issued by the authorities permitting the claimant to open the pharmacy shop which is owned by his father.

14. In these circumstances, the income assessed by the Tribunal is not appropriate. The claimant is residing in the area of District Gurugram which abuts the National Capital Region Delhi. Undoubtedly, he was running his pharmacy in Pataudi, which is a sub-division of District Gurugram. However, the claimants have not brought any documentary evidence to prove their income except the oral evidence.

15. Considering the facts of the case, this court is required to use the Thumb Rule in assessing the income of the claimant. Hence, the income of the claimant is conservatively assessed at Rs.20,000/- per month. Accordingly, the loss of the income of the claimant is assessed at Rs.12,800/- per month. On account of future prospects, his income will be increased by 40%.

16. Apart from that, the claimant has been awarded Rs.10,000/- towards artificial limb which would periodically need replacement. The learned counsel representing the Insurance Company submits that the Tribunal while awarding Rs.13,01,488/-, has added Rs.90,000/- as the cost of

artificial limb, however, in the considered view of this Court, the artificial limb would need periodical repair as well as replacement.

17. Keeping in view the aforesaid facts, the cost of artificial limb and its repair and replacement, is conservatively assessed at Rs.2,50,000/-.

18. Similarly, the Tribunal has also erred in assessing the future medical expenses and attendant charges, only @ Rs.1,00,000/-. Keeping in view the young age of the claimant, the aforesaid amount is revised to Rs.2.50,000/-.

21. Hence, the amount of compensation is re-worked as under:-

<i>Heads</i>	<i>Compensation awarded by MACT</i>	<i>Compensation awarded by High Court</i>
Income of injured	Rs.9518.49 per month	Rs.20,000/- per month
Treatment including medicines	Rs.16,09,333-30,4845=13,01,488/-	Rs.13,01,488/-
Loss of earning due to (i) during the period of treatment. (ii) loss of future earning	(a) Rs.1,99,888.29 (b) Rs.27,75,591.36(50%)	(a) 20,000x21=4,20,000/- (b) Loss of earning due to functional disability(64%) =20,000x64/100=12,800/- per month. (Loss of earning due to functional disability + loss of future prospects(40%))x MultiplierxAnnual income = (12,800x12)+40%x18= Rs.38,70,720/-
Loss of amenities for life	Rs.2,00,000/-	Rs,2,00,000/-
Multiplier	18	18
Pain and suffering	Rs.5,00,000/-	Rs.5,00,000/-
Transportation, special diet and attendant charges	Rs.1,00,000/-	Rs.1,00,000/-
Loss of prospects of marriage	Rs.1,00,000/-	NIL
Cost of artificial limb	Rs.10,000/-	Rs.2,50,000/-
Future Medical expenses and attendant charges	Rs.1,00,000/-	Rs.2,50,000/-
Total compensation	Rs.52,86,967.65/-	Rs.68,92,208/-
Rate of Interest	6%	9%

Compensation Awarded by the High Court

:Rs.68,92,208/-

FAO No.3470 of 2021(O&M)

-8-

2024:PHHC:031488

(-) Compensation Awarded by the MACT

:Rs.52,86,967.65/-

Enhanced Compensation

:Rs.16,05,240.35/-

19.

With these modifications, both the appeals are disposed of.

20.

The enhanced amount i.e. Rs.16,05,240.35/- shall carry interest @
9% from the date of filing of the claim petition till its realization.

21.

All the pending miscellaneous applications, if any, are also
disposed of.

March 05, 2024

(ANIL KSHETARPAL)

nt

JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO