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

105

FAO-1513-1999 (O&M)
Date of decision: 21.08.2025

CHARAN DASS **....Appellant**

Versus

VIJAY KUMAR AND OTHERS **...Respondents**

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present : Mr. Abhinav Goel, Advocate (Amicus Curiae) for the appellant.

Mr. Suvir Dewan, Advocate for respondent No.3.

PARMOD GOYAL. J.(Oral)

CM-26528-CII-2010

Present application under Order 41 Rule 27 CPC, read with Section 151 CPC, for additional evidence has been filed on behalf of the appellant.

For the reasons stated in the application, application for leading additional evidence is allowed as documents in additional evidence are required for just and correct decision. Annexures A-1 to A-244, subsequent medical bills as Ex. AW-1 collectively are taken on record subject to all just exceptions.

Learned counsel for Insurance Company has submitted that these bills were duly verified by it, therefore no rebuttal has been sought.

FAO-1513-1999

1. The present appeal has been preferred by the appellant seeking enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Faridabad, vide impugned award dated 07.01.1999. By the said award,

the appellant was held entitled to compensation of Rs. 2,61,446/- on account of injuries as well as permanent disability.

2. Learned counsel for the claimant-applicant has argued that the learned Tribunal had erred in not considering the permanent disability to the extent of 35%, which has been duly proved on record by way of a disability certificate, and has wrongly awarded only Rs. 50,000/- as compensation for the said permanent injury.

3. He further contends that, subsequent to the passing of the award, the appellant had to undergo treatment for the injuries sustained and incurred additional medical expenses amounting to Rs.1,78,342/- and the same have been duly verified by the insurance company and reply has been filed in this regard.

4. Learned counsel has also submitted that the claimant-appellant is also entitled to enhanced compensation on account of pain and suffering, as only Rs. 20,000/- was awarded to the claimant-appellant under this head.

5. He also claimed that the claimant is entitled to transportation and attendant charges amounting to Rs. 40,000/-, as no amount was awarded under these heads by the learned Tribunal. He further submitted that the petitioner had spent an amount of Rs. 15,000/- on special diet, which the Tribunal ought to have granted but had failed to do so. The claimant has also asserted that the income of the injured was Rs.9,500/- and has sought multiplier of 15, as the injured was 38 years old at the time of the accident.

6. Learned counsel for the insurance company fairly admits that the learned Tribunal did not take into consideration the extent of permanent disability.

However, he argues that a permanent disability of 35% in respect of one limb cannot be treated as total disability for the purpose of calculating loss of earning capacity. He submits that functional disability needs to be assessed accordingly.

7. I find merit in the contention raised by the learned counsel for the insurance company that a permanent disability of 35% in respect of one limb cannot be treated as total disability, and functional disability has to be determined by this Court.

8. On considering the oral assertions of the petitioner regarding vocation of claimant, it is made out that he was working as a helper. He has also claimed that he is currently running a shop. Therefore, keeping in view the nature of disability due to malunited unstable fracture on the bones of right leg, fermur and hip with shortening and deformity of right hip. The functional disability impacting earning capacity is taken to 15%.

9. On consideration, I find that the claim of the claimant that he was earning Rs. 9,500/- as put forward by the learned Amicus Curiae cannot be accepted solely on the basis of oral assertions made by the claimant. The claimant has not placed on record any document showing income of Rs. 9,500/- as claimed by him. He had not produced record of his employer to show salary of Rs.9,500/- in the year 1995 when accident had taken place. In the absence of any material evidence regarding the income of the injured, it would be appropriate to consider the income of the injured to be equivalent to the minimum wages payable to an unskilled worker in 1995.

10. Accordingly, the minimum wages of Rs. 2,400/- prevalent in the year

1995 are taken as such. The petitioner was admittedly 38 years old and is entitled to a multiplier of 15, as well as an addition of 40 percent on account of future prospects. In addition to loss of earning capacity due to disability and expenses on medical treatment. The petitioner is entitled to compensation for pain and suffering, loss of future amenities, prospects and life expectancy, transportation, attendant charges, as well as for expenses, special diet. The claimant is entitled to the following total compensation under various heads.

Income of Injured/claimant	Rs. 2,400/- per month (minimum wages prevalent in the year 1995)	Rs.2,400/- per month
Addition towards future prospects	40%	Rs.3360/- (Rs.2400/- +Rs.960/-)
Selection of multiplier	15	15
Earning Capacity	Rs.3,360/- (income of claimant with future prospects x 12 months x 15 multiplier	Rs.6,04,800/-
Loss of earning capacity due to functional disability to the extent of 15%	6,04,800 X 15 /100	Rs.90,720/-
Pain and suffering	Rs.20,000/- awarded by learned Tribunal	Rs. 35,000/-
Transportation charges, expenses on attendant and special diet		15,000/-
Compensation for expenses on medical expenses	Rs.1,78,342/- medical expenses incurred after award + Rs.1,91,446/- granted by learned tribunal	Rs.3,69,788/-

Loss of future amenities, prospects and expenditure of life		Rs.35,000/-
Total compensation awarded by Tribunal	Rs.2,61,446 (award by Tribunal)	
Enhanced amount of compensation	(Rs.5,45,508/- - Rs.2,61,446/- award in appeal) –	Rs.2,84,062/-

11. The appeal is allowed in above terms.

12. It is made clear that the amount already awarded by the Tribunal and paid by the Insurance Company to the satisfaction of the award shall be deducted from the above-calculated compensation.

13. The enhanced compensation shall carry interest at the rate of 7.5% from the date of filing of the claim petition till the date of realization. Payment to claimants be made through his bank account.

(PARMOD GOYAL)
JUDGE

21.08.2025
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No