IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-8469-2015 (O&M)

The Oriental Insurance Company Ltd.

...Appellant

VERSUS

Bhinder Singh and others

...Respondents

(ii) FAO-2247-2016 (O&M)

Bhinder Singh

...Appellant

VERSUS

Mohinder and others

...Respondents

Date of Decision: January 10, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ram Avtar, Advocate
for the appellant (in FAO-8469-2015) and
for respondent No.3 (in FAO-2247-2016).

Mr.Vishal Sharma,Advocate
for respondent No.1 (in FAO-8469-2015) and
for the appellant (in FAO-2247-2016).

Mr.Saajan Singla and Ms.Parveen Dahiya, Advocate
for respondents No.2 and 3(in FAO-8469-2015) and
for respondents No.1 and 2 (in FAO-2247-2016).

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ARCHANA PURI, J.

These are two cross appeals, filed at the instance of insurance company as well as the claimant, thereby, assailing the Award dated 15.07.2015 passed by learned Motor Accident Claims Tribunal, on the quantum of compensation awarded, on account of injuries sustained by Bhinder Singh, in a motor vehicular accident, which took place on 15.01.2013.

FAO-8469-2015 has been filed by the appellant-The Oriental Insurance Company Ltd., seeking reduction of the compensation, whereas, **FAO-2247-2016** has been filed by the appellant-claimant Bhinder Singh, thereby, seeking enhancement of the compensation.

For the convenience of discussion, the parties are referred to, as making appearance before learned Tribunal.

The facts germane, to be noticed, are as follows:-

That on 15.01.2013, at about 4.15 p.m., the claimant along with his cousin Kulwinder Singh was standing on the gate of Khanauri Mechanical Works. One Ghora Trolla bearing registration No.PB-23F-6781, without trolley, came there, which was being driven by respondent No.1-Mohinder Singh, in a rash and negligent manner and at a high speed and the same struck the claimant and Kulwinder Singh stepped towards one side, as a result whereof, claimant was crushed by the said trolla. As a result of the accident, both the legs and pelvis of the claimant were fractured and his ribs were also fractured. He also received injuries on the spine.

In the given backdrop, at the very outset, learned counsel for the insurance company submits that the disability certificate Ex.PW3/A, which has been proved in evidence, by way of examination of PW-3 Dr.Parshotam Dass, has not been appropriately taken into consideration by learned

Tribunal. In fact, while making reference to the said disability certificate, it is submitted that although the detail of the fractures suffered by the claimant have been mentioned therein, but there was advice given by the doctor for re-assessment of the disability, which was assessed as 15%, after a period of two years. However, this re-assessment has not been got done, as a result whereof, the disability could not be taken to be 15%, as held by learned Tribunal. Even, it is submitted that income assessed on the basis of the income tax return, is on higher side, which also calls for reduction and consequently, the compensation, ought to be reduced.

However, on the other hand, learned counsel for the claimant has refuted the claim of the insurance company. It is submitted that the detail of the injuries is given in the disability certificate, which shows about the multiple fractures suffered by the claimant. Therein also, the nature of disability is mentioned as permanent and to the extent of 15%. Even though, re-assessment has not been made, but however, from the material coming forth, it stands established that the injuries were of serious nature, which do amply establish about affecting the income generating capacity of the claimant and therefore, it ought to be taken into consideration and thus, the disability certificate has been appropriately considered by learned Tribunal.

Furthermore, it is submitted that even though, multiple income tax returns have been brought on record, but the same have not been appraised in the appropriate manner by learned Tribunal. In fact, it is submitted that the extent of income is taken on lower side.

In this backdrop, it is pertinent to mention that the claimant himself stepped into witness box as CW-4 and has given the detail of the injuries suffered by him and the period of his hospitalization also and the same also finds corroboration from the testimony of Kulwinder Singh, an eye witness to the accident in question, who stepped into witness box as CW-1.

Besides the aforesaid, the claimant has also examined PW-2 Dr.Paramjit Chehal, Orthopedic Surgeon, Columbia Asia Hospital, who deposed about the patient (claimant) to have been operated upon by him on 16.01.2013 for right femur fracture and on 17.01.2013 for left femur fracure and chest injury and pelvic fracture were managed conservatively. The patient-Bhinder Singh was discharged on 24.01.2013. He further deposed that the patient was re-admitted on 25.07.2013 and minor surgery for left femur was done and he was discharged on 26.07.2013. This witness also proved the bills and treatment record.

Even, Dr.Parshotam Dass, District Immunization Officer, Office of Civil Surgeon has been examined as PW-3, who deposed about the claimant to have been examined for the purpose of assessment of the disability and deposed that it was a case of road accident, in which, he sustained multiple injuries and was diagnosed a case of united fracture femur right side, uniting fracture femur left, malunited fracture pelvis, uniting fracture of transverse fractures of spine and united fracture of ribs and he was assessed to be permanently disabled by 15%. Furthermore, in the subsequent examination-in-chief only, he stated that with such kind of disability, the patient, who is truck mechanic, will have difficulty in performing his work, while bending and lying on the floor and will affect the functional performance of the injured and he also stated that though there is mention made about the re-assessment to be done after two years, but is not certain that disability will improve with passage of time or not and also deposed that at present there is no improvement in the disability of Bhinder Singh.

No doubt, considering the aforesaid evidence, it is evident that the claimant had suffered multiple fractures. He was running Khanauri Mechanical Works for truck body parts and therefore, definitely, it will be having impact on his working capacity, more particularly, considering his age. Furthermore, it should also be observed that in the disability certificate Ex.PW3/A, there is mention made about the permanent disability to be 15% and further, there is also mention made that it is not likely to be improved and re-assessment was advised after a period of two years. Undisputedly, this re-assessment has not been made.

From the income tax returns proved in evidence, it is evident the date of birth of the claimant is 17.05.1976 and as such, at the time of accident, he was 37 years old. The kind of injuries, as detailed aforesaid, definitely there is going to be decrease in body functionality. Even though, re-assessment of the disability has not been made, but however, very conveniently, considering the nature and seats of injuries and the impact thereof, definitely, body functionality is bound to be decreased. Considering the same, the disability, as such, can conveniently be taken as 10%.

The claimant was running Khanauri Mechanical Works and he has asserted his earnings to be Rs.35,000/- per month. However, the income tax returns of the claimant have come on record. Income tax return for the assessment year 2009-10 is Ex.P6, which reflects the annual earnings as Rs.1,62,330/-. Similarly, the income tax return for assessment year 2010-11 is Ex.P5, showing the earnings to be Rs.2,02,330/- per annum. Similarly, Ex.P4 is the income tax return for the assessment year 2011-12, depicting the annual earnings to be Rs.2,05,870/- The income tax return for the assessment year 2012-13 is Ex.P3 and therein also, the earnings are shown as Rs.2,92,716/- per annum. Ex.P1 is the income tax return for the assessment year 2013-14, which reflects the annual earnings of the claimant to be Rs.3,00,300/-.

While relying upon ***K.Ramya and others vs. National Insurance Company Ltd. and another, 2022(4) RCR (Civil) 435***, it is pertinent to mention that even though, the income tax returns are reliable piece of evidence, but however, the date of furnishing of the income tax return, ought to be taken into consideration. So far as, income tax return Ex.P1 is concerned, the same is for the assessment year 2013-14. It was filed on 06.03.2014, meaning thereby, it was filed after taking place of the accident and therefore, singularly, the same cannot be taken into consideration to make assessment, as the chances of showing the exaggerated earnings, as such, cannot be ruled out. But however, at the same time, while considering the other income tax returns, it is evident that there was sustained increase in the earnings of the claimant, with each passing year.

Considering the same, in the modest estimate, the earnings of claimant can be taken as Rs.17,000/- per month, annual whereof, comes to be Rs.2,04,000/- To the said amount, keeping in view the age of the claimant, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of 40%, ought to be made, on the count of 'future prospects' and thus, the earnings of the claimant comes to be

Rs.204000+81600(40%)=Rs.2,85,600/- per month. Considering disability to be 10%, as observed aforesaid, the annual loss of earnings, comes to be Rs.2,85,600x10/100=Rs.28,560/-.

Considering the age of the appellant-claimant, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the suitable multiplier to be applied is '15' and by applying the same, the loss is assessed as **Rs.28,560x15=Rs.4,28,400/-**.

Besides the aforesaid, Rs.2,88,000/- granted by learned Tribunal, has been appropriately granted, on the basis of the medical bills. Similarly, the amounts granted by learned Tribunal, on the counts of 'attendant charges', 'transportation charges' and 'pain and suffering' i.e. Rs.20,000/-, Rs.15,000/- and Rs.25,000/- respectively, are also just and reasonable.

However, the claimant must have spent some amount for intake of special diet for healing process, which has been given amiss by learned Tribunal. Thus, on the count of 'special diet', another sum of **Rs.25,000/-** is granted.

Thus, on various counts, as detailed aforesaid, the compensation to be granted to claimant Bhinder Singh, is re-computed as herein given:-

1.	**Loss of earnings**	**Rs.4,28,400/-**
2.	**Medical Bills**	**Rs.2,88,000/-**
3.	**Attendant charges**	**Rs.20,000/-**
4.	**Transportation charges**	**Rs.15,000/-**
5.	**Pain and suffering**	**Rs.25,000/-**
6.	**Special diet**	**Rs.25,000/-**
	Total	**Rs.8,01,400/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.8,01,400-6,95,000=Rs.1,06,400/-**. On the enhanced amount of the compensation i.e. **Rs.1,06,400/-**, claimant-Bhinder Singh, shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Accordingly, the impugned Award dated 15.07.2015, stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid observations, FAO-8469-2015, filed by appellant-insurance company stands dismissed, whereas, FAO-2247-2016, filed by the appellant-claimant, stands allowed.

All the pending civil misc. applications, if any, stand disposed of.

January 10, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**