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

FAO-4539-2017 (O&M)

Date of Decision : 23.01.2025

Khetu

....Appellant

VERSUS

Jitender Kumar and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Deepak Vashishth, Advocate for the appellant.

Mr. Abhinav Rawal, Advocate for

Mr. Namit Khurana, Advocate for respondent No.1.

Mr. R.C. Gupta, Advocate for respondent No.2.

Service of respondent No.3 dispensed with
vide order dated 11.09.2024.

Mr. Rohit Duggal, Advocate for respondent No.4.

ALKA SARIN, J. (Oral)

CM-13551-CIL-2017

1. For the reasons stated in the application, the same is allowed.

The delay of 77 days in filing the present appeal is condoned.

FAO-4539-2017 (O&M)

2. The present appeal has been preferred by the claimant-appellant challenging the award dated 22.11.2016 passed by the Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') whereby an amount of Rs.8,26,268/- was awarded as compensation.

3. 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.

4. In the present case the Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Medical expenses	Rs.92,668/-
2	Pain and suffering	Rs.50,000/-
3	Special Diet	Rs.20,000/-
4	Transportation	Rs.20,000/-
5	Loss of future income	Rs.4,53,600/-
6	Loss of amenities	Rs.1,70,000/-
7	Loss of income	Rs.20,000/-
	Total Compensation	Rs.8,26,268/-
	Interest	6% per annum

5. Learned counsel for the claimant-appellant would contend that the claimant-appellant was 45 years of age at the time of the accident, which took place on 20.04.2015. In the said accident the claimant-appellant sustained multiple grievous injuries. It is further the contention of learned counsel for the claimant-appellant that the claimant-appellant remained admitted in PGIMS Rohtak from 20.04.2015 to 02.07.2015 and again remained admitted in Nav Jeevan Hospital, Rohtak from 21.08.2015 to 24.08.2015. As a result of the accident his left leg above the knee was amputated and he also suffered fracture of both thighs (united) with arthritics in right knee with on and off pain thereby suffering disability to the extent of 85% . The learned counsel for the claimant-appellant would further contend that the amount of compensation awarded by the Tribunal is on the lower side inasmuch as the Tribunal ought to have applied a multiplier method and that the amounts awarded under the heads pain and suffering, special diet,

transportation, loss of amenities of life are also on the lower side. Further, no amount has been awarded towards attendant charges and prosthetic limb.

6. *Per contra*, the learned counsel for the respondent No.2-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.

7. I have heard the learned counsel for the parties.

8. In the present case, Dr. Anil Batra stepped into the witness-box as PW-9 and testified that due to the accident the claimant-appellant suffered permanent disability to the extent of 85% and has also produced on record the disability certificate as Ex.P22. He further testified that due to the accident the left leg of the claimant-appellant above the knee was amputated and that he also suffered fracture of both thighs (united) with arthritics in right knee with on and off pain. The claimant-appellant in the present case was working as a labourer and due to amputation of his left leg above the knee he would not be in a position to work as a labourer. In view of the disability suffered by the claimant-appellant, the Tribunal has wrongly assessed the functional disability of the claimant-appellant as 30% and, hence this Court deems it fit to take his permanent disability to the extent of 85%.

9. 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.”

10. Since there is no challenge to the income of the claimant-appellant as assessed by the Tribunal, the same is maintained as Rs.9,000/- per month. Keeping in view the disability of the claimant-appellant, the Tribunal should have applied a multiplier method in view of the law laid down by Hon'ble Supreme Court in the case of **Pappu Deo Yadav** (supra). At the time of the accident the claimant-appellant was 45 years of age and, hence, a multiplier of '14' would be applicable and an addition of 25% is also to be made towards loss of future prospects.

11. Further, the Tribunal has not awarded any amount towards attendant charges. The claimant-appellant remained admitted in the hospital for about 03 months and keeping in view the extent of disability suffered by him, this Court deems it appropriate to grant attendant charges for a period of three month @ Rs.9,000/- per month, which comes to Rs.27,000/- (Rs.9,000 x 3).

12. Further, the amounts awarded by the Tribunal under the head 'pain and suffering', special diet, transportation and loss of amenities of life are on the lower side. Keeping in view the fact that the claimant-appellant remained admitted in various hospitals and also keeping in view the nature of disability suffered by him, this Court deems it appropriate to enhance the amount awarded under the head pain and suffering to Rs.2,50,000/-, Rs.25,000/- under the head special diet and Rs.25,000/- towards transportation charges. The Tribunal has awarded an amount of Rs.1,70,000/- towards loss of amenities of life, which in the opinion of the Court is on the lower side and, this Court deems it appropriate to enhance the amount to Rs.5,00,000/- under the said head.

13. Further, the Tribunal has not awarded any amount for the prosthetic limb. The Delhi High Court in the case of **Reliance General Insurance Co. Ltd. vs. Rohit Kumar & Ors. [2017 (7) AD (Delhi) 602]** has awarded an amount of Rs.7,00,000/- towards cost of artificial limb in the year 2017. In the present case, the accident took place in the year 2015 and taking a cue from the judgment in the case of **Rohit Kumar** (supra), this Court deems it appropriate to award an amount to Rs.10,00,000/- towards the cost of the prosthetic limb and future maintenance thereof. The amount of Rs.92,668/- awarded by the Tribunal towards medical expenses, to which there is no challenge, is maintained. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.9,000/-
2	Annual Income	[Rs.9,000 x 12] = Rs.1,08,000/-
3	Loss of annual Income on account of 85% permanent disability	Rs.91,800/-
4	Future prospects @ 25%	[Rs.91,800 + 22,950] = Rs.1,14,750/-
5	Loss of income after applying multiplier ‘14’	[Rs.1,14,750 x 14] = Rs.16,06,500/-
6	Loss of Amenities of life	Rs.5,00,000/-
7	Pain and suffering	Rs.2,50,000/-
8	Special Diet	Rs.25,000/-
9	Transportation charges	Rs.25,000/-
10	Prosthetic limb	Rs.10,00,000/-
11	Attendant charges	Rs.27,000/-
12	Medical expenses	Rs.92,668/-
	Total Compensation	Rs.35,26,168/-

14. 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.

15. In view of the above discussion, the present appeal is allowed. The award passed by the Tribunal stands modified in the above terms. Pending applications, if any, also stand disposed off.

23.01.2025

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

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