



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 22.01.2026

FAO-6479-2019(O&M)

Darshan Lal @ Darshan Singh

...Appellant(s)

Vs.

Harpal Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Yogesh Gupta, Advocate
for the appellant.

Mr. D.K. Prajapati, Advocate
for respondent No.3/Insurance Company.

NIDHI GUPTA, J.

Present appeal has been filed by injured-claimant seeking enhancement of compensation of Rs.19,45,790/- awarded by the Motor Accident Claims Tribunal, Chandigarh (hereinafter 'the learned Tribunal') vide Award dated 02.07.2019 passed in MACT Case No.424 dated 25.07.2017 filed under Section 166 of the Motor Vehicles Act (hereinafter "the Act").

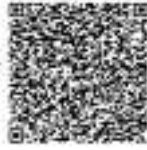
2. Brief facts of the case are that the Id. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties, concluded that the appellant had suffered injuries in a motor vehicular



accident that took place on 11.11.2016 due to the rash and negligent driving of truck bearing registration No.PB-23M-5224 (hereinafter “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. The said compensation has been awarded along with interest @ 7.5% per annum. Respondent No.3 was held liable to pay the compensation amount.

3. Learned counsel for the appellant seeks enhancement of compensation by submitting that in the accident in question, the appellant has suffered 86% permanent disability, which has been assessed as 90% functional disability by the learned Tribunal. Learned counsel submits that the appellant has undergone amputation of right leg above the knee and amputation of left toe. It is submitted that prior to the accident, the appellant was working as a Raj Mistri. It is pointed out that as per the recent judgments of the Hon’ble Supreme Court, functional disability has to be assessed in terms of the job being done by the claimant/injured prior to the accident. Learned counsel submits that in view of the amputation of the right leg above the knee and amputation of the left toe, the appellant shall never be able to work again and therefore, his functional disability ought to have been assessed as 100%.

4. Learned counsel for the appellant refers to the medical evidence on record in detail to submit that in view of the amputation of the right leg of the appellant, learned Tribunal also ought to have awarded



some amount towards artificial limb. It is submitted that the appellant had examined the concerned official from the Artificial Limb Centre recognized by the Chandigarh Administration who deposed that the appellant visited their Centre for fitment of prosthesis and after taking his physical examination, his physical requirement for artificial limb was suggested for Endolite Right Above Knee Prosthesis. The cost of said artificial limb is Rs. 5,22,800/- and the approximate life of above said artificial limb is about 5 to 6 years; whereafter according to its condition it has to be replaced at the cost prevalent at that time. Even during the period of 5 to 6 years, the artificial limb may require necessary repair and maintenance which costs around Rs. 35,000/- to Rs. 40,000/-. However, Ld. Tribunal erred in allowing only total of Rs.1,75,000/- for the artificial limb and future expenses on artificial limb. Whereas, considering the above said deposition of the official of the artificial limb centre and high above knee amputation of appellant and his life expectancy as well as the life and maintenance cost of artificial limb, reasonable compensation deserves to be allowed for artificial limb including its maintenance cost and replacements in future.

5. In support, Id. Counsel relies upon judgment of Hon'ble Supreme Court in **Civil Appeal No.7192/2022 titled as "G. Vivek Vs. National Insurance Co. Ltd. & Anr."** Decided on 12.10.2022, wherein it is held that:-

"10. It may be seen that the High Court has not employed any



reasoning, logic or evidence to reduce the cost of a new prosthesis from Rs. 5,00,000/- to Rs. 2,00,000/-. The High Court is also silent regarding its maintenance cost.

11. In our view, the Tribunal was justified in awarding a sum of Rs. 20,00,000/- towards cost of new prosthesis at the rate of Rs. 5,00,000/- to be changed four times in five years. In other words, the Tribunal awarded this cost component only for 20 years despite the fact that Appellant was hardly of the age of 15-16 years old at the time when the Award was passed.

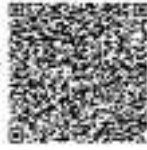
12. There is no rationale for the High Court to reduce the cost of the prosthesis from Rs. 20,00,000/- to Rs. 5,00,000/-.

13. Having held so, the Appellant is indeed entitled to Rs. 26,00,000/- towards cost and maintenance of prosthesis and that being so, the compensation amount stands increased from Rs. 5,00,000/- (as awarded by the High Court) to Rs. 26,00,000/- and excluding a sum of Rs. 5,00,000/- awarded by the High Court towards cost of prosthesis, totaling to Rs. 71,00,000/-.

14. In addition to the above, we hold the Appellant entitled to a sum of Rs. 1,00,000/- towards transport expenses and attendant fees for dressing. In this manner, the compensation amount is increased to Rs. 72,00,000/- (Rs. 71,00,000/-+ Rs.1,00,000/-)

15. The appeal is, consequently, allowed in the above terms.

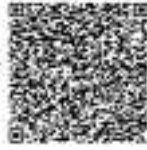
16. The Respondent - Insurance Company is directed to release the enhanced compensation of Rs.72,00,000/- along with interest at the rate of Rs.7.5% per annum, to be calculated from the date of application, that is 13.10.2011 till the date of



actual payment made to the Appellant. Needless to say, any amount already paid or deposited shall be adjusted while depositing the final compensation awarded by this court which shall be made within a period of six weeks from today."

6. Learned counsel also refers in detail to the medical evidence on record to submit that keeping in view the said facts and evidence, the amounts granted by the learned Tribunal under other heads also deserve to be enhanced. Moreover, learned Tribunal has awarded nothing for Physiotherapy and meagre amount has been awarded for Attendant Charges, etc. whereas in view of the condition of the appellant, amounts towards Physiotherapy ought to be granted. It is accordingly prayed that the present appeal be allowed and the impugned Award be modified.

7. Per contra, learned counsel for respondent No.3 submits that he has full sympathy with the appellant. The permanent disability of the appellant to the extent of 86% is not disputed. However, as stated by learned counsel for the appellant, functional disability has to be ascertained on the basis of impediment caused in the execution of the job claimant was doing prior to the accident. It is submitted that in the present case, the appellant was unable to prove that prior to the accident, he was working as Raj Mistri. Thus, his functional disability was not liable to be calculated as 100% in view of the fact that in terms of judgments of the Hon'ble Supreme Court, functional disability and assessment of future loss of earnings due to permanent disability has to be calculated as per the



impact of the disability and earning capacity of the claimant on the basis of profession of the claimant and the nature of work. It is submitted that in the present case, as appellant was unable to prove his occupation, Tribunal has correctly assessed functional disability of the claimant as 90%.

8. As regards artificial limb, Id. counsel submits that the accident had taken place on 11.11.2016. The Award is of the year 2019. However, even ten years hence, there is no evidence that appellant had got an artificial limb. It is pointed out that although the Insurer has paid an amount of approximately Rs.90 lakh to the appellant inclusive of compensation amount and interest, the appellant has not produced any bills for artificial limbs. It is submitted that in these circumstances, sum of Rs.75,000/- awarded by the Tribunal towards artificial limb was sufficient. It is further submitted that the Technician PW3 examined by the appellant from the Centre had also stated as follows in his cross-examination that (at page 113 of the LCR):-

"It is correct that artificial limb are available in the Centre run by State Govt. or Center Govt. Voltd. but the quality of the same are below than the above said artificial limb because they are heavy and movement of limb or bone is difficult for those limbs. It is wrong to suggest that voluntary portion is false and baseless and beyond the record. The cost of the artificial limb available in Govt. Center are of the lesser cost than our Centre..."



9. It is contended that therefore, there is credible evidence on record that even if the appellant were to opt for an artificial limb on a future date, cheaper options were available at government Centres.

10. As regards the avocation of the appellant as a Mason, learned counsel for the respondent No.3 submits that as the appellant is unable to prove his alleged avocation, as per law, his wages have to be determined as that of an unskilled worker. It is pointed out that in the present case, the appellant could not prove his avocation as a Mason. Even the complainant had not appeared in the Witness Box to support the case of the appellant. It is contended that therefore, income of the appellant has been correctly assessed by the Tribunal as Rs.7500/- per month as an unskilled worker.

11. Learned counsel further submits that learned Tribunal has erred in awarding future prospects to the appellant @ 40%. It is submitted that as the appellant was 44 years old at the time of accident, future prospects could have been added @ 25% only. It is submitted that therefore, keeping in view all of the above facts, compensation to the claimant does not call for enhancement; and it is upon this Court to balance the equities.

12. In support of his contentions, Id. Counsel for the Insurance Company relies upon judgment of the Hon'ble Supreme Court in **Uttar Pradesh Road Transport Corporation v. Vibhor Fialok, (SC) : Law Finder Doc Id # 2751894**; wherein it is held that:

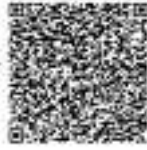


“B. Motor Vehicles Act, 1988 - Section 168 - Percentage of functional disability - Assessment must consider the effect of specific limb disability on the functioning of the whole body - Whole body disability for lower limb disability to be calculated as 1/4th of the limb disability percentage.”

13. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find merit in the submissions advanced on behalf of the appellant.

14. There is no dispute with regard to the fact that in the accident in question, the appellant has been rendered 86% permanently disabled. Admittedly, the appellant has suffered amputation of right leg above the knee, and amputation of left toe. It is the contention of the learned counsel for the Insurance Company that functional disability of the appellant has been rightly assessed by the learned Tribunal as 90% as appellant was unable to prove his occupation as Mason. However, I find no merit in the said argument as, even assuming for the sake of argument that appellant was unable to prove his occupation as Mason, as per the deposition of the treating PGI doctor (PW-2), due to this amputation, appellant will be unable to do any labour work to earn his livelihood. PW2 Dr. Sudesh Pebam, Deptt. Of Orthopaedic, the attending doctor of the appellant has categorically deposed that (at page 99 of the LCR):-

“...The patient was a case of right traumatic below knee amputation with degloving injury left foot and ankle. He was



operated on 11.11.2016 for above knee amputation of the right side and he was also operated debridement and skin grafting was done on the left foot by the Plastic Surgery Department. He was again operated on 23.11.2016 for revision high above knee amputation due to infected amputation stump. That after the first surgery done on 11.11.2016 the patient suffered infection in his above knee amputation due to which another surgery i.e. revision high above knee amputation required and the same was done on 23.11.2016. Thereafter he was discharged on 15.12.2016 with advise of regular follow up treatment and for regular Physiotherapy and for regular dressing of wound and for taking high protein diet and for regular taking medicine. The patient requires the services of attendant for the amputation regularly. Due to this amputation the patient is unable to do any labour work to earn his livelihood. I have seen Exhibit P-4 and Ex.P-5 which are the copies of medical record of P.G.I qua the patient-Darshan Singh...

(Emphasis is mine)

15. Even PW4 Dr. Nirmal Raj who was a member of the Disability Board Which examined the appellant has testified as follows: - (at page 121 of the LCR)

"...The patient was case of amputation of right leg above knee along with amputation of left toe. The disability of the patient for aforesaid patient is 86% permanent in nature. The disability of the patient is functional disability as well due to aforesaid amputation and will affect the working capacity of the patient. The patient also require artificial limb for



amputation of right leg for his normal functioning and for moving his body. The patient also require the services of attendant for his entire life for his daily course. The patient also require special diet for early recovery from injury after the discharge from hospital..."

16. In the face of this unequivocal medical testimony, especially of PW2 that *"Due to this amputation patient is unable to do any labor work to earn his livelihood."*, it is clear that functional disability of the appellant ought to have been taken as 100%. Thus, even assuming the appellant was not working, or was only doing labor work and was not a Mason prior to the accident, even then it is clear that the appellant shall even be unable to do his day-to-day activities properly without the assistance of an attendant. In these circumstances, functional disability of the appellant has to be assessed as 100%.

17. Further, as per the deposition of treating PGI doctor (PW-2), appellant was admitted in PGI on 11.11.2016 with right leg traumatic injury and degloving (separation of skin from body) injury on left foot & ankle and he was operated on 11.11.2016 for above knee amputation of right side and also operated for debridement (removal of damaged tissue or foreign objects from wound) & skin grafting was done on left foot by the Plastic Deptt. After 1st surgery patient suffered infection in above knee amputation stump due to which he was again operated on 23.11.2016 for revision high above knee amputation due to infected amputation stump.



He was discharged from PGI on 15.12.2016 with advice of regular follow up treatment, regular physiotherapy, regular dressing of wound, high protein diet and regular medicine. PW2 has clearly deposed that appellant shall require the services of attendant regularly. This requirement has been also endorsed by PW4 who has deposed that appellant shall need an attendant for the remaining part of his life. Yet, learned Tribunal has awarded meagre amount by way of attendant charges. Needless to say, services of an attendant are not required for helping the appellant in doing the job of a Mason. Attendant is required to help, assist, and enable the appellant to undertake even his daily chores. It is thus, reiterated that functional difficulty of the appellant ought to have been taken as 100%.

18. Reference in this regard is made to judgment of the Hon'ble Supreme Court in **Sarnam Singh v. Shriram General Insurance Co. Ltd. (SC)** :

Law Finder Doc ID # 2259883, wherein it is held that:-

*"9. As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this Court in **Mohan Soni v. Ram Avtar Tomar And Others (2012) 2 SCC 267**. In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed at 60%. The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting.*



The High Court did not disturb the finding regarding loss of income on account of disability. This Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%.

10. Applying the same principle to the case in hand, we find that the appellant herein was working as a gunman with Bharat Hotel Limited. On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31.05.2015. It is not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman. This is his functional disability. He was 50 years & 5 months old at the time of accident. Considering the aforesaid facts, in our view, the Tribunal was right in assessing the loss of earning capacity of the appellant at 100% and assessing the compensation accordingly. The High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment of High Court, despite there being a judgment of this Court available on the issue.”



19. Now as regards the artificial limb, doubtless the Id. Counsel for the appellant has been unable to deny that in the intervening 10 years since the accident, the appellant has not commissioned an artificial limb. However, PW4 has categorically deposed that the appellant being case of amputation of right leg above knee along with amputation of left toe, requires artificial limb for amputation of right leg for his normal functioning & for moving his body. Further, as per the deposition of the Technician from Artificial Limb Centre (PW-3) after physical examination of appellant & his physical requirements, he was suggested Endolite Right Above Knee Prosthesis and cost of the same is Rs. 5,22,800/-. The approximate life of above prosthesis is about 5 to 6 years and thereafter according to the condition the same has to be replaced at the cost prevalent at that time. During the period of 5-6 years artificial limb may require necessary repair & maintenance, which costs around Rs. 35,000/- to Rs. 40,000/-. Contention of learned counsel for the Insurance Company that cheaper options are available at government centers is irrelevant as PW3 is from Artificial Limb Centre which is recognized by the Chandigarh Administration. In this view of the matter the Id. Tribunal has granted meagre compensation of only Rs.1,75,000/- for Artificial Limb (including maintenance & future replacements), which is liable to be enhanced.

20. In this regard, reference is made to judgment of the Hon'ble Supreme Court in **2022 LiveLaw (SC) 1017 "Mohd. Sabeer @ Shabir**

**Hussain Vs. Regional Manager, UP State Road Transport Corporation”,**

wherein it is held that:-

*“22. The High Court has awarded a compensation of Rs.5,20,000/- for the prosthetic limb and Rs.50,000/- towards repair and maintenance of the same. The Appellant submits that the cost of the prosthetic limb itself is Rs. 2,60,000/- and the life of the prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs. 15,000 to Rs.20,000/-. This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of Anant Son of **Sideshwar Dukre (Supra)** that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:*

"In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries."

"The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.""



21. Reliance of Id. Counsel for the appellant on judgment in **G. Vivek supra** is misplaced as the said judgment is distinguishable on facts. Moreover, in the present case, to balance the equities, it cannot be lost sight of that 10 years since the accident/ 7 years since the Award, the appellant has not yet commissioned an artificial limb.

22. PW2 and PW4 have also deposed that the appellant shall require physiotherapy and special diet for early recovery from injury after the discharge from hospital. Needless to say, because of his disability, appellant shall also require transportation assistance for the rest of his life. Thus, sufficient compensation needs to be granted for life-long attendant, transportation, special diet, pain & suffering, loss of amenities and future medical expenses as per the settled law. In this regard, reference is made to judgment of Hon'ble Supreme Court in **S. Mohammed Hakkim v. National Insurance Co. Ltd., (SC) : Law Finder Doc ID # 2756347**; wherein it is held that:

“10. The High Court has rightly granted Rs.5,00,000/- for the future medical expenses but erred in reducing the attendant charges from Rs. 18 lacs to Rs. 5 lacs. In the present case, by taking charges of an attendant as Rs.6,000/- per month for 25 years, the Tribunal calculated the attendant charges as Rs. 18 lacs. While reducing it to Rs.5 lacs, the High Court has not given any cogent reasons and merely noted that fixing Rs.18 lacs as attendant charges is exorbitant and unreasonable. We are unable to understand how the



attendant charges of Rs.18 lacs fixed by the Tribunal are unreasonable. The appellant has lost his entire left leg, which was amputated from waist downwards, which means that he would require assistance throughout his life to perform the basic daily routine. Thus, we hold that the attendant charges as fixed by the Tribunal were justified.”

23. Reliance is also placed upon judgments of this Court in **FAO-923-2016 titled as “Oriental Insurance Co. Ltd. Vs. Sandeep Singh & Others” decided on 07.11.2024; Major Singh v. Iqbal Singh, (Punjab And Haryana) Law Finder Doc ID # 2339516; and Ms. Arti v. Sakun Ahmed @ Kaka, (Punjab And Haryana) Law Finder Doc ID # 2145603.**

24. Lastly, it was pleaded case of the appellant before the learned Tribunal that prior to the accident he was working as a Raj Mistri/Mason. However, the appellant has failed to lead any evidence in this regard. As such, income of the appellant has been correctly assessed by the learned Tribunal as Rs.7,500/- per month as an unskilled worker.

25. Age of the appellant was determined to be 44 years on the basis of pleadings. Learned Tribunal has therefore, correctly applied multiplier of 14. I find merit in the submission of learned counsel for the respondent No.3 that as it is own pleaded case of the appellant that he was 44 years old at the time of accident, future prospects ought to have been added @ 25%.



26. Medical expenses have been granted to the appellant on the basis of the bills produced by him for an amount of Rs.58,190/-. Given the facts and circumstances of the case, it is my view that learned Tribunal has awarded a meagre amount of only Rs.1 lakh for pain and suffering. The same is on the lower side. In actual fact, the pain, suffering, and mental trauma undergone by a patient upon loss of limb cannot be quantified or compensated in terms of money. Thus, keeping in view the entire facts, the compensation payable to the appellant is re-assessed as under:-

Head	Before the learned Tribunal	Re-assessed compensation
Income	Rs.7,500/- per month	Rs.7,500/- per month
Annual salary	Rs.7,500/- x 12 = Rs.90,000/-	Rs.7,500/- x 12 = Rs.90,000/-
Future prospects	(40%) Rs.90,000/- + Rs.36,000/- = Rs.1,26,000/-	Rs.90,000/- + 25% (as the age of the injured was 44 years) Rs.1,12,500/-
Loss on account of disability of 90%	Rs.1,26,000/- x 90% = Rs.1,13,400/-	Rs.1,12,500/- x 100% = Rs.1,12,500/-
Multiplier of 14 (Age 44 years)	Rs.1,13,400/- x 14 = Rs.15,87,600/-	Rs.1,12,500/- x 14 = Rs.15,75,000/-
Medical expenditure	Rs.58,190/-	Rs.58,190/-
Pain and suffering	Rs.1,00,000/-	Rs.5,00,000/-
Attendant charges	Rs.10,000/-	Rs.10,00,000/-
Transportation	Rs.5,000/-	Rs.2,00,000/-
Special diet	Rs.10,000/-	Rs.50,000/-
Artificial limb	Rs.75,000/-	Rs.5,00,000/-
Future expenses on artificial limb	Rs.1,00,000/-	Rs.2,00,000/-
Interest	9%	9%
Total	Rs.19,45,790/-	Rs.40,83,190/- rounded off to Rs.40,85,000/-



27. Judgment in **Vibhor Fialok supra** relied upon by Id. Counsel for Respondent no.3/ Insurance Company is distinguishable in view of the above discussion.

28. Present appeal stands **allowed** as above. The Respondent - Insurance Company is directed to release the enhanced compensation of Rs.40,85,000/- along with interest at the rate of Rs.9% per annum, to be calculated from the date of application, that is 25.07.2017 till the date of actual payment made to the Appellant. Needless to say, any amount already paid or deposited shall be adjusted while depositing the final compensation awarded by this Court which shall be made within a period of six weeks from today.

29. Pending application(s) if any also stand(s) disposed of.

22.01.2026

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No