211 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-130-2007 (O&M)
Date of Decision : 05.09.2024

Jaswant Singh ....Appellant

Versus

Ramesh Kumar and others ....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Parminder Singh, Advocate
for the appellant.

Ms. Simran, Advocate for
Mr. Pardeep Goyal, Advocate and
for respondent No.3 – Insurance Co.

Mr. B. R. Rana, Advocate for respondent No.5.

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SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred against the award dated 29.07.2006 passed in the claim petition under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Ambala (for short - 'the Tribunal' vide which the claim petition filed by the claimant was dismissed.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 02-04-1999, Surjan Singh (deceased) alongwith his son Baljinder Singh was going from Petrol Pump, Muzafra to Ambala City by driving three-wheeler No.HR-01-GA-0359. At about 9.15 p.m. when they reached near village Bullana on Hissar to Ambala road, their three-wheeler stopped running due to some mechanical defect. He took it to the correct left hand side of the road on kacha berm and called telephonically his other son namely, Jaswant Singh to come with candles and tools, etc., so that the three-wheeler could be checked and repaired. At about 10.00 p.m. when the deceased –

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Surjan Singh was holding candle in his hand Jaswant Singh was in the process of checking/repairing three-wheeler with the help of Baljinder Singh, in the meantime, one maruti car bearing registration No.HR-26-D-0062 came from Ambala side being followed by another maruti Car bearing registration No. PB-10-Y-0208, which was being driven rashly and negligently by respondent no.1 and was perhaps trying to overtake the car going ahead and in that process said car went on the extreme wrong side of the road on kacha berm and hit against all the three persons present there as well as against the three wheeler. As a result, all the three persons suffered multiple, simple and grievous injuries. Surjan Singh was dragged with the car up to some distance and then the car was put in back gear by its driver and then fled away from the spot with the car. All the injured were taken to Civil Hospital, Ambala City, but Surjan Singh died on reaching the hospital on account of injuries suffered by him in the accident. The accident took place on account of sole, rash and negligent driving of maruti car No. PB-10-Y-0208, being driven by respondent no.1.

3. Upon notice of the claim petition, respondents appeared and denied the factum of compensation.

4. From the pleading of the parties, the Tribunal framed the following issues:-

> *"Whether Surjan Singh died and Baljinder Singh and Jaswant Singh received injuries in accident caused due to rash and negligent driving of Maruti Car No.PB-10-Y-0208 by respondent no.1-Ramesh Kumar? OPP.*
>
> *ii) If issue no.1 is proved, to what amount of compensation, if any, the petitioners are entitled to and from which respondents? OPP.*

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iii) Whether respondent no.3 is not liable to pay any compensation, on the grounds alleged? OPR.

iv) Relief"

5. After hearing learned counsel for the parties and perusing the whole record, the learned Tribunal dismissed the claim petition. Hence the claimant-appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

6. Learned counsel for the claimant-appellant contends that the learned Tribunal did not take into consideration the evidence on record in correct perspective and has wrongly dismissed the claim petition filed by the claimant.

7. Per contra, learned counsel for the respondent No.3-Insurance Company contends that the claim petition filed by the appellant-claimant has rightly been dismissed.

8. I have heard learned counsel for the parties and perused the whole record of this case. Relevant portion of the judgment is reproduced hereunder:-

"15. In support of their case claimant Jaswant Singh has appeared in the witness box as PW2 and claimant Baljinder Singh has appeared as PW3. Both these witnesses are the injured persons and also happen to be the son of deceased Surjan Singh.

16. In his deposition PW3 Baljinder Singh stated on oath that on 02.04.99, he was returning from village Matrehri to Ambala city on a three- wheeler. While they were near village Balana, some fault developed in the three-wheeler. They then parked the three-wheeler on one side of the road and he called telephonically his brother Jaswant Singh to the spot as Jaswant Singh was learning the work of auto-mechanic. Jaswant Singh reached at about 9.00 p.m. While his

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father Surjan Singh and Jaswant Singh were sitting in front of the three-wheeler and he (i.e.PW3) was applying the jack to the three-wheeler, in the meantime two cars came from Ambala side. The front car, which was running in a zigzag manner, struck against their three-wheeler and the other car stopped at the back of offending car. The number of offending car was PB-10-Y-0208 whereas the number of other car was HR-26D-0062. In said accident injuries and his father died on account of those injuries on reaching the hospital. He himself had sustained injuries on his legs and had remained admitted in Civil Hospital, Ambala City for about 15/20 days. Even after his discharge he has to take the medicines for about 5/6 months.

17. During his cross examination, as conducted on behalf of respondent no.2, previous owner of car No.PB-10-Y-0208, he admitted that FIR was recovered on basis of his statement wherein he has mentioned the number of offending car as HR-26-D- 0062. He, however, denied the suggestion that accident was caused by Maruti Car No.0062 and not by car number 0208.

18. During his further cross examination, as conducted on behalf of respondents no.1 & 2A, driver and new owner of car No.PB-10-Y-0208, he admitted that he had not seen the accident taking place as he was laying under the three-wheeler and was applying the jack. He clarified that his brother Jaswant Singh told him after 4/5 days of accident that accident had been caused by car No.0208. He further admitted that his brother Jaswant Singh had come to the spot on a moped. He however, denied that accident of the moped had also taken place. He also denied the suggestion that the accident actually took

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place between three-wheeler and the moped. He also denied the suggestion that car no.0208 came later on and just touched the three-wheeler. He admitted that three-wheeler in question was belonging to his father, who was driving the same on the day of accident.

19. During his cross examination, as conducted on behalf of respondents no.4 & 5, previous owner of car No.HR-26-D-0062, he admitted that both cars had stopped at the place of accident, but since he was unable to walk due to the injuries on his leg, he had not seen that head-light of any of those two cars had been damaged in the accident. He however, admitted that the car, which caused the accident had also been damaged and that when he visited police station he saw only car No.0208 there, but he did not notice any damage on car No. 0208.

20. Coming to the deposition of the only other eye-witness, namely, Jaswant Singh, who appeared in the witness-box as PW2, it has come on record in his statement that on receiving telephonic message from his elder brother that their three-wheeler had gone out of order, he visited the spot and found that three wheeler was parked on the katcha portion of Hisar-Ambala road near village Balana. His brother started applying the jack. In the meantime two maruti cars, attempting to overtake each other came from Ambala side and one of those cars, bearing no. PB-10-Y-0208, dashed against their three-wheeler. As a result of said accident, he was thrown on one side and sustains injuries. His brother Baljinder Singh and father Surjan Singh also sustained injuries. His brother however, died on the same day on account of those injuries on reaching Civil Hospital, Ambala City. He

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himself had sustained injuries over his head, left palm and leg and was referred to PGI, Chandigarh, where he remained admitted for 3/4 days. He further deposed that immediately after the accident, he became unconscious and regained the consciousness after 3/4 days of the accident. Police then recorded his statement after his return to Ambala from Chandigarh, wherein he disclosed the number of offending car to the police.

21. During his cross examination, as conducted on behalf of respondent no.1 & 2-A driver and new owner of car No.PB-10-Y-0208, he admitted that he became unconscious within 2/3 minutes of the accident. He alleged that he orally remembered the number of the offending car and had not noted down same anywhere. He also admitted that his brother Baljinder Singh had not seen the accident taking place and that he told him (i.e. to Baljinder Singh) the number of the offending car only after returning from PGI, Chandigarh. He denied the suggestion that accident had already taken place with moped. He volunteered, to add that he had gone to the spot on moped which he had parked in front of the three-wheeler and said moped was also damaged on its being hit by the same car. He denied the suggestion that the accident had already taken place between the three-wheeler and the moped. He also denied the suggestion that car no.0208 has simply touched those vehicles and that said car was not attempting to over-take car no.0062.

22. In their documentary evidence, claimants have placed reliance upon copy of charge sheet (Exh.P1), whereby the court of Sh. Deepak Gupta, Judicial Magistrate, Ambala has framed charges under

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sections 304-A, 279,337, IPC against Ramesh Kumar and Raj Kumar, i.e. respondents No.1 & 5, copy of report under section 173, Cr.P.C. (Exh.P2), whereby final report has been furnished to the court by police against respondents no.1 & 5, copy of FIR (Exh.P3), as lodged against unknown driver of car no.HR-26-D-0062, copy of post mortem report (Exh.P4) of Surjan Singh and copy of supplementary statement of Baljinder Singh (Mark-A).

23. On the other hand, respondents examined Aurn Sharma (RW1), Ahlmad to the court of Sh.Y.S.Rathore, ACJM, Ambala. He placed on record the statement (Exh.R1) of Baljinder Singh, statement (Exh.R2) of Jaswant Singh and statement (Exh.R3) of Inder Mohan as recorded by the court of Illaqa Magistrate. He also placed on record the statement (Exh.R4) of Baljinder Singh, as recorded by the police on basis of which FIR of the present case was recorded, statement (Exh.R4) under section 161, Cr.P.C. of Inder Mohan, rough site-place (Exh.R5) of the place of occurrence as prepared by Investigating Officer, mechanical report (Exh.R6) of moped in question, mechanical report (Exh. R7) of three-wheeler in question, mechanical report (Exh.R8) of car number PB-10-Y- 0208 and copy of mechanical report (Exh.R9) of car number HR-26-D-0062.

24. Ramesh Kumar, respondent no.1, appeared in the witness box as RW2 and deposed that on the day of accident he was going in his car bearing number PB-10-Y-0208 at a moderate speed, said car was purchased by Jai Pal, respondent no.2-A, on the same day. At about 8.30 p.m. when he reached near village Balana, he saw a three-wheeler and a luna (mopad) had met with an accident. It was dark at

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that time. He stopped there for a while to see the accident. Due to darkness his car just touched three-wheeler, however, no accident took place with his car. He had not seen any other car causing accident with said three-wheeler and the accident was between three-wheeler and two-wheeler (moped).

25. During his cross-examination, as conducted on behalf of respondents no.4 & 5, owner and driver of car No.HR-26-D-0062. He admitted that his car was damaged in said accident and that he also suffered minor injuries due to the impact of his car with three-wheeler.

26. During his further cross-examination, as conducted on behalf of the claimants, he shown his inability in saying whether car no.HR-26-D-0062 was following his car. He admitted that he had not moved any complaint before any higher authority regarding his false implication in the accident in question by the police. He admitted that he had since been acquitted in said criminal case by the court of Sh.Y.S. Rathore, ACJM, Ambala. He denied knowing any Virpal, owner of car No.HR-26-D-0062.

27. During his further cross-examination as conducted on behalf of Insurance company of car no.PB-10-Y- 0208, he admitted his relation with new owner of his car i.e, Jaipal, respondent no.2A, who happens to be the grandson of his uncle. He further that he do not know personally Amarjeet Kaushal, Veer Pal Raj Kumar, and Tejinder respondents no.2, 4, 4-A & 5. He further admitted that he was facing the criminal case wherein he has since been acquitted. He also admitted that no other car was running alongwith his car. He shown

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his ignorance that in the present proceedings he was initially shown as driver of car No.HR26-D-0062 and at that stage his summons were served upon him through Veer Pal.

28. Respondent No.5, Raj Kumar, the driver of the car No.HR-26-D-0062, has also appeared in the witness box as RW3 and deposed that on 02.04.99 he was driver on said car owned by Veer Pal, respondent no.4. On that day he was going on said car and when reached near village Balana, he saw a scooty and three-wheeler standing near the road in an accident condition. He just crossed by the side of those accidental vehicles alongwith other vehicle plying on the road and had not come down from his car. It was only on next morning, when he was called by the police to the police station, that he came to know there that his car has been shown in said accident as on offending vehicle.

29. During his cross examination, as conducted on behalf of the claimants, he admitted that he was not a permanent driver on said car as the owner used to call him occasionally on daily labor basis. He admitted that on the day of accident he had not noticed any car bearing No. PB-10-Y-0208 running in front of his car or near his car. He had never informed the police that accident was caused by car No.PB-10-Y-0208. He admitted that he had not made any representation before any authority regarding his false implication.

30. During his further cross examination as conducted on behalf of Insurance Company of car No.PB-10-Y- 0208, he admitted that neither Veer Pal nor Tejinder Singh, respondents No.4 & 4A, were traveling with him in said car.

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31. Counsel for respondent no.2 tendered on record original delivery-receipt (Exh.R10) dated 02.04.99 regarding the purchase of car NO.PB-10-Y-0208 by Jaipal, respondent no.2-A from Amarjeet Kaushal, respondent no.2 on 02.04.99, receipt (Exh.R11) dated 10.04.99 of the possession of said car by Jaipal and application (Exh.R12) dated 08.04.99.

32. Counsel for claimant submitted that driver of car No. PB-10-Y-0208, i.e. Ramesh Kumar respondent no.1, while appearing in the witness box as RW2 has admitted in very words that due to darkness his car just touched with the three-wheeler and was damaged and that he himself suffered minor injuries due to that impact and that he was challaned by the police for causing the accident in question. It is also stressed that the mechanical report (Exh.R8) of said car also shows accidental marks thereupon. The accident has taken place at about 10.00 p.m. on 02.04.99 and FIR (Exh.P3) was promptly got recorded at about 1.30 a.m. on 03.04.99 by injured Baljinder Singh and the intervening time has duly been explained that the accident has taken place at a distance of about eight kilometer from Ambala and injured Baljinder Singh and his brother Jaswant alongwith their father Surjan Singh were brought to the hospital, but Surjan Singh died after reaching the hospital and Jaswant referred to PGI, Chandigarh on account of his serious condition and Baljinder Singh was hospitalized at Civil Hospital, Ambala City and a medical ruqqa was sent regarding their arrival upon which police reached the hospital and recorded the statement of injured Baljinder Singh. It is further submitted on behalf of the claimants that although FIR is against an

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unknown driver of Maruti Car N.HR-26-D0062 alone, but during investigation drivers of both the cars were found negligent and responsible for causing the accident in question and accordingly police submitted report under section 173, Cr.P.C. (Exh.P2) against both of them and the Illaqa Magistrate also framed charge-sheet (Exh.P1) against both of them for causing the accident in question. Both the injured persons, namely, Jaswant Singh (PW2) and Baljinder Singh (PW3) had deposed in same tune against respondent no.1 only and, therefore, Ramesh Kumar, respondent no.1, driver of car No. PB-10-Y-0208 be held responsible for causing accident in question resulting into the death of Surjan Singh and bodily injuries to Baljider Singh and Jaswant Singh.

33. On the other hand, counsel for Insurance Company pointed out that both the drivers of cars in question have made a tailored statement just to support the claimants as the collusion between them is writ at large in their pleadings even and if the deposition of RW2, wherein he had admitted the accident in very words, is put aside, then there is no evidence at all establishing any accident. There is no independent eye witness of the occurrence and the deposition of both the injured persons self establishes prima-facie contradictory that same are and the concocted versions projected by the witnesses to get a false claim from the Insurance Company.

34. In support of his stand, counsel for insurance company first of all pointed out the manner in which parties to the proceedings changed their pleadings from stage to stage. It is shown that in the original petition as filed on 25.05.1999 claimants have shown Ramesh

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Kumar as the driver of car no.HR-26-D0062 and Veer Pal as the owner of said car and there was no reference of car no.PB- 10-Y-0208. In order dated 28-09-99 the Tribunal has made an observation that the learned counsel for both these respondents has stated that vehicle in question was no insured at the time of accident. The same counsel is presently representing Ramesh Kumar as a driver of car No. PB-10-Y-0208 and its owner Amarjit Kaushal, but is not representing Veer Pal, who has been shown as the owner of car no. HR-26-D-0062.

35. Thereafter, petitioner moved an application for amendment of the petition incorporating Ramesh Kumar as driver of car No.PB-10-Y-0208, Veer Pal as well as one Rajinder Singh Maan as its owner and there was surprisingly no reference of car no. HR-26-D-0062. Counsel for respondents no.162 appended his note of no-objection over said application and same was accordingly accepted and amended petition filed. However, counsel for claimants thereafter on made a statement 20.10.2000 for striking of names Veer Pal and Tejinder Singh Mann, respondents no.2 & 2A, respectively, from the claim petition as from the Insurance Particulars supplied by counsel for respondent no.1 it has come on record that vehicle in question bearing no. PB-10-Y-0208 is owned by one Amarjit Kaushal. On account of said statement name of both said respondents were struck off. Counsel for claimant then again moved an application for amendment for amendment petition seeking incorporation of Amarjit Kaushal, owner of car No.PB-10-Y-0208 as respondent no.2 and Oriental Insurance Company as respondent no.3. Counsel for

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respondent no.1 made a statement that he has no objection in allowing the amendment application and same was accordingly allowed and amended petition was filed on 14.03.01.

36. Thereafter, respondents filed their written statement, claimants filed replication and issues were framed on 20.02.02 and case was put for evidence. Again claimants moved an application for amendments on 19.08.02 seeking incorporation of the drivers & owners of both the vehicles as respondents. Veer Pal Singh and Tejinder Singh Manna, who were previously shown as owners of maruti car No.PB-10-Y-0208 and whose name were subsequently struck off vide order dated 20.10.2000, were again impleaded in the application for amendment as respondents no.4 & 4A being owners of maruti car No.HR-26-D-0062. Counsel for respondent no.1 also appeared on behalf of respondent no.2A-Jai Pal Singh, and filed written statement on his behalf. It is not out of place to mention here that respondent no.1 i.e. Ramesh Kumar, while appearing in witness box as RW2 has admitted that said Jai Pal is in his relations as he happens to be the grandson of his uncle. RW2 has further deposed that he does not known any Amarjit Kaushal, i.e. respondent no.2.

37. Both Amarjit Kaushal and Jai Pal has been shown as owners of car No.PB-10-Y-0208. There is no RC of said, vehicle on record to establish the ownership. Only documents in this regard are a delivery receipt (Exh.R10) and a receipt of resumption of possession (Exh.R11), as tendered in evidence by Sh.B S Jaspal, Advocate, for Amarjit Kaushal, respondent no.2. A perusal of Exh.R10 shows that same was exhibited on 02.04.1999, 1.e. on the day of accident itself,

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by Jai Pal, respondent no.2A, admitting his purchase of said car on 02.04.1999 at 5.00 p.m. on the payment of Rs.1,42,000/- to Amarjit Kaushal and that he has taken the possession thereof. Said delivery receipt is signed by Jai Pal and attested by Rangi Ram and B S Jaspal Advocate. There is no signature of the then owner of the vehicle i.e. Amarjit Kaushal, on said document and it raises a suspicion. Witness Rangi Ram to this document is no other, but tha father of the respondents no.1-Ramesh Kumar (RW2). It is also very disturbing on the record that the name of said Ramesh Kumar is appearing in the claim petitions as son of one Desheyo Ram whereas while coming in the witness box Ramesh Kumar has admitted himself to be the son of Rangi Ram.

38. A perusal of Exh.Bll further shows that Jai Pal, respondent no.2A, has resumed the possession of car No. PB-10-Y-0208 from its registered owner i.e. Sh. Amarjit Kaushal on 10.04.99 as the court of Illaqa Magistrate has ordered for the release of vehicle in the name of registered owner. He has also shown his thankfulness for the cooperation of the registered owner. It is duly signed by Jai Pal and Jai Pal has been identified by one Sunil Kumar who had affixed his signature on 10.04.99 itself. Again this document also does not contain any signature of the registered owner i.e. Amarjit Kaushal. Sunil Kumar is non else, but the real brother of respondent no.1-Ramesh Kumar, as admitted by Ramesh Kumar in the witness box. Thus, the father of Ramesh Kumar was a witness to the alleged purchase of car No. PB-10-Y-0208 on 02.04.99 at about 5.00 p.m. Said car has been shown as on offending car in the accident in

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question which has taken place on 02.04.99 at about 9.00/10.00 p.m. while being driven by Ramesh Kumar. The brother of Ramesh Kumar has been shown as a witness to the resumption of said vehicle by its alleged new purchaser Jai Pal from the alleged registered owner Amarjit Kaushal on 10.04.99 after it being released on superari in favour of registered owner. At the cots repetition, it has to be noted against that there is no RC of said vehicle on record to support the assertions of respondents and their documents Exh. R10 & Exh. R-11. It is also not out of place to note here that the RC of the other vehicle, i.e. maruti car No.HR-26-D-0062, is also not on record.

39. Coming to the depositions of PW2 & PW3, counsel for Insurance Company pointed out that both these Witnesses are the claimants also for their personal injures, regarding which they had filed separate claim petition, and are also the LRs of deceased Surjan Singh, regarding which a separate petition has been filed by all the LRs of Surjan Singh including PW2 & PW3. It is also pointed out that there is no other independent witness of the occurrence.

40. A perusal of the deposition of Baljinder Singh (PW3) shows that he had not seen the happening of the accident as he was lying under the three- wheeler at the time of accident and was applying the jack for its repairs. He admitted it in very words and clarified that it was his brother Jaswant Singh (PW3) who told him after 4-5 days of the accident that the accident had been caused by Car No.208. Surprisingly, the FIR (Exh.P3) of the case was registered within four hours of the accident on the basis of the statement of Baljinder Singh wherein he has given the minute details of the occurrence and has not

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uttered a single word about car No. PB-10-Y-0208. What he had stated therein is that there were two cars coming at a fast speed and the first car crossed them and thereafter the second car struck against their three-wheeler causing injuries to him as well as to his brother and the body of his father entangled underneath said car, which dragged it to a certain distance and then the car driver driven his car backwards and then ran from the spot. One Inder Mohan, whose grinding machine of floors was therein in the three-wheeler and who was also sitting with them, had then shifted them with the help of other persons to the hospital.

41. Said Inder Mohan was admittedly an independent witness of the occurrence, but he has not been called in the witness box by the claimants.PW3 has admitted that he had not seen the accident taking place, therefore, the only witness to prove the accident remains Jaswant Singh (PW2).

42. Jaswant Singh (PW2) had deposed that immediately after the accident he became unconscious and regained his consciousness after 3-4 days of the accident as he has suffered injuries over his head and other parts of the body. His condition was so critical that he was immediately referred to PGI, Chandigarh where he remained admitted for 3-4 days. It was only after his return from the PGI that he disclosed the number of the offending car to the police. He has also admitted that within 2- 3 minutes of the accident he has become unconscious. Prior to his disclosing the name of offending car to his brother and to the police, his brother has already got lodged an FIR of the occurrence within four hours of the accident against another

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car. Both these brothers i.e. PW2 & PW3, has alleged that they had also sustained grievous injures and for which they had to remain hospitalized for a number of days and have to take the treatment four months altogether, but none of them had placed on record treatment record of any of them or their MLRs or expenses incurred by them on their medicines and treatment. They are from labourer section and one of their three-wheeler and moped had also been damaged in said accident, but they had not claimed any re-imbursement for those damges and have also not placed on record any bills regarding those vehicles to support their assertions. They had lost their father in said occurrence. In such a situation the as assertion made by PW2 that he orally remembered the number of the offending car and had not noted down same anywhere and then told the number to the police and to his brother after returning from PGI, Chandigarh does not seems to be natural and trustworthy. It is against natural course of events that PW2 was having such a balanced mind at that stage that he had noted down the number of offending vehicle and kept same in his memory lance even after becoming unconscious for hours altogether.

43. Otherwise also the manner of the alleged occurrence narrated by PW2 and PW3 does not depict the true picture. PW2 has deposed that PW3 started applying the jack to the three-wheeler and in the meantime offending car dashed against their three- wheeler as a result of which he himself was thrown on one side and he as well as his brother and father suffered injuries. He had not stated that both the cars had stopped at the spot or that he had noted down the number of any of the cars. Then it is quite strange how he deposed

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that the number of the other car was HR-26-D-0062 to which the offending car was attempting to overtake. Similarly, it has come on record that PW3 was laying under the three-wheeler and was trying the jack for repairing the three-wheeler. In such of a situation of PW3, he cannot be heard to allege that he had seen two cars coming from Ambala side out of which one was running in zig-zag manner and struck against their three-wheeler and the other car thereafter came and stopped at the back of the offending car. It is pertinent to note here that this witnesses has lodged FIR against said other car which had stopped behind the offending car and he had even quoted the number of this second car in his FIR as calling the same to be an offending car. What is most noteworthy in the deposition of PW3 is that he has alleged that when he started applying the jack to the three-wheeler, his father and brother Jaswant set in front of the three-wheeler and the offending car had struck against their three-wheeler only and then injures were suffered by the claimants and their father. In other words the father and the brother of PW3 must be sitting on the opposite side of the three wheeler then the side from which the offending car has stuck against the three wheeler. This situation of the injured person further gets. support from the deposition of PW2 wherein he has alleged that he had gone to the spot on moped which he had parked in front of the three wheeler and said moped was also damaged on being hit by the same car. Had said moped and Surjan Singh, father of PW2 & PW3, along with PW3 were towards the direction from which the offending vehicle was coming, then both the witnesses must have deposed that the offending car first struck against

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them and then hit their three wheeler, but that is not so in the present case. Meaning thereby that as per the assertions of PW2 & PW3 the offending car first struck against their moped. It has also come in the FIR (Exh.P3) as recorded on basis of statement of PW3, that the body of the Surjan Singh entangled underneath the offending car and the car driver then reversed his car and then car ran away from the spot alongwith his car. However, the assertion of PW3 in the witness box that the other car bearing no.HR-26-D-0062 came after the offending car and then stopped at the back side of the offending car turns the whole of the deposition of PW3 as self contradictory.

44. Resultantly, no reliance can be placed upon the depositions of PW2 & PW3 as well as upon the alleged admission of accident by RW1, whose identity has remained doubtful from the very beginning till end and who was certainly appearing in collusion with the claimants.

45. In view of the findings as above, claimants have failed to prove that the death of Surjan Singh has actually taken place in the manner alleged by the claimants. Claimants have also miserly failed to prove that Jaswant Singh (PW2) and Baljinder Singh (PW3) have actually suffered any injury in said accident as there is neither any documentary evidence nor any deposition of the treating doctor to establish the same. Accordingly, this issued is decided against the claimants.

ANALYSIS OF RECORD

9. A perusal of the record shows that respondent No.1 i.e. driver of the car No.PB-10-Y-0208 filed written statement, wherein, he admitted that his car

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was going from Ambala and other car bearing HR-26D-0062 was going ahead of his car but denied the factum of accident.

10. Respondent No.4 i.e. owner of the car No.HR-26D-0062 appeared and pleaded by filing written statement that no accident took place with his car. He further pleaded that he was called by the police along with his driver and the car, and on visiting there he saw another car bearing registration No.PB-10Y-0208 standing there in a damaged condition. He further stated that the accident, if any, must have been caused by the said car No.PB-10Y-0208 as the said car was following his car on the day of accident.

11. Jaswant Singh appeared as PW2 and Baljinder Singh appeared as PW3. Both are the injured persons and also sons of deceased Surjan Singh. Since both PW-2 and PW-3 injured in the accident were the best eye witnesses to the same. Documentary evidence i.e. copy of charge sheet (Exh.P1), whereby charges were framed under sections 304-A, 279,337, IPC against Ramesh Kumar and Raj Kumar, i.e. respondents No.1 and 5 was produced. Copy of report under section 173, Cr.P.C. (Exh.P2), whereby final report was furnished to the court by police against respondents no.1 and 5, copy of FIR (Exh.P3), as lodged against unknown driver of car no.HR-26-D-0062, copy of post mortem report (Exh.P4) of Surjan Singh and copy of supplementary statement of Baljinder Singh (Mark-A).

12. Mr. Arjun Sharma was examined as RW1, who was Ahlmad to the court of Sh.Y.S.Rathore, ACJM, Ambala. He placed on record the statement (Exh.R1) of Baljinder Singh, statement (Exh.R2) of Jaswant Singh and statement (Exh.R3) of Inder Mohan as recorded by the Illaqa Magistrate. He also placed on record the statement (Exh.R4) of Baljinder Singh, as recorded by the police on basis of which FIR of the present case was registered, statement (Exh.R4) under section 161, Cr.P.C. of Inder Mohan, rough site- plan (Exh.R5) of the place of

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occurrence as prepared by Investigating Officer, mechanical report (Exh.R6) of moped in question, mechanical report (Exh. R7) of three-wheeler in question, mechanical report (Exh.R8) of car number PB-10-Y- 0208 and copy of mechanical report (Exh.R9) of car number HR-26-D-0062.

13. Ramesh Kumar, respondent no.1, appeared in the witness box as RW2 and deposed that on the day of accident he was going in his car bearing No. PB-10-Y-0208 at a moderate speed, said car was purchased by Jai Pal, respondent no.2-A, on the same day. He further stated that at about 8.30 p.m. when he reached near village Balana, he saw a three-wheeler and a luna (moped) had met with an accident. It was dark at that time. He stopped there for a while to see the accident. Due to darkness his car touched three-wheeler, however, no accident took place with his car. He further stated that he had not seen any other car causing accident with said three-wheeler and the accident was between three-wheeler and two-wheeler (moped). During his cross-examination, as conducted on behalf of respondents no.4 and 5, owner and driver of car No.HR-26-D-0062. He admitted that his car was damaged in the said accident and that he also suffered minor injuries due to the impact of a car with three-wheeler. In his cross-examination, he further stated that he had not moved any complaint before any higher authority regarding his false implication in the accident in question by the police. He admitted that he had been acquitted in said criminal case by the court of Sh.Y.S. Rathore, ACJM, Ambala. In his cross-examination as conducted on behalf of Insurance company of car no.PB-10-Y-0208, he admitted that he was facing criminal case and he was acquitted in the same. The driver of car No.PB-10Y-0208, i.e. Ramesh Kumar respondent no.1, who appeared as RW2 admitted that due to darkness his car just touched with the three-wheeler and was damaged and that he himself suffered minor injuries due to that impact and he was challaned by

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the police for causing the accident in question. Mechanical report (Exh.R8) of said car also shows accidental marks thereupon. The accident took place on 02.04.1999 at about 10.00 p.m. and FIR (Exh.P3) was promptly got recorded at about 1.30 a.m. on 03.04.1999 by injured Baljinder Singh. The injured Baljinder Singh and his brother Jaswant alongwith their father Surjan Singh were brought to the hospital, but Surjan Singh died after reaching the hospital and Jaswant Singh was referred to PGI, Chandigarh on account of his serious condition and Baljinder Singh was hospitalized at Civil Hospital, Ambala City and a medical ruqa was sent regarding their arrival upon which police reached the hospital and recorded the statement of injured Baljinder Singh. During investigation, drivers of both the cars were found negligent and responsible for causing the accident in question and accordingly police submitted report under section 173, Cr.P.C. (Exh.P2) against both of them and the charge-sheet (Exh.P1) was framed against both of them for causing the accident in question.

14. Both Jaswant Singh (PW2) and Baljinder Singh (PW3) deposed against respondent no.1 only and, therefore, Ramesh Kumar, respondent no.1, driver of car No. PB-10-Y-0208 was held responsible for causing accident in question resulting into the death of Surjan Singh and bodily injuries to Baljinder Singh and Jaswant Singh.

15. Learned Tribunal dismissed the claim petition by stating that reliance cannot be placed upon the depositions of PW-2 and PW-3 as well as alleged admission of accident by RW-1.

16. As discussed above, this Court finds that the factum of accident as well as injuries to PW-2 and PW-3 and death of Surjan Singh are proved. PW-2 and PW-3 are best witnesses, who are eye witnesses as well and the learned Tribunal totally ignored the statements of the witnesses, presenting of challan and

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charges framed against respondents, mechanical reports of vehicles, postmortem report of Surjan Singh etc.

17. On the touchstone of hereinabove discussed findings and judicial precedent, the award dated 29.07.2006 passed by learned Tribunal, Ambala stands vitiated by a complete absence of judicial application of mind.

SETTLED LAW ON COMPENSATION

18. Hon'ble Supreme Court has settled the law regarding grant of compensation with respect to the disability. The Apex Court in the case of **RajKumar Vs. Ajay Kumar and Another (2011) 1 Supreme Court Cases 343**, has held as under:-

> ***General principles relating to compensation in injury cases***
>
> *5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could*

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have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467).

6. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

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19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earnings is explained below with reference to the following

Illustration 'A' *: The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the*

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person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

a) Annual income before the accident : Rs. 36,000/-.

b) Loss of future earning per annum
(15% of the prior annual income) : Rs. 5400/-.

c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-

***Illustration 'B'** : The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows :*

a) Annual income prior to the accident : Rs. 36,000/- .

b) Loss of future earning per annum
(75% of the prior annual income) : Rs. 27000/-.

c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-

***Illustration 'C'** : The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning*

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capacity was also assessed as 70%. The calculation of compensation will be as follows :

a) Minimum annual income he would have got if had been employed as an Engineer	*: Rs. 60,000/-*
b) Loss of future earning per annum (70% of the expected annual income)	*: Rs. 42000/-*
c) Multiplier applicable (25 years)	*: 18*
d) Loss of future earnings : (42000 x 18)	*: Rs. 7,56,000/-*

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

19. Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi &Ors.*** **[(2017) 16 SCC 680]** has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

(A) Deduction of personal and living expenses to determine multiplicand;

(B) Selection of multiplier depending on age of deceased;

(C) Age of deceased on basis for applying multiplier;

(D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;

(E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

" *Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads,*

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namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

20. Hon'ble Supreme Court in the case of ***Erudhaya Priya Vs. State Express Tran. Corpn. Ltd. 2020 ACJ 2159,*** has held as under:-

" 7. There are three aspects which are required to be examined by us:

(a) the application of multiplier of '17' instead of '18'*;*

The aforesaid increase of multiplier is sought on the basis of age of the appellant as 23 years relying on the judgment in National Insurance Company Limited v. Pranay Sethi and Others, 2017 ACJ 2700 (SC). In para 46 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in the table in the case of Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC) . In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability.

The aforesaid position is not really disputed by learned counsel for the respondent State Corporation and, thus, we come to the

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conclusion that the multiplier to be applied in the case of the appellant has to be '18' and not '17'.

(b) Loss of earning capacity of the appellant with permanent disability of 31.1%

In respect of the aforesaid, the appellant has claimed compensation on what is stated to be the settled principle set out in Jagdish v. Mohan & Others, 2018 ACJ 1011 (SC) and Sandeep Khanuja v. Atul Dande & Another, 2017 ACJ 979 (SC). We extract below the principle set out in the Jagdish (supra) in para 8:

> *"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:*
>
> *(i) Pain, suffering and trauma resulting from the accident;*
>
> *(ii) Loss of income including future income;*
>
> *(iii) The inability of the victim to lead a normal life together with its amenities;*
>
> *(iv) Medical expenses including those that the victim may be required to undertake in future; and*
>
> *(v) Loss of expectation of life."*
>
> *[emphasis supplied]*

The aforesaid principle has also been emphasized in an earlier judgment, i.e. the Sandeep Khanuja case (supra) opining that the multiplier method was logically sound and legally well established to

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quantify the loss of income as a result of death or permanent disability suffered in an accident.

In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries had been set out as under:

*"**Nature of injury**:*

(i) compound fracture shaft left humerus

(ii) fracture both bones left forearm

(iii) compound fracture both bones right forearm

(iv) fracture 3rd, 4th & 5th metacarpals right hand

(v) subtrochanteric fracture right femur

(vi) fracture shaft femur

(vii) fracture both bones left leg

We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 13 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

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We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case (supra), more specifically para 61(iii), considering the age of the appellant, would be 50% of the actual salary in the present case.

(c) The third and the last aspect is the interest rate claimed as 12%

In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the Jagdish's case (supra). On this aspect, once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court.

CONCLUSION

8. The result of the aforesaid is that relying on the settled principles, the calculation of compensation by the appellant, as set out in para 5 of the synopsis, would have to be adopted as follows:

Heads	***Awarded***
Loss of earning power (Rs.14,648 x 12 x 31.1/100	*Rs. 9,81,978/-*
Future prospects (50 per cent addition)	*Rs.4,90,989/-*

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Medical expenses including transport charges, nourishment, etc.	*Rs.18,46,864/-*
Loss of matrimonial prospects	*Rs.5,00,000/-*
Loss of comfort, loss of amenities and mental agony	*Rs.1,50,000/-*
Pain and suffering	*Rs.2,00,000/-*
Total	*Rs.41,69,831/-*

The appellant would, thus, be entitled to the compensation of Rs. 41,69,831/- as claimed along with simple interest at the rate of 9% per annum from the date of application till the date of payment.

21. In view of the above, the present appeal is allowed and award dated 29.07.2006 is set aside. Accordingly, as per the settled principles of law as laid down by Hon'ble Supreme Court as mentioned above, the appellant - claimant is held entitled to the compensation amount as calculated below:

Sr. No.	**Heads**	**Compensation Awarded**
1	Medical Expenses	Rs.25000/-
2	Attendant Charges	Rs.10,000/-
3	Diet	Rs.10,000/-
4	Transportation	Rs.5000/-
5.	Pain and Sufferings	Rs.20,000/-
	Total Compensation	Rs.70,000/-

22. So far as the interest part is concerned, as held by Hon'ble Supreme Court in ***Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma*** **2019 ACJ 3176** and ***R.Valli and Others VS. Tamil Nandu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the amount so calculated shall carry an interest @ 9% per annum from the date of filing of the claim petition, till the date of realization.

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23. The Insurance Company is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish the bank account details to the Tribunal.

24. Disposed of accordingly.

25. Pending applications, if any, also stand disposed of.

05.09.2024 **(SUDEEPTI SHARMA)**
A.Kaundal **JUDGE**

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No

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