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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****FAO- 1518-2006 (O&M)****Date of Decision: September 27, 2024****Naresh Kumar****.....Appellant(s)****Vs.****Harish Kumar and Others****.....Respondent(s)****CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Ashit Malik, Advocate for the appellant.

Mr. Neeraj Khanna, Advocate for respondent No.3 – Insurance Co.

Mr. G.C.Shahpuri, Advocate for respondent No.4.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 09.12.2005 passed in the claim petition filed under Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal') for granting compensation to the claimant/appellant on account of injuries received by him in the accident.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 23.06.2005 deceased Tek Ram along with his son Naresh Kumar was going from Madhuban to Chandigarh in government Jeep bearing registration No.HR-05K/4532 which was being driven by Bhoop Singh. When at about 9:15 AM, the jeep reached near village Khanpur

Kolian on G.T.Road, a truck bearing registration No.HR-38K/7072 driven by



Harish Kumar respondent No.1 rashly and negligently came from Pipli side, hit the Jeep from behind. Due to the impact, the Jeep after crossing the divider of G.T.Road struck against an Indica Car bearing registration No.PB-11S/4327, which was coming from the opposite direction and thereafter, Jeep fell into ditches. All the occupants of Jeep received multiple injuries. They were taken to LNJP, Hospital, Kurukshetra where Tek Ram succumbed to his injuries. Bhupinder Singh who was travelling in Indica Car bearing registration No.PB-11S/4327, with which Jeep bearing registration No.HR-05K/4532 struck after the accident with truck No.HR-38K/7072, driven by respondent No.1-Harish Kumar, who also died in the accident. Naresh also sustained injuries in the said accident. The offending truck was owned by respondent No.2 and insured with respondent No.3.

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

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

1. Whether the accident in question resulting into death of Tek Ram and Bhupinder Singh and injuries to Naresh was caused due to rash and negligent driving of truck No.HR-38K/7072 by its driver respondent No.1 as alleged” OPP
2. If issue No.1 is proved, to what amount of compensation, the petitioners are entitled to and from whom?OPP
3. Whether respondent No.1 was not holding a valid and effective driving licence on the alleged date of accident? OPR
4. Relief.



5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition of the claimant/appellant. Hence the claimant/appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE COUNSELS

6. Learned counsel for the appellant contends that as a matter of fact Harish Kumar is a truck driver and being truck driver accidents do occur on the highway, therefore, it cannot be presumed that since the person is involved in numerous cases, the present case is a false one. He further contends that the accident took place on 9:15 on 23.06.2005 and registration number of the offending vehicle was duly mentioned in the FIR by RW-14 Bhoop Singh on 23.06.2005, itself which was recorded at 12:45 PM, therefore, there was no occasion for manipulation. He further contends that no witness from the side of the respondents has appeared to prove the false involvement of the vehicle. Even the driver, respondent No.1 Harish Kumar did not appear in the witness box before the learned Tribunal, to deny his involvement in the accident.

Further that surveyor RW-12 S.K.Makkar in his cross-examination had admitted that rear side of the jeep was broken as shown in photograph Ex.P/87 and Ex.P/89 and also admitted that Jeep was totally damaged from the left side. Therefore, he submits that the claim petition has been wrongly dismissed and prays for allowing of the present appeal.

7. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues on the lines of the award and contends that claim of the appellants has rightly been rejected. He, therefore, prays that the present appeal be dismissed.

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8. I have heard learned counsel for the parties and perused the whole record of this case.

9. Relevant portion of the award dated 09.12.2005 is reproduced as under:-

“8. At the outset, it has been argued by the learned counsel for the claimants that on 23.06.2003 Tek Ram deceased, his son Naresh Kumar had started from Madhuban to Chandigarh in Government jeep No.HR-05K/4532 which was being driven by Bhoop Singh respondent No.4. At about 9:15 AM when the said jeep reached near Khanour Kolian on G.T.Road., in the meantime truck bearing No.HR-38K/7072 being driven by respondent No.1 Harish Kumar in rash and negligent manner and at high speed without observing the traffic rules came from Pipli side and hit the jeep from behind. The impact of the hit was so high that the jeep crossed the divider of G.T.Road and struck against an Indica Car No.PB-115/4327 which was coming from the opposite side. The jeep fell into ditches, as a result of which all the occupants of the jeep received multiple grievous injuries. They were shifted to L.N.J.P Hospital, Kurukshetra where Tek Ram succumbed to the injuries sustained in the accident. Respondent No.1 ran away from the spot after causing the accident. Respondent No.1 was challaned by the police. The accident had taken place due to sole rash and negligent driving of respondent No.1 while driving truck No. HR-38K/7072.



9. *To rebut the arguments of learned counsel for the claimants, it has been argued by learned counsel for the respondents and Government Pleader for the State that in fact no accident had taken place with truck No.HR-38K/7072. On 23.06.2003, the said truck was parked in L.N.N.P III RMS casualty and it had lifted the material at 4:30 AM and had left the premises of the hospital at 7 A.M. It is not possible for the truck to reach Kurukshetra by 9.15 AM. The learned counsel for the insurance company has placed on record copy of inward material register as Ex.R107 showing that construction work of Era Constructions India Ltd. New Delhi was going on that day i.e. 23.06.2003. He has also placed on record the material receipt slip dated 23.06.2003 as Ex.R108 in which the truck number has been shown as HR-38K/7072. He has also placed on record copy of agreement between Era Constructions and for and on behalf of President of India as Ex.R111. It has been argued that moreover Harish Kumar driver of offending truck is habitual in offering his own vehicles in M.A.C.T cases. Some times in the capacity of driver of the offending vehicle. The learned counsel for the insurance company has placed on record a number of petitions and the copies of award passed therein in which Harish Kumar respondent No.1 has been shown as either owner or driver of the offending vehicle. It has been argued by learned counsel for respondents and the Government Pleader that if at all the accident had taken place, it was between Indica car No.PB-115/4327 and Jeep No.HR-05K/4532. There was*



no fault of the truck, rather the number of truck has been planted subsequently. Before M.A.C.T Karnal, the case with regard to damages of the jeep was pending. It is not apparent from the record as to how the number of the truck came to the knowledge of Bhoop Singh driver of the jeep bearing No.HR-05K/4532. The learned counsel for the respondents have prayed for dismissal of the claim petitions as these have been filed with the purpose to take undue claim from the insurance company.

10. The arguments advanced by learned counsel for the petitioners and respondents have been carefully heard alongwith meticulous examination of the record of the case, oral as well as documentary evidence.

11. Now discussing the arguments of learned counsel for the claimants and respondents along with Government Pleader one by one.

12. It has been argued by learned counsel for the petitioners Maya Devi and Naresh Kumar that Harish Kumar respondent No.1 driver of truck No.HR-38K/7072 has not been produced by learned counsel for respondents and an adverse inference has to be drawn against the respondents. If respondent No.1 had been produced, the learned counsel for the petitioners would had opportunity to cross-examine him. When the counsel for petitioners could not cross-examine respondent No.1 Harish Kumar driver of offending truck, it cannot be presumed that he has been falsely implicated in the said case.



Moreover, the accident relates to 9:15 A.M and the FIR was lodged on the same day i.e. 23.06.2003 at 1:15 PM. When the FIR was lodged on the same day, it cannot be concluded that the number of truck and the driver of the truck had been planted. Had there been delay in lodging the FIR, it could be presumed that there was time for concoction of the story and inserting the vehicle. The learned counsel for respondents has tried to take the plea that on the fateful day i.e. 23.6.2003 the offending truck no. HR-38K/7072 was lying parked at L.N.J.P. Hospital-III, Delhi and was carrying material for Era Constructions. Learned counsel for respondents have not bothered to examine the witness in the present petitions rather the intention of learned counsel for respondents was to delay the proceedings of the court in not examining the witness. A number of times bailable warrants were ordered to be issued against B.B Yadav, an official of Era Constructions, New Delhi. In spite of that the learned counsel for respondents did not examine him. Instead of examining him, learned counsel for respondents has placed on record copy of statement made by him in claim petition relating to damage of jeep no. HR-05K/4532 pending before the Tribunal at Karnal. It cannot be accepted. Learned counsel for the petitioners has placed reliance on 1986(1) ACJ 331 titled as Bhagwani Devi Vs. Krishan Kumar Saini and others, 1994 (3) P.L.R. 170 titled as Smt. Sheela Devi and others Vs. Jayanti Parshad and others and 1999(2) C.C.Cases 91 titled as Vidhyadhar Vs. Mankikrao & Anr.



13. *It has next been argued by learned counsel for petitioners that the copies of statements made by witnesses and the documents from the other file had merely been exhibited by learned counsel for respondents. No efforts have been made to prove those documents. Mere marking of documents as an exhibit does not dispense with its proof and in support of this argument he has placed reliance on AIR 1971 Supreme Court 1865 titled as Sait Tarajee Khimchand and others Vs. Yelamarti Satyam and others.*

14. *It has next been contended by learned counsel for petitioners that Harish Kumar driver of offending truck has been facing criminal trial under sections 279, 337, 338, 304-A IPC which prima-facie proves that the accident had taken place due to rash and negligent driving of driver. He has placed reliance on 1993(2) P.L.R. 109 titled as Girdhari Lal Vs. Radhey Shyam and others.*

15. *Learned counsel for petitioners has drawn attention of the court towards cross-examination of RW-12 S.K. Makkar, Surveyor who had admitted in his cross-examination that the left rear side of the jeep was broken in photograph Ex. R/87. He has further admitted it to be correct that in Ex. R/89 photograph there was a dent on left side water penal. He has also admitted that the jeep in question which he had inspected was badly damaged from the left side. The learned counsel for petitioners have drawn attention of the Court towards photographs in which the left rear side of the jeep has been shown to have been damaged. It has been argued by learned counsel for*



petitioners that the petitioners have successfully proved the version of claimants that truck no. HR-38K/7072 had hit the jeep no. HR-05K/4532 from back side.

16. *First of all taking the point of recording of FIR on the statement of Bhoop Singh driver. The accident has been alleged to be of 23.6.2003 at 9.15 A.M. The copy of report under section 173 Cr.P.C. has been placed on record as Ex. P/19. It was registered at 1.15 P.M. on 23.6.2003. In the opening lines of the report under section 173 Cr.P.C. it has been recorded that a telephonic message was received that an accident had taken place and the injured have been admitted in L. N. J. P. Hospital. Kurukshetra. After writing the details it has been reported that the statement of all the injured including Bhoop Singh were recorded on the basis of which FIR was registered. Bhoon Singh has been examined as RW14 and he has stated that he was admitted in the hospital of Dr. Vijay Gupta at Karnal and the police had recorded his statement at that hospital. On one hand it has been stated in the report under section 173 Cr.P.C. that the statement of Bhoop Singh was recorded in L.N. J. P. Hospital. Kurukshetra and on the other hand, Bhoop Singh RW14 has stated that he regained consciousness in the hospital of Dr. Vijay Gupta at Karnal on 24.6.2003 and his statement was recorded on the same day. Meaning thereby Bhoop Singh remained unconscious in L. N. J. P. Hospital. Kurukshetra and could not make any statement. If his*



statement was recorded on 24.6.2003 how FIR was registered on 23.6.2003 at 1.15 P.M.

17. *Now taking the number of truck allegedly involved in the accident and because of rash and negligent driving of driver of truck allegedly the accident had taken place. First of all copy of report under section 173 Cr.P.C. placed on record as Ex.P19 is material in which the statement made by Bhoop Singh has been reproduced. It has been specifically stated by Bhoop Singh respondent no.4. that later on he came to know the number of truck as HR-38K/7072. Bhoop Singh when stepped into the witness box has admitted in his cross-examination that he had not seen the truck prior to the accident. In the later part of his cross-examination it has been stated by him that he had noticed the registration number of the truck after the accident, when he fell down on the road and thereafter he got up. He has further stated that he had noticed the truck immediately after the accident. He has stated that he fell down on the divider between the G.T Road: whereas the Jeep fell into the ditches on other side of the G.T. Road. The learned counsel for the insurance company has placed on record copy of statement of Bhoop Singh examined in claim case for damages of jeep No. HR-05K/4532 pending at Karnal as Ex. R106 in which he has stated that he had seen the truck prior to the alleged accident in the rear view mirror of the jeep. The truck was at a distance of 20-25 feet when he noticed the truck for the first time. Though the evidence in the other case is not material, yet it is*



pertinent to mention here that with regard to the same accident claim for damages of the jeep has been filed before Tribunal at Karnal and the same witnesses have been examined there. One witness cannot blow hot and cold in the same breath as with regard to the same accident evidence is being recorded. This is contradictory statement made by Bhoop Singh respondent no.4 driver of the jeep. At one place he has stated that he noticed the number of truck after he fell down after the accident and it is not practically possible that a person who has fallen down after receiving such heavy impact due to other vehicle and the offending vehicle has run away from the spot the injured can notice the number of offending vehicle.

18. The learned counsel for the insurance company has argued that Harish Kumar respondent no.1 is in the habit of offering himself either as driver or as owner of the offending vehicle in all the accident cases whichever and wherever it take place. The learned counsel for the insurance company has examined Balram D.R.K.. Sessions Record Room Sonapat as RWI who has brought the summoned file relating to claim petition titled Murti Devi Vs. Rai Kumar decided on 29.11.2003. The case file of MACT case titled as Randhir Singh Vs. Raj Kumar and case file titled as Urmila Vs. Raj Kumar. All these three claim petitions were consolidated having arisen out of the same accident. The learned counsel for the insurance company-respondent no.3 has examined Pawan Kumar Addl. Ahlmad to the Court of learned Judicial Magistrate 2nd Class, Karnal as RW2 who has brought the



summoned file of criminal case titled as State Vs. Jati Singh. FIR No.206 of 2000, under sections 279, 337, 338, 340 IPC. In the said case the FIR was lodged against an unknown truck driver. The certified copy of the FIR is Ex. R10. Copy of report under section 173 Cr.P.C. is Ex. R11. As per recovery memo Harish Kumar son of Shankar Dass had taken superdari of offending truck and registration certificate of the truck shows him the owner of the truck. Copy of superdaginama has also been placed on record as Ex.R12. The learned counsel for respondent no.3 has examined Pawan Kumar. Record Keeper, Judicial Record Room, Karnal as RW, who has brought the summoned file of criminal case titled State vs. Krishan Kumar bearing FIR No. 786 of 1998, under sections 279. 336. 338 decided on 23.10.2000. The FIR was registered against an unknown truck driver and Harish Kumar was later on shown as driver of the truck. In that case also, application Ex.R16 was moved for taking the truck on superdari by Harish Kumar and certified copy of superdaginama is Ex.R17. Copy of judgment has been placed on record as Ex. R18. He has also brought the criminal file titled as State Vs. Kulwant Singh FIR No.336, under sections 279, 304-A IPC. In that case also application for release of truck on superdari was moved by Harish Kumar son of Shankar Dass. He has also brought the criminal case file of case State Vs. Raj Kumar, FIR No.31 of 1999, under sections 279, 337, 304-A IPC. The vehicle involved in that accident was taken into police possession from Harish Kumar son of



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Shankar Dass and application for release of said vehicle (Tata Sumo) was moved by Harish Kumar son of Shankar Dass. Sanjay Kumar Addl. Ahlmad of the court of learned Addl. Chief Judicial Magistrate,. Karnal has also been examined by learned counsel for respondent no.3 as RW4 who has brought the criminal case file of State Vs. Harish Kumar FIR No.230 dated 6.5.1999, under sections 279, 337, 338, 304-A IPC. The FIR was lodged against an unknown driver. In that case also application for taking the truck on superdari was moved by Harish Kumar. The certified copies of the application and that of suberdaginama have been placed on record as Ex. R32 and Ex.R33 respectively. As per registration certificate, Harish kumar son of Shankar Dass was registered owner of the said vehicle. Ram Niwas. Record Keeper, Sessions Court, Karnal has been examined as RW5. He has brought the M.A.C.T case file titled as Charanjit Singh Vs. Jati decided on 15.3.2001. Copy of Judgment placed on record as Ex.R34 and Ex. R35, file of case State Vs. Paramjit decided on 15.3.2001, copies placed on record as Ex. R36 and Ex. R37. Charaniit Singh Vs. H. K. Pruthi decided on 4.1.2001, copies placed on record as Ex. R38 and Ex. R39. MACT file titled as Radhir Singh Vs. Harish Kumar decided on 2.11.2001, certified copy of claim petition and written statement are Ex. R40 and Ex. R41. He has also brought the MACT case file titled as Ram Kumar Vs. Harish Kumar decided on 2.11.2001, certified copies of claim petition, power of attorney of respondent no. 1, written statement and judgment are Ex.R42 to



Ex.R45. He has brought the MACT case file titled as Roshni Vs. Kulwant Singh decided on 2.2.2002, certified copies of claim petition, written statement and judgment are Ex. R46 to Ex.R48 respectively. The case file of MACT case titled as Surender Kumar Vs. Raj Kumar decided on 29.4.2003 has also been brought the certified copies of claim petition, written statement and judgment are Ex. R49 to Ex. R51 respectively. He has brought the MACT case file of case titled Rachna Vs. Harish Kumar decided on 12.11.2001, the certified copies of claim petition, power of attorney and written statement are Ex. R52 to Ex. R55. The learned counsel for respondent no.3 has examined Kanshi Ram, Record Keeper, Record Room, Kurukshetra as RW6. He has brought the MACT file titled as Ajit Singh Vs. M/s Vikas Road Ltd. decided on 5.10.2004. The certified copies of claim petition, power of attorney, zimini orders dated 3.6.2003, 11.4.2003 and judgment dated 5.10.2004 are Ex.R56 to Ex. R60 respectively. Balbir Singh, Criminal Ahlmad of the Court of learned S. D. J. M. Gohana has been examined as RW7 who has brought the criminal case file titled State vs. Jaspal Singh, under sections 279, 304-A IPC. The power of attorney of one Virender Singh is in favour of Harish Kumar son of Shankar Dass. Rajinder Kumar Ahlmad of the court of learned J.M.I.C. Panipat has been examined as RW8 who has brought the file of criminal case titled as State Vs. Ashok Kumar, under sections 279, 337, 304-A IPC. In that case application for releasing the Maruti car on superdari was moved by Harish Kumar. Sandeep Singla, Ahlmad



of the court of learned Addl. District Judge. Karnal has been examined as RW9. He has brought the MACT case file titled as Commandant 4th Battalion Vs. Harish Kumar filed on 1.12.2003. The copies of claim petition, written statement and estimate are Ex. R68 to Ex. R71. It is pertinent to mention here the said claim petition relates to the damage of Jeep no. HR-05K/4532, in which allegedly deceased Tek Ram was travelling on whose behalf of present claim petition has been filed. Suresh Kumar Clerk, Labour Office, Karnal RW10 has brought the file titled Deepak Vs. Virender Singh which was dismissed in default on 17.9.2003. Copies of claim petition and order dated 17.9.2003 are Ex. R72 and Ex. R73 respectively. Rajinder Saini. Criminal Ahlmad of the court of J.M.I.C. Sonapat RW11 has brought the file of criminal case titled State Vs. Raj Kumar under sections 279, 337, 338 and 304-A IPC. In that case also application for releasing the truck on superdari was moved by Harish Kumar son of Shankar Dass, the copies of application, police report, order of releasing the truck on superdari are Ex. R78 to Ex.R80. Superdaginama is Ex. R81 and surety bond is Ex.R82.

19. *In reply to the arguments of learned counsel for respondents. It has been argued by learned counsel for the petitioners that though the learned counsel for respondents has placed on record a number of documents and has examined a number of witnesses to prove the involvement of Harish Kumar respondent no.1 in number of cases, yet even by placing on record a number of documents, the learned*



counsel for respondent no.3 insurance company has failed to prove the involvement of offending truck no. HR-38K/7072 in any of the cases mentioned by him. It has further been argued by learned counsel for the petitioners that in all the cases produced by learned counsel for respondent no.3, Harish Kumar has not been shown as owner of the offending vehicles. Since he is carrying on the business of transporter, the owners of vehicles of other districts which are involved in the accidents might have told the present respondent no.1 to obtain the vehicle on superdari on their behalf. Only in those circumstances on the basis of power of attorney the vehicles were got released by respondent no.1 Harish Kumar. In some of the cases he was driver of the vehicle. If the accident had taken place the FIR was required to be registered. It cannot be said to be any manipulation on the part of petitioners to falsely implicate respondent no.1 or his truck no. HR-38K/7072.

20. The learned counsel for the petitioner has pointed out that though the learned counsel for respondents has tried to prove the false involvement of truck no.HR-38K/7072 yet at the time of cross-examination of PW5 Naresh Kumar, an eye witness, learned counsel for respondents has specifically suggested him that while overtaking the jeep, the driver of truck had blown the horn, which clearly shows that even respondents have admitted the presence of truck behind the jeep at the time of alleged accident,



21. *By examining official witnesses and by placing on record the documents of MACT cases and also criminal cases in accident matters, the learned counsel for respondent no.3-insurance company has proved that the present respondent no.1 driver of offending truck No. HR-38K/7072 was involved in a number of claim cases either in the capacity of owner or in the capacity of driver of the offending vehicles. Ex. R48 copy of judgment dated 2.2.2002 in MACT petition titled as Roshni Devi Vs. Kulwant Singh etc. decided by Shri N.C. Nahta, the then learned Motor Accident Claims Tribunal, Karnal in para no.13 of the said judgment. It has been specifically observed that "it has been proved on the record beyond doubt that the petitioners have filed this petition in connivance with respondents no.1 and 2 and in fact it is handy work of one Harish Kumar son of Shankar Dass who had always been ready to play any role in the hit and run cases. In this case also the respondents no. 1 and 2 seemed to have been made a tool by said Harish Kumar to become a driver and owner of the offending vehicle. Harish Kumar who is found Omni present in all the cases of hit and run. Thus this claim petition is nothing but a bundle of lies and the entire evidence seems to have been fabricated. The petitioners have simply tried to claim false compensation with the help and connivance of respondents no.1 and 2, who were readily available to the petitioners at the instance of Harish Kumar being his tools".*



22. *EX. P50 copy of award dated 29.4.2003 passed by the Court of Sh. Dhani Ram, the then learned Motor Accident Claims Tribunal. Karmal. in case titled Surender Kaur Vs. Raj Kumar also show that observations have been made by the learned Tribunal that it was a case of hit and run and the deceased was hit by some unknown vehicle driven by some unknown person. The claim petition was observed to be result of fabrication and connivance between claimants, respondents no.1 and 2 and Harish Kumar who had taken the Tata Sumo on superdari as attorney.*

23. *In these circumstances, the onus lies heavily upon the claimants to prove that on 23.6.2003 the accident had taken place due to rash and negligent driving of Harish Kumar, respondent no. 1. driver of truck no. HR-38K/7072.*

24. *The learned counsel for the respondent no. 3-insurance company had conducted survey and had also assessed the loss/damage to jeep No. HR-05K/4532 through Shri S.K. Makkar, Surveyor who has been examined as RW12. His survey report has been placed on record as Ex.R3 and the technical opinion has been expressed that there was no impact/damage on the rear back side of the vehicle. It is pertinent to mention here that as per story of claimants, the offending truck no.HR-38K/7072 had hit the jeep from the left back side as a result of which it turned turtle and hit Indica car and finally fell into ditches. The surveyor S.K.Makkar RW12 had also taken 9 photographs of jeep no. HR-05K/4532 as Ex. R84 to Ex.R92 and*



negatives thereof as Ex. R93 to Ex. R101. In photographs Ex. R91 and Ex. R92 rear portion of the jeep bearing no.HR-05K/4532 has been shown and no damage on the rear portion has been shown. S.K. Makkar, Surveyor RW12 has specifically stated in his examination-in-chief that on vehicle inspection, it was observed that the vehicle in question has been damaged from the front and left side and there was no impact or damage to rear/back side of the jeep. He has further stated that in the photographs there is no damage on the back side of the jeep.

25. *As per story of claimants, the accident had taken place as jeep no. HR-05K/4532 was going from Madhuban to Chandigarh and truck no. HR-38K/7072 was coming at very high speed and in rash and negligent manner from the back side and hit the jeep from back as a result of which the jeep crossed the divider on the opposite side and hit an Indica car bearing no. PB 115/4327 and finally fell into ditches, as a result of this accident Tek Ram who was travelling in jeep no. HR-05K/4532 had died and the remaining occupants of the jeep had received injuries.. Bhupinder Singh who was travelling in Indica car no. PB-115/4327 had also died due to accident and the remaining occupants of Indica car had received multiple and grievous injuries. Petitions titled as Mava Devi Vs. Harish Kumar and Naresh Vs. Harish Kumar have been filed on the plea that the accident had been caused due to rash and negligent driving of respondent no. 1 driver of truck no. HR-38K/7072. The third petition titled as Gurdev Singh vs.*



Harish Kumar etc.. though has been filed on the same ground, yet in para no.25 of the said petition,. it has been stated that the accident has been caused due to sole rash and negligent driving of respondent no.1 driver of truck no. HR-38K/7072 and respondent no.4 driver of jeep no. HR-05K/4532. During the course of arguments, it has not been argued by learned counsel for petitioner Gurdev Singh that accident had taken place due to rash and negligent driving of respondent no. I Harish Kumar driver of truck no. HR-38K/7072. Rather it has been argued that the accident had been caused due to rash and negligent driving of respondent no.4 driver of jeep no. HR-05K/4532. It is pertinent to mention here that learned counsel for petitioner in petition titled as Gurdev Singh Vs. Harish Kumar etc.. Rajiv Kaushal has been examined as PW7 in additional evidence. He has placed on record his affidavit Ex. P26. He was driver of Indica car no. PB-115/4327 on 23.6.2003. In the affidavit it has specifically been deposed by him that at 9.15 A.M. when they reached near village Masana on G.T. Road. jeep bearing no. HR-05K/4532 driven by Bhoop Singh rashly and negligently and at high speed came from wrong side after crossing the divider of G.T.road and straight-way hit the car which was being driven by him as a result of which all the occupants of the car received injuries and Constable Bhupinder Singh succumbed to his injuries. He was cross-examined at length. In cross-examination it has been stated by him that he had noticed the jeep from a distance of 100 meters. There was no truck going from Delhi to



Ambala side. The accident had taken place due to rash and negligent driving of driver of the jeep. No truck was involved in the said accident and no truck was present at that time. So the impact from back side on the jeep in question does not arise. The truck bearing no. HR-38K/7072 has been falsely involved in the present accident and it was not present on G.T.road at that time. He has further stated that Harish Kumar respondent no.1 has been falsely involved in the present accident. Since Rajiv Kaushal driver of Indica car no. PB-11S/4327 had received injuries and he was referred to PGI Chandigarh his statement was recorded at PGI Chandigarh on 25.6.2003. It has been specifically stated by Rajiv Kaushal PW7 that he had mentioned in his statement that the accident had taken place due to rash and negligent driving of the driver of jeep bearing no. HR-05K/4532 i.e. Bhoop Singh respondent no.4.

26. *As per allegation in the petitions due to heavy impact of the hit caused by truck the jeep no. HR-05K/4532 crossed the divider and hit Indica car no. PB-11S-4327, Bhoop Singh PW14 is the eye witness of the said accident. In cross- examination he was specifically asked as to whether there was any damage to the divider when the jeep had crossed the divider. He has replied that he cannot say whether the divider has suffered any damage or not, when the jeep crossed the divider. He had volunteered that the divider must be damaged. His statement was also recorded in M.A.C.T. case with regard to damage to the jeep pending at Karnal before the Tribunal.*



The Copy of his statement has been placed on record by learned counsel for respondent no.3 as Ex. 106. In the said statement he has stated that there was no damage to the divider. The witness who was eye witness of the said accident is making statements differently at different times.

27. *The learned counsel for the petitioners have tried to show that in the cross-examination of Naresh Kumar PW, learned counsel for the respondents have specifically asked about blowing of horn which itself proves that the counsel for respondents have also admitted the presence of truck. This argument of learned counsel for petitioners has no force, as the petitioners themselves are not standing on the same footings. Petitioners Smt. Mava Devi and Naresh Kumar have deposed about the presence of truck no. HR 38K/7072 on G.T.road at the time of accident, whereas Gurdev Singh petitioner has denied the presence of truck on G.T.road. PW7 Rajeev Kaushal driver of Indica car has specifically deposed that the truck and respondent no.1 driver of the truck have been falsely implicated.*

28. *Learned counsel for petitioners have argued about withholding of best evidence by not examining Harish Kumar respondent no.1 as RW, yet this argument of learned counsel for petitioners also has no force as apparently Harish Kumar respondent No.1 alleged driver of truck no. HR-38K/7072 has not stepped into the witness box only to avoid cross- examination and further to avoid confrontation with all the documents placed on record by learned*



counsel for respondent no. 3-insurance company in which false implication of the vehicles either owned by Harish Kumar or driven by Harish Kumar respondent no.1 has been shown. It has already been observed that the truck no. HR-38K/7072 was falsely involved at the instance of petitioners and in connivance with respondent no.1 Harish Kumar. Rather examination of Harish Kumar respondent no.1 as RW would damage the case of petitioners, with this fear he was not examined as witness of the respondents.

29. *Though, the consideration of documents placed on record by learned counsel for respondent no.3 has been opposed by learned counsel for petitioners on the ground of admissibility and in the absence of examination of the witnesses, yet these are the certified copies and have been brought by concerned officials from the Courts. They cannot be rejected altogether on the ground that the witnesses have not been examined to prove these documents. Hence, this argument of learned counsel for the petitioners is also rejected.*

30. *With regard to admission of the documents showing the presence of truck no.HR-38K-7072 at L.N.J.P. Hospital-111, Delhi, the learned counsel for petitioners have objected to these documents on the ground of non-examination of the witnesses. These are only copies of statements made by B. B. Yadav Senior Assistant (Personnel) and Gian Chand. Perusal of the file shows that previously notices were sent to official concerned from Era Constructions, New Delhi and service was affected. Bailable warrants were also ordered to be*



issued number of times. On 14.6.2005 B.B. Yadav was present but he could not be examined as he had not brought the complete record and he was directed to bring the complete record. On the next date of hearing, B. B. Yadav was not feeling well and in his place Anand Sahu,. Personnel Officer, Era Constructions, was present and had under taken to produce B. B. Yadav on the next date of hearing. Inspite of that on the next date, he was not present. In these circumstances evidence of all the respondents was ordered to be closed by orders of the Court. In this eventuality the statements which were made by B. B. Yadav Senior Assistant (Personnel) in claim case regarding damage of the jeep pending at Karnal were placed on record by learned counsel for respondent no.3. They cannot be rejected altogether.

31. By placing on record copy of statement of Gian Chand son of Karam Chand which was recorded in claim case at Karnal relating to damages of Jeep no. HR-05K/4532, copy of which has been placed on record as Ex. R114, learned counsel for respondent no.3 has tried to show that truck no. HR-38K/7072 had gone in G.B. Pant Hospital for unloading building material on 22.6.2003. On 23.6.2003 at around 7.00/7.30 A.M. material was unloaded and after coming out from the hospital, it had gone for refilling of fuel. On 23.6.2003 at around 12 noon/ 1.00 P.M. the vehicle had again started for Firakpur from Delhi. On that day i.e. on 23.6.2003, his truck had not met with any accident. It is pertinent to mention here that said Gian Chand has



been shown to be real owner of truck no. HR-38K/7072 and in the capacity of owner of truck, he had deposed in the court. Though. learned counsel for the petitioners have placed reliance upon 1989(1) P.L.R. 159 titled as United India Insurance Co. Ltd. through its Regional Manager. Chandigarh and another, yet the ratio of the said authority is not applicable to the facts of the present case, as in that case the plea was taken in the written statement that the offending truck was out of Punjab on the day of occurrence but no such evidence was produced. In the present case by placing on record certified copy of statement of original owner of the truck recorded in other case. It cannot be said that the evidence is deficient. Moreover. Ex. P107 copy of inward material register of Era Constructions. Ex.R108 material receipt slip, EX. R109 copy of stock register and Ex.R110 copy of statement of B.B. Yadav. Senior Assistant (Personnel) Era Constructions, placed on record in the claim case for damages of jeep, also support the plea of respondent no.3.

32. *With regard to pendency of criminal case against respondent no.1. there are number of authorities, in which the ratio is that even if there is criminal case pending before a criminal court. It does not ipso-facto prove negligence of driver of offending vehicle. The proceedings in claim petition before the Tribunal are entirely different. Hence, this argument of learned counsel for petitioners is also having no legs to stand.*



33. *This fact should also not be lost sight of that Rohtas gunman of Tek Ram deceased was also travelling in the same jeep when the alleged accident took place. He has not been examined as witness of the petitioners, inspite of fact that he was eye witness and also injured. This also raises suspicion.*

34. *The learned counsel for respondents has pointed out that in all the claim cases which were instituted by the claimants in collusion with the driver and owner of truck. Shri Amit Bansal Advocate had filed petitions on behalf of claimants. He has drawn attention of the Court towards copy of application moved by Gian Chand in criminal case titled as State Vs. Harish Kumar. FIR no. 190 of 2003 under sections 279, 337, 338,304-A IPC on behalf of Shri Amit Bansal Advocate. Copy of said application and power of attorney of the counsel have been placed on record as Ex.R115 and Ex. R116. Vide order dated 17.7.2003. Shri Amit Bansal Advocate obtained bail orders of accused Harish Kumar, the certified copy has been placed on record as Ex.R117 and copy of order dated 18.7.2003 vide which vehicle was taken on superdari through Sh. Amit Bansal Advocate as Ex. R118. Vide order dated 3.12.2003 charge was framed and presence of Shri Amit Bansal Advocate was marked, copy placed on record as Ex.R119 and copy of order dated 29.12.2003 as Ex. R120. Learned counsel for respondent no.3 has also drawn attention of the court towards claim petition titled Suresh Bala Vs. Dilshad Ahmed placed on record as Ex. R127 which was filed through Sh.A.*



D. Sood Advocate, who is also counsel in the present case. The learned counsel for respondents has drawn attention of the Court towards copy of power of attorney as Ex.R128 in which the name of Shri. A. D. Sood Advocate and Sh. Amit Bansal Advocate have been jointly written. The learned counsel for respondent no.3 has also placed on record copies of photographs of Chamber of Shri A. D. Sood, Advocate as Ex..R121 to Ex.R123 and negatives Ex. R124 to Ex. R126 which also show the joint names of Sh.A.D. Sood Advocate and Sh. Amit Bansal Advocate. It has been argued by learned counsel for respondents that the present petition was filed through Sh. A.D Sood Advocate and in the criminal case accused Harish Kumar was represented by Sh. Amit Bansal Advocate who was practising with Shri A. D. Sood Advocate which clearly shows collusion between the petitioners and respondent no.1.

35. *Under issue no. 1 the claimants were required to prove that on 23.6.2003 at 9.15 A.M. on G.T.road near Masana the accident had taken place due to rash and negligent driving of Harish Kumar respondent no.1 driver of offending truck no. HR-38K/7072. To prove the case learned counsel for claimants has examined Gurdev Singh one of the claimants as PW1. He is son of Bhupinder Singh deceased who had been travelling in Indica car which was hit by jeep no. HR-05K/4532. PWI father of Bhupinder Singh deceased has proved the income of his son. Randir Singh PW2 has brought the summoned record proving that Tek Ram deceased was posted as DSP. 4th*



Battalion, Madhuban. His date of birth and salary certificates have been proved by him. PW3 is Smt. Maya Devi wife of Tek Ram deceased who is not an eye witness to the accident. PW4 is Dr. Vijay Gupta who has stated about the admission of injured in his hospital. PW6 is Sandeep Sharma Constable who has brought the salary certificate of Bhupinder Singh deceased. On the point of negligence. learned counsel for claimants have examined Naresh Kumar son of Tek Ram deceased as PW5. He was also travelling in jeep no. HR-05K/4532 at the time of alleged accident. He is the eye witness of the accident. He has re- iterated the stand taken by petitioners in their claim petition that truck no. HR-38K/7072 was coming from the back side and it was in high speed. It had hit jeep no. HR-05K/4532 from the left back side. The impact was so high that the jeep crossed the divider and hit Indica car no. PB-11S/4327 which was coming from opposite side. The learned counsel for the respondent No. 3- insurance company has placed on record the copies of claim petitions, written statements. applications for taking the vehicles on superdari,. superdaginamas and the awards in various claim petitions by different Courts, in which the present respondent no. I Harish Kumar has been shown to be involved either as driver or as owner of the offending vehicle. In award placed on record as Ex.P40, the learned Tribunal has specifically observed that Harish Kumar is omni present in all the accident cases either in the capacity of owner of the offending vehicle or in the capacity of driver of offending vehicle. In number of



judgments, it has been observed that the claim petitions were filed in collusion with Harish Kumar or at the instance of Harish Kumar. In the present case also Harish Kumar had offered his services in the capacity of driver of the truck. It is pertinent to mention here that in claim petitions titled as Mava Devi Vs. Harish Kumar and Naresh Kumar Vs. Harish Kumar the evidence has been led on the point that the accident had caused due to rash and negligent driving of Harish Kumar driver of offending truck no. HR-38K/7072. At the time of filing of petition titled as Gurdev Singh Vs. Harish Kumar, the stand was taken that the accident had taken place due to rash and negligent driving of respondent no.1 driver of truck no.HR-33K/7072 and respondent no.4 driver of jeep No. HR-05K/4532. At the time of adducing evidence of the petitioners, petitioner Gurdev Singh did not examine any other witness except Gurdev Singh, who was neither eye witness nor had deposed anything with regard to negligence of driver of either truck no. HR-38K/7072 or jeep no. HR-05K/4532. When respondents had examined 13 witnesses, an application was moved for additional evidence and by way additional evidence, learned counsel for the petitioner in claim petition Gurdev Singh Vs. Harish Kumar has examined Rajiv Kaushal as PW7 who was alleged himself driver of Indica car no. PB 11S/4327. Instead of taking the stand as taken in the petition he has deposed on altogether different lines. In the petition the involvement of the truck has been shown: whereas while deposing in the court he has specifically stated that there was



no truck on G.T.road at that time going from Delhi to Ambala. It has also been stated by him that the truck has been falsely involved and Harish Kumar respondent no.1 has also been falsely involved in the accident. It appears that when the evidence of petitioners was recorded learned counsel to petitioner Gurdev Singh did not find it necessary to record the statement of Rajiv Kaushal, the alleged driver of indica car no. PB-11S/4327. The evidence of the respondents was started examining the official witnesses who had brought record relating to involvement of respondent no. 1 in number of claim cases and also criminal cases relating to accident. After 13 witnesses had been examined, learned counsel for petitioner Gurdev Singh realized that the false involvement of Harish Kumar the alleged driver of offending truck no. HR-38K/7072 would be proved and also by showing that the truck no. HR-38K/7072 was lying parked at L. N. J. P. Hospital Delhi on 23.6.2003, the false involvement of the truck would also be proved, he took different turn and moved an application to examine Rajiv Kaushal alleged driver of Indica car No. PB-11S/4327. In his affidavit Ex. P26 it was nowhere stated that the accident had taken place due to rash and negligent driving of respondent no. 1 driver of truck no. HR-05K/7072 nor in cross-examination he has stated so.. Rather he came forward with different story that no truck was involved in the said accident and it had taken place due to rash and negligent driving of Bhoop Singh, respondent no.4 driver of jeep no. HR 38K/4532. The petition was filed on



4.8.2003 and the driver of Indica car no. PB-11S/4327 was examined on 8.11.2005 i.e. after 28 months, particularly when the evidence of respondents was on the verge of completion. As per statement of Rajiv Kaushal driver of Indica car no. PB-11S/4327 his statement was previously recorded in P.G.I. Chandigarh where he was referred after receiving injuries in which he has stated that the accident had taken place due to rash and negligent driving of respondent no.4. Bhoop Singh driver of jeep no. HR-30K/4532. Since in the petition a different stand was taken by petitioner Gurdev that the accident had taken place due to rash and negligent driving of respondent no.1 driver of truck No. HR -05K/7072 and respondent no.4 driver of jeep no. HR-30K/4532, the previous statement made by Rajiv Kaushal driver of Indica car no. PB-11S/4327 was withheld. Now he cannot prove the assertion that previously also he had taken the stand of rash and negligent driving of respondent no.4. Moreover, the photographs placed on record by Surveyor of insurance company do not tally with the oral version of the claimants. As per version of claimants truck no. HR-05K/7072 had hit the jeep no. HR-38K/4532 from the back side with such a force that it had crossed the divider, hit the indica car on other side of the G.T-road and ultimately fell into the ditches. In the Photographs EX.R91 and Ex. R92 no damage has been shown on the back side of the Jeep. Rather the damage which has been shown on the left side of the jeep which is not the story of the claimants. Had the truck hit the jeep with such a force, it is not believable that from the



back side jeep would not be damaged. Only lower bumper has been shown to have been misplaced towards lower side. Even if the Surveyor has stated that there is dent on the back side of the jeep, it does not prove the story of petitioners that the truck had hit the jeep from back side with much force. It shows that the truck bearing no.. HR-05K/7072 was not involved in the accident and only to take claim from the insurance company of truck no. HR-05K/7072 the truck and its driver respondent No.1 have been falsely implicated.

36. *In petitions titled as Smt. Mava Devi etc. Vs. Harish Kumar etc. and Naresh Kumar Vs. Harish Kumar learned counsel for petitioners has miserably failed to prove involvement of truck no. HR-05K/7072 and the accident having taken place due to rash and negligent driving of Harish Kumar; respondent no.1 the alleged driver of truck no. HR-05K/7072.*

37. *In petition titled as Gurdev Singh Vs. Harish Kumar etc. the evidence has been led beyond pleadings and the learned counsel for the petitioner has failed to prove that the accident had taken place due to rash and negligent driving of Harish Kumar, respondent no.1, the alleged driver of truck no. HR-05K/7072 and respondent No.4 Bhoop Singh, driver of jeep no. HR-38K/4532.*

38. *In view of foregoing discussions issue no.1 is hereby decided against the petitioners and in favour of respondents except respondent no.1 Harish Kumar.”*



10. A perusal of the above shows that learned Tribunal totally ignored the oral as well as documentary evidence on record and dismissed the claim petition on the ground that in the photograph no damage is shown on the back-side of the jeep. Rather the damage is shown on the left side of the jeep which is not the story of the claimants. If the truck would have hit the jeep with such a force then the jeep would have damaged. Therefore, the Tribunal held that there is no involvement of the offending truck. It further held that since the driver (Harish Kumar) of the offending vehicle is a habitual offender in motor accident cases and many cases under the MACT are registered against him, therefore, the claim was rejected.

11. A perusal of the record shows that FIR was lodged on the same day i.e. 23.06.2003 at 1:15 PM. Harish Kumar driver of the offending truck was facing criminal trial under Sections 279, 337, 338, 340, 304-A of the Indian Penal Code, 1860, which further proves the factum of accident. RW-12 Sh. S.K.Makkar, Surveyor admitted in his cross-examination that left side of the Jeep was broken in photograph Ex.R/87. He further admitted that in Ex.R/89 (photograph), there was a dent on the left side of water panel. He further admitted that the jeep in question which he inspected damage was on the left side. Reasoning given by the learned Tribunal is without application of judicial mind.

12. Pawan Kumar, Additional Ahlmad to the Court of learned Judicial Magistrate, IInd Class, Kaithal, was examined as RW-2, who brought the summoned file of all criminal cases. As per recovery memo, Harish Kumar had taken superdari of the offending truck and registration certificate of the truck shows him to be the owner of the truck. The record of many FIRs was produced before the learned Tribunal, in which, Harish Kumar was driver of the offending



vehicle which shows that the driver Harish Kumar was involved in many FIRs, registered against him under Sections 279, 337, 338, 340, 304-A of the Indian Penal Code, 1860. The judicial record of the cases was produced by the Ahlmad concerned. The learned Tribunal even after examining the record regarding superdari of the offending vehicle taken by Harish Kumar driver respondent No.1 held that Harish Kumar cannot be omnipresent in all the cases of hit and run. The Tribunal totally ignored the judicial record placed before it.

13. In view of the above reasoning given by the learned Tribunal while dismissing the claim petition of the appellants is not acceptable. The award is passed by total non-application of judicial mind. Accordingly, the award is liable to be set aside.

SETTLED LAW ON COMPENSATION

14. Hon'ble Supreme Court has settled the law regarding grant of compensation with respect to the disability. The Apex Court in the case of **Raj Kumar 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 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 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 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)].

15. 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, 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.”

16. 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 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 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.



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:

<i>Heads</i>	<i>Awarded</i>
<i>Loss of earning power</i>	<i>Rs. 9,81,978/-</i>



<i>(Rs.14,648 x 12 x 31.1/100</i>	
<i>Future prospects (50 per cent addition)</i>	<i>Rs.4,90,989/-</i>
<i>Medical expenses including transport charges, nourishment, etc.</i>	<i>Rs.18,46,864/-</i>
<i>Loss of matrimonial prospects</i>	<i>Rs.5,00,000/-</i>
<i>Loss of comfort, loss of amenities and mental agony</i>	<i>Rs.1,50,000/-</i>
<i>Pain and suffering</i>	<i>Rs.2,00,000/-</i>
<i>Total</i>	<i>Rs.41,69,831/-</i>

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.

CONCLUSION

17. In view of the law laid down by the Hon’ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 09.12.2005 is modified accordingly. The appellant-claimant is entitled to amount of compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Medical Expenses	Rs.10,000/-
2	Attendant Charges	Rs.5,000/-
3	Special Diet	Rs.5,000/-
4.	Transportation	Rs.5,000/-



5	Loss of Income during treatment for 6 months	Rs.15,000/- (2500 x 6)
6	Pain & Suffering	Rs.5,000/-
	Total Compensation	Rs.90,000/-

18. 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 appellants-claimants are granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition, till the date of its realization.

19. Respondent No.3 – United India Insurance Company is directed to deposit the 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 amount of compensation along with interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish his bank account details to the Tribunal.

20. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 27, 2024
tripti

Whether speaking/non-speaking : Speaking
Whether reportable : Yes