



FAO-2782-2006 (O&M)

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

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**FAO-2782-2006 (O&M)
Date of Decision : 15.10.2024**

BABLI @ RAJWANTI AND ANR**....APPELLANTS**

Versus

SATYAWAN SAHARAWAT AND ORS**....RESPONDENTS****CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr.Sanjeev Kodan, Advocate
for the appellant(s).

Ms. Simran, Advocate for
Mr. Pardeep Goyal, Advocate for respondent No.3.

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SUDEEPTI SHARMA, J.

1. The present appeal has been preferred against the judgment dated 02.08.2005 passed in the claim petition under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Jhajjar (for short, 'the Tribunal') vide which, the claim petition filed by the claimants/appellants was dismissed.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 20.10.2000, Ashok Kumar was going for taking milk on his bicycle to village Siddipur Lova. It was about 3.15, when he reached near Krishana Akhara on main road of Siddipur Lova, Bahadurgarh, a truck bearing registration No. HR-46- A/1928 from the opposite side came there. The driver of the truck was driving the truck in a rash and negligent manner. The truck hit Ashok Kumar as a result of which he suffered



grievous injuries and died on the spot. It is alleged that the deceased was aged about 24 years. He was engaged in the business of sale of milk. He was earning Rs.12,000/- per month. A sum Rs.20,000/- was spent on his last rites. Caimants/petitioners filed the present petition claiming the compensation of Rs.10,00,000/-.

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:-

“1. Whether deceased Ashok Kumar expired in a motor vehicle accident on 20.10.2000 at about 3.15 a.m. near Krishan Akhara, Bahadurgarh, in a motor vehicle accident which had been caused due to rash and negligent driving of vehicle No. HR- 16-A-1928 by respondent No.1 Satyawar? OPP.

2. If issue No.1 is proved, to what amount of compensation, the claimant is entitled to? OPP

3. Whether respondent No.1 had no legal and valid driving licence at the time of accident? OPR-3

Relief.”

5. Vide order dated 26.8.2003, an additional issue No.3-A was also framed.

“3-A. Whether the respondent No.2 was not the authorised driver of the vehicle at the time of accident? OPR-3.”.

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

**SUBMISSIONS OF THE COUNSEL FOR THE PARTIES**

7. Learned counsel for the appellants contends that the claim petition of the appellants is dismissed only on the ground that testimony of PW-3 Surte, who was an eye witness could not be relied upon and no evidence was led by the appellants that respondent No.2 was driving the truck in a rash and negligent manner.

8. Per contra, learned for the respondent-Insurance Company contends that the driver Mukesh Kumar (respondent No.2) in his disclosure statement admitted that he had committed the theft of the offending truck. Therefore, the insurance company would not be liable to pay the compensation. She further contends that even the learned Tribunal held that respondent No.2 was not authorized driver of the vehicle and as such insurance company would not be liable to pay any compensation. She prays for dismissal of the claim petition.

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

“Issue No.1:-

Drawing my attention to the testimonies of Hari Kishan (PW2) and Surte (PW3) and the copy of the FIR, Mr. R.K.Vats, learned counsel for the petitioners argued that on the basis of testimonies these witnesses, it stands established on the record that respondent No.2 was driving the truck in a rash and negligent manner and he had caused the accident. Counsel further argued that petitioners have proved on the record that respondent No.1 is facing the trial under Section 304-A IPC. Law is well settled that the driver of the vehicle being prosecuted under Section 304-A, IPC, is prima facie proof of



the fact that he was rash and negligent. Accordingly, the findings on issue No.1 be returned in favour of the petitioners.

11. On the other hand, Mr. Kadian, learned counsel for respondent No.3 argued that petitioners have miserably failed to establish that respondent No.2 was driving the truck and that he was rash and negligent while driving the same. Counsel submitted that the only evidence that has been led by the petitioners is the testimony of Surte (PW3). Surte (PW3) in his testimony has deposed that about four years back at about 4-00 a.m. he was going to answer the call of nature. A cyclist was going ahead on him. Cyclist was Mukesh Kumar and he had died in the accident. Counsel submitted that Surte in his testimony has also deposed (PW3) that tractor driver had told the registration number of the truck to him. Mr Kadian argued that in fact a reading of the testimony of Surte (PW3) would show that he had not witnessed the occurrence. Counsel submitted that in fact there is no evidence on the record that respondent No.2 was driving the truck and he was rash and negligent.

12. I have duly considered the rival contentions.

13. Petitioners have examined Surte (PW3), the alleged eye-witnesses, Surte (PW3) in his testimony has deposed that about four years back at about 4-00 a.m. he was going to answer the call of nature. A cyclist was going ahead of him. There had come a truck from the opposite side. The truck had hit the cyclist. Mukesh had died on the spot. The tractor driver had



noticed the registration number of the truck and had informed about the same to him. He in turn had informed about the same to the police. In the cross-examination he had deposed that he was at a distance of about one acre from Mukesh Kumar. I am of the considered view that Surte (PW3) had not witnessed the occurrence. He is not even aware of the name of the deceased and that of the truck driver. He did not know the registration number of the truck. Apart from this, petitioners have led no evidence that respondent No.2 was driving the truck and that he was rash and negligent in driving the same. Accordingly, I find this issue against the petitioners.

Issues No.3 & 3-A,

14. Both these issues are inter-connected. Accordingly, I have taken up them together for discussion. Petitioners have led no evidence that respondent No.2 was employed as driver for that by respondent No.1 on the truck in question. On the other hand respondents have proved on the record the disclosure statement of respondent No.2 before the police. Bhupender Verma (RW1) deposed that he had brought the record of the case titled State Versus Mukesh bearing FIR No.358/2000, under Sections 279, 304-A, IPC, Police station, City Bahadurgarh. Bhupender Verma (RW1) proved on the record the disclosure statement (Ex.R1). A reading of disclosure statement (Ex.R1) shows that Mukesh Kumar, respondent No.2 had mentioned in the same that he had committed the theft of the truck and that the truck in question had met with an accident. This shows that respondent



No.2 was not an authorised driver of the vehicle. Vinod Sharma (PW1) in his testimony has deposed that the driving licence of Mukesh Kumar was not attached with the file. In view of the above-discussion, I hereby hold that respondent No.2 was not authorised driver of the vehicle and as such the insurance company i.e. respondent No.3 is not liable to pay any compensation. However, respondent No.3 has failed to establish that respondent No.2 was not holding a legal and valid driving licence. I find issue No.3 against respondent No.3 and issue No.3-A in favour of respondent No.2.”

ANALYSIS OF RECORD.

10. A perusal of the record shows that it stands established on the record that respondent No.2 was driving the truck in a rash and negligent manner and he had caused the accident. Counsel further argued that petitioners have proved on the record that respondent No.1 is facing the trial under Section 304-A IPC. Law is well settled that the driver of the vehicle being prosecuted under Section 304-A, IPC, is prima facie proof of the fact that he was rash and negligent. Accordingly, the findings on issue No.1 are liable to be returned in favour of the petitioners. Since respondent No.2 was not holding a legal and valid driving licence, therefore, I decide issue No.3 against respondent No.3 and Issue No.3-A in favour of respondent No.2.

11. Shri Bhupender Verma was examined as RW-1, who deposed that he he had brought the record of the case titled State Versus Mukesh bearing FIR No.358/2000, under Sections 279, 304-A, IPC, Police station, City Bahadurgarh.

Bhupender Verma (RW1) proved on the record the disclosure statement made by respondent No.2 as Ex.R1. A reading of disclosure statement (Ex.R1) shows that



Mukesh Kumar, respondent No.2 had mentioned therein that he had committed theft of the truck and the truck in question had met with an accident.

SETTLED LAW ON COMPENSATION

12. 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 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)].

13. 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.”

14. 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 (Rs.14,648 x 12 x 31.1/100</i>	<i>Rs. 9,81,978/-</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>

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.

RELIEF

15. In view of the above, the present appeal is allowed and award dated 02.08.2005 is set aside. Accordingly, as per the settled principles of law as laid down by Hon’ble Supreme Court as mentioned above, the appellants - claimants are held entitled to the compensation amount as calculated below:

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.3000/-
2	Future prospects @ 40%	Rs.1200/- (40% of 3000)
3	Deduction towards personal expenditure	Rs.050/- [1/4 of (3000+1200)]
4.	Total Income	Rs.3150/- (4200-1050)
5	Multiplier	18
6	Annual Dependency	Rs.6,80,400/- (Rs.3150/- x 12 x 18)
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
9	Loss of Consortium	Rs.1,92,000/-
	Total Compensation	Rs.9,08,400/-

16. 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 amount from the date of filing of claim petition till the date of its realization.

17. The 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 accounts of all the claimants/appellants as per ratio settled in the award dated 02.08.2005. The claimants/appellants are directed to furnish the bank account details to the Tribunal.

18. Disposed of accordingly.

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

October 15, 2024

A.Kaundal

(SUDEEPTI SHARMA)

JUDGE

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No