

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 171 of 2016

Reserved on: 05.08.2026

Date of decision: 25.08.2026

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Shriram General Insurance Company Ltd.

.....Appellant

Versus

Karam Chand & Ors.

.....Respondents

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting? Yes.*

For the appellant:

Mr. Jagdish Thakur and Ms.
Raksha Thakur, Advocates.

For the respondents:

Mr. Ajay Chandel, Senior
Advocate with Ms. Ridhi,
Advocate, for respondent No. 1.

Mr. Rahul Anand Kapoor,
Advocate vice Mr. Arsh Rattan,
Advocate, for respondent No. 2.
Respondent No. 3 ex parte.

Mr. Maan Singh, Advocate, for
respondents No. 4 & 5.

Mr. Deepak Bhasin, Senior
Advocate with Mr. Sambhav
Bhasin and Ms. Shruti Dubey,
Advocates, for respondent No.
6.

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

Sushil Kukreja, Judge.

The instant appeal has been maintained by the appellant/Insurance Company, who was respondent No. 6 before the learned Motor Accidents Claims Tribunal-II, Kullu, District Kullu, H.P., (hereinafter referred to as “the learned Tribunal”) under Section 173 of the Motor Vehicles Act, 1988 (for short ‘the Act’), against impugned award, dated 01.08.2015, passed by the learned Tribunal below, whereby Claim Petition No. 43/2014, filed by the petitioner, Karam Chand, under Section 166 of the Act, was allowed and he was held entitled for compensation in the sum of Rs. 17,69,561/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till deposit of the amount by respondents No. 3 and 6, i.e. 60% of the amount by respondent No. 3 and 40% of the amount by respondent No. 6.

2. The brief facts of the case are that on 10.08.2011, at about 1:00 P.M. (noon), the petitioner was sitting on the motorcycle bearing registration No. HP-58-2633, as pillion rider, which was being driven by respondent

No. 5, Gopal Krishan. When the said motorcycle reached near Thalaut, Sub-Tehsil Aut, District Mandi, a truck bearing registration No. HP-34-0852, being driven by respondent No. 2, Mohammad Matlook Birji, came from Mandi Side and crushed the right leg of the petitioner, as a result of which, he sustained grievous injuries on his person. According to the petitioner, the accident had occurred due to rash and negligent driving of both respondent No. 2 and respondent No. 5. After the said accident, the petitioner was firstly taken to Regional Hospital Mandi for medical treatment wherefrom he was referred to IGMCH, Shimla, where he remained admitted w.e.f. 11.08.2011 to 23.08.2011. Thereafter, he was shifted to Fortis Hospital Chandigarh for further treatment, where his plastic surgery was conducted and remained under treatment there till 26.08.2011. After discharge from Fortis Hospital Chandigarh, the petitioner came to his house, however, he was again admitted in Lady Willingdon Hospital, Manali for 17 days and after that, he has been taking treatment from Cosmo Hospital Mohali, Punjab. As per the petitioner, he has spent more than Rs. 6,00,000/- on his

treatment during his stay at hospitals, taxi fares as well as on attendants. As per the averments made in the petition, the petitioner suffered permanent disability of 60% as per the certificate issued by the Medical Board. According to the petitioner at the time of accident, he was 27 years of age and was working as Mason, as well as agriculturist and horticulturist and his monthly income was Rs. 15,000/-, however, due to disability suffered by him, he was unable to earn his livelihood and to contract marriage. Hence, the petitioners filed the claim petition under Section 166 of MV Act seeking compensation to the tune of Rs. 50,00,000/-.

3. Respondents No. 1 & 2, i.e. owner and driver of the offending truck, by filing replies, took preliminary objections of maintainability, suppression of facts and also that the accident has occurred due to rash and negligent driving of respondent No. 5. On merits, relevant date, time and place of the accident has been admitted, however, it has been denied that the accident has occurred due to rash and negligent of respondent No. 2, rather, the same has occurred due to rash and negligent driving of motorcyclist, respondent

No. 5. It has been stated that the petitioner has settled the claim with respondent No. 1, as such, he is not entitled for compensation. It has been further stated that since the offending motorcycle was insured with respondent No. 6, the said respondent is liable to indemnify the claim.

4. Respondent No. 3, in its reply, took preliminary objections of maintainability, suppression of facts and that the accident has occurred due to rash and negligent driving of respondent No. 5. On merits, factum of accident has been admitted, however, it has been denied that the accident has occurred due to rash and negligent driving of respondent No. 2, rather, the same has occurred due to rash and negligent driving of respondent No. 5, who was driving the motorcycle. It has been stated that if the Tribunal comes to the conclusion that the petitioner is entitled for compensation, then, respondent No. 6, being insurer of the motorcycle shall be liable to indemnify the same.

5. Respondents No. 4 & 5 in their reply, took preliminary objections of maintainability and suppression of facts. On merits, factum of accident has been admitted,

however, it has been denied that the same has occurred due to rash and negligent driving of respondent No. 5, rather the same has occurred on account of rash and negligent driving of driver of the offending truck, i.e. respondent No. 2. It has been stated that the matter was compromised between respondents No. 1 & 2 and father of the petitioner. It has been further stated that if the Tribunal comes to the conclusion that the petitioner is entitled for compensation, then, respondent No. 6, being insurer, shall be liable to indemnify the same.

6. Respondent No. 6, in its reply, took preliminary objections of maintainability and that respondent No. 5 was not possessing a valid and effective driving licence and other documents including route permit, RC, fitness certificate, token tax etc. It has been stated that the petition is collusive one and also that the petitioner was a gratuitous passenger at the time of accident. On merits, the accident has been denied for want of knowledge. It has also been denied that the petitioner was earning Rs. 15,000/- per month and spent Rs. 6,00,000/- on his treatment.

7. On 04.09.2014, the learned Tribunal below had framed the following issues for consideration and adjudication:

- “1. Whether on noon of 10.08.2011 around 1:00 P.M. at place near Thalaut, District Mandi petitioner suffered 60% permanent disability in motor vehicular accident when Truck bearing No. HP-34-0852 being driven by respondent No. 2 Mohammad Matlook rashly and negligently met with an accident with Motorcycle bearing No. HP-58-2633, as alleged? OPP***
- 2. Whether on the relevant date, time and place respondent No. 5 Gopal Krishan was driving Motorcycle No. HP-58-2633 rashly and negligently which met with an accident with truck No. HP-34-0852, as alleged? OPP***
- 3. Whether the petitioner is entitled for compensation, as prayed for? If so, from whom? OPP***
- 4. Whether the petition of the petitioner is not maintainable in the present form, as alleged? OPR***
- 5. Whether truck No. HP-34-0852 owned by respondent No. 1 was being driven by respondent No. 2 in violation of terms of insurance policy, as alleged? OPR-3***
- 6. Whether the petitioner has already received an amount of Rs. 1,50,000/- from respondent No. 1 as compensation, if so, its effect ? OPR-1***
- 7. Whether respondent No. 5 was driving Motorcycle No. HP-58-2633 in violation of the terms of insurance policy as the petitioner was gratuitous passenger at the time of accident, as alleged? OPR-5***
- 8. Relief.”***

8. After the parties led evidence and after hearing the learned counsel for the parties, the petition was allowed and the petitioner was held entitled for compensation in the sum of Rs. 17,69,561/- alongwith interest at the rate of 9% per annum from the date of filing of the petition till deposit of the amount by respondents No. 3 and 6, i.e. 60% of the amount by respondent No. 3 and 40% of the amount by respondent No. 6/Insurance Company.

9. Feeling aggrieved and dissatisfied, the appellant/Insurance Company preferred the instant appeal against the impugned award dated 01.08.2015.

10. I have heard the learned Counsel for the appellant, learned counsel for the respondents and carefully examined the entire record.

11. The Learned counsel for the appellant contended that the offending truck was being plied in violation of the terms and conditions of the insurance policy, as the offending truck in question was not having permit at the time of the accident. He further contended that learned Tribunal below has also erred in concluding that due to 60% permanent

disability, the petitioner has lost 100% earning capacity, as by no stretch of imagination, his earning capacity could have been reduced to 100% due to injury on his right leg. He also contended that learned Tribunal below has erred in taking the income of the petitioner as Rs. 6,000/- per month, as no documentary proof in this regard has been placed on record. With these averments, he submitted that the impugned award be set aside and the present appeal be accepted.

12. On the other hand, the learned Senior Counsel appearing on behalf of respondent No. 1 contended that the learned Tribunal below has granted inadequate compensation, which deserves to be enhanced. The learned counsel for the other respondents supported the impugned award and prayed for dismissal of the instant appeal.

13. I have closely scrutinized the entire evidence on record and from the close scrutiny thereof, it has become clear that the petitioner Karam Chand sustained grievous injuries in the motor accident while he was a pillion rider on motorcycle bearing registration No. HP-58-2633, being driven by respondent No. 5, Gopal Krishan and the said

motorcycle had fallen on the road due to rash and negligent driving of respondent No. 2, Mohammad Matlook Birji, who was driving the offending truck bearing registration No. HP-34-0852 and crushed the right leg of the petitioner.

14. The offending truck was owned by respondent No. 1, Sitar Mohammad, who appeared in the witness box as RW-2, admitted in his cross-examination that permit of the offending truck was issued in the year 2011 and he had deposited the fee for permit after September 2011. The date of accident is 10.08.2011. Thus, it has been proved on record that the owner was plying the offending truck without permit on the date of accident.

15. Now the first question which arises for consideration before this Court is as to whether the owner could have plied his truck, which admittedly was a transport vehicle, in a public place without permit.

16. Any motor vehicle, as defined under Section 2 (28) of the Act, requires to be registered in terms of Section 39 for putting the same on road, subject to the riders mentioned therein and the exception carved out in the

proviso in the case of a dealer. If such vehicle is to be used as a 'transport vehicle' as defined under Section 2 (47) , it is mandatory that it should have a valid 'Permit' as defined under Section 2 (31) of the Act, in view of the mandate under Section 66 (stipulating the necessity for permit), subject to the exception under sub section 3.

17. Necessity to have a 'Permit' for plying the vehicle as a 'transport vehicle' is stipulated under Section 66 of the Act, which mentions in unequivocal terms, that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place, whether or not such vehicle actually carries any passengers or goods, save in accordance with the conditions of Permit granted or countersigned by a Regional or State Transport Authority or any such other authority authorising the use of vehicle in that place in the manner in which the vehicle is being used, subject to exemption carved out under sub-section (3) of Section 66 of the Act.

18. Coming to the field of precedents, the issue as to the absence of a valid Permit to a transport vehicle was the

subject matter of consideration before the Apex Court in ***National Insurance Company Vs. Challa Upendra Rao (2004) 8 SCC 517***, the relevant portion of which is reproduced as under:

“12. The High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed on a better pedestal vis-à-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of the insurer. The High Court was, therefore, not justified in holding the insurer liable.

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any

other property or properties of the owner of the vehicle i.e. the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

19. The question whether absence of valid Permit to a transport vehicle at the time of accident is a 'fundamental breach' or a 'technical breach' had come up for consideration again before the Apex Court in ***Amrit Paul Singh and Another Vs. TATA AIG General Insurance Company Limited and Others, (2018) 7 SCC 558***. The factual matrix in the said case is that, the rider of the motor cycle was knocked down to death by the offending truck on 19.02.2013, which led to the claim petition preferred by the legal heirs. The claim was resisted by the insurer, mainly contending that there was violation of policy conditions in so far as the offending truck was not having a valid Permit and the driver was not having a valid driving licence. Based on the materials on record and placing reliance on the verdict passed by the Apex Court in ***Challa Upendra Rao's case (cited supra)***, the Tribunal, after fixing the quantum of compensation, directed the insurer to satisfy the same, with liberty to have it recovered from the insured. The said finding and reasoning came to be affirmed by the High

Court, in turn leading to the proceedings before the Apex Court. The Apex Court held, in such circumstances, that the verdict passed by the High Court affirming the stand of the Tribunal directing the insurer to satisfy the liability and to have it recovered from the owner/insured was in consonance with the principles stated in *National Insurance Co. Ltd. Vs. Swaran Singh & Ors.*, 2004 (3) SCC 297 and other cases pertaining to 'pay and recover principle'. Relevant portion of **Amrit Paul Singh's** case (supra) reads as under:-

"24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under [Section 66](#) of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in [Section 66](#). The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles [laid down in Swaran Singh](#) (supra) and [Lakhmi Chand](#) (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no

permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and other cases pertaining to pay and recover principle."

20. In the case on hand, since the vehicle in question was a transport vehicle and was being plied without the permit at the time of the accident and the owner had neither pleaded nor proved the exceptions as have been carved out under Section 66 of the Act, it can safely be held that on the date of accident, the vehicle in question was being plied in violation of the terms and conditions of the Insurance Policy, as plying of the offending truck in a public place without permit is fundamental statutory infraction. Therefore, the tribunal below has erroneously fastened the liability on the appellant/Insurance Company.

21. The Learned counsel for the appellant next contended that learned Tribunal below has erred in taking

the income of the petitioner as Rs. 6,000/- per month, as no documentary proof in this regard has been placed on record. He also contended that learned Tribunal below has erred in concluding that due to 60% permanent disability, the petitioner lost 100% earning capacity, as by no stretch of imagination, his earning capacity could have been reduced to 100% due to injury on his right leg. With these submissions, he prayed that the amount of compensation awarded by the Tribunal below deserves to be reduced.

22. Now the next question which arises for consideration before this Court is as to what amount of compensation the petitioner is entitled for. The law with respect to the grant of compensation in injury cases is well-settled. The injured is entitled to pecuniary as well as non-pecuniary damages. Pecuniary damages also known as special damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations. The pecuniary or special damages, generally include the expenses incurred

by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require any special treatment or aid to the insured for the rest of his life. The general damages or the non-pecuniary loss include the compensation for mental or physical shock, pain and sufferings, loss of amenities of life, loss of marriage prospects etc.

23. In *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd., (1995) 1 SCC 551*, a road accident resulted in 100% disability due to paraplegia below waist to a lawyer. The Supreme Court observed that no amount of compensation can restore the physical frame of the appellant. That is why it has been said by Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. In its very nature whenever a Tribunal or a

Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. Para-9 of the said judgment is reproduced as under:-

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame."

24. In **Arvind Kumar Mishra vs. New India Assurance Co.**

Ltd., (2010) 10 SCC 254, the road accident resulted in 100% permanent disability to a final year engineering student. The Supreme Court held the functional disability to be 70% to compute the loss of earning capacity according to the multiplier method. The Supreme Court further held that the whole idea of compensation is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for what he had suffered.

Para-10 of the judgment reads as under:-

"10. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he

will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases- and that is now recognized mode as to the proper measure of compensation is taking an appropriate multiplier of an appropriate multiplicand."

25. In **Raj Kumar vs. Ajay Kumar, (2011) 1 SCC 343**, the Supreme Court laid down the following principles for computation of compensation in injury cases:-

"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 SC 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.

7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii)- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) - involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/ deprivation/ disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

 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."

26. In the instant case, the petitioner sustained grievous injury in the accident and suffered 60% permanent disability as per disability certificate, Ext. PW-4/A, whereby, it has been opined that he had suffered Compound Grade III with fracture supracondylar femur right side with Siatic nerve injury right femoral component. The assessment of compensation is always a matter of difficulty and there is always scope for some guess work. The case of the petitioner is that he was earning Rs. 15,000/- per month, as he was mason by profession, as well as an agriculturist and horticulturist but after the accident, he was not in a position

to do any work on account of disability suffered by him. However, there is no documentary evidence on record in order to prove the income of the petitioner. Hence, in the absence of any documentary evidence on record, some amount of guess work is required to be done. Thus in view of the material available on record and the deposition of the petitioner in particular, since the petitioner was working as mason and was also doing the work of agriculture and horticulture, this court is of the considered view that in the absence of any documentary evidence, the learned Tribunal below had rightly assessed the monthly income of the petitioner at Rs. 6000/-per month. However, there is no evidence on record that the petitioner has lost 100% earning capacity. Therefore, the learned Tribunal had committed an error by observing that 60% permanent disability has affected 100% earning capacity of the petitioner. Admittedly, the petitioner has suffered 60% permanent disability, as his right leg was crushed in the accident as such his working capacity must have been affected to some extent. Therefore, keeping in view the disability suffered by the petitioner, the

loss of his earning capacity has to be taken as 60%. The learned Tribunal below had also committed an error in not giving an addition of 40% of the notional income towards future prospectus on account of disability suffered by the petitioner. It has been held in ***National Insurance Company Ltd vs. Pranay Sethi and ors, (2017) 16 SCC 680***, that while determining the income, in case of person being self-employed or on a fixed salary and below the age of 40 years, an addition of 40% of the established income to his income towards future prospects should be made. Paras 59.3 and 59.4 of the said judgment read as follows:-

“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

27. In the instant case, since the petitioner was aged

about 25 years and had no permanent job, therefore, in view of the law laid down by the Apex Court in **Pranay Sethi's** case (supra), an addition of 40% of the notional monthly income of the petitioner has to be made towards future prospects as he was aged below 40 years. Accordingly, by taking monthly income of the petitioner as Rs. 6000/- and by taking loss of the earning capacity of the petitioner as 60%, his loss of monthly income comes to Rs. 3600/-. By adding 40% of the monthly income towards future prospects, the amount comes to Rs. 5040/- per month ($3600 + 1,440/- = 5040/-$) and his annual loss of income comes to Rs. 60,480/-. As discussed, at the time of the accident, the age of the petitioner was 25 years as such in view of the decision of the Hon'ble Apex Court in **Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, the multiplier of '18' applied by the learned Tribunal below is just and proper. By applying the multiplier of '18' as per the settled law, the compensation under the head future loss of income is fixed at Rs. 10,88,640/-.

28. The amount of Rs. 4,09,711 awarded by the

Learned Tribunal below under the head medical expenses, Rs. 33,850 under the head taxi charges, Rs. 10,000/- under the head attendant charges are just and proper and no fault can be found with the findings recorded by the learned Tribunal below on this count.

29. Learned Tribunal below has awarded a sum of Rs. 10,000/- under the head pain and sufferings, which in the opinion of this Court is inadequate, as the petitioner suffered permanent disability to the extent of 60% and also remained admitted at IGMCH, Shimla w.e.f. 11.08.2011 to 23.08.2011 and thereafter, he was shifted to Fortis Hospital Chandigarh for further treatment, where his plastic surgery was conducted and remained under treatment there till 26.08.2011, therefore, a sum of Rs. 60,000/- would be appropriate to award under the head pain and sufferings.

30. The perusal of the award further shows that the Tribunal below had awarded Rs. 10,000/- under the head future discomfort and inconvenience, which, in the opinion of this Court is quite inadequate and which amount should have been awarded under the head "loss of amenities of life". The

head 'loss of amenities of life' must take into account all aspects of a normal life that have been lost due to the injury caused and disability suffered by the petitioner. As per *R. D. Hattangadi's case (supra)*, this includes a variety of matters such as the inability to walk, run or sit etc. In the present case, keeping in mind these factors as well as the age of the petitioner, since the petitioner suffered grievous injury on his person, as his right leg was crushed in the accident and has affected the amenities of life of the petitioner, hence it would be proper to award a sum of Rs. 60,000/- under the head 'loss of amenities of life'.

31. Thus, the petitioner is entitled to the compensation as under:-

“(a) Loss of future earnings = Rs. 10,88,640/-

(b) Loss of amenities of life = Rs. 60,000/-

(c) Medical expenses = Rs. 4,09,711/-

(d) Taxi charges = Rs. 33,850/-

(e) Attendant charges = Rs. 10,000/-

(f) Pain and sufferings = Rs. 60,000/-

Total = Rs. 16,62,201/-

32. Now the last question, which arises for consideration, is as to who is liable to pay the amount of compensation. Learned counsel for the appellant has vehemently contended that since there was a fundamental breach of the policy condition, therefore, the insurance company cannot be held liable to pay any compensation to the petitioners. On the other hand, learned counsel for the petitioner as well as respondents No. 2 & 3 contended that in the instant case, the petitioner was a third party, hence, the liability to pay the amount of compensation should be fastened upon the insurance company in the first instance with liberty to recover it from the owner.

33. It is settled proposition of law that the Motor Vehicles Act is the benevolent piece of legislation. The petitioner herein is the third party, therefore, the right of a third party cannot be defeated only on the ground that the owner was plying the offending truck without permit. Therefore, in view of the judgment passed by the Apex Court in ***Amrit Paul Singh's case (supra)***, this Court is of the view that the appellant/insurance company is to be made liable to

indemnify the compensation amount awarded by the learned Tribunal below in the first instance and thereafter to recover the same from the owner of the offending vehicle.

34. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the present appeal is partly allowed and the impugned award dated 01.08.2015, passed by the learned Tribunal below, is modified to the extent that the petitioner is entitled to compensation to the tune of Rs. 16,62,201/-, out of which 60% of the amount shall be first paid to the petitioner by the appellant/Insurance Company, who shall be entitled to recover the same from respondent No. 2/owner of the offending truck bearing registration No. HP-34-0852, in accordance with law. The remaining part and terms of the impugned award, including the interest component, shall remain the same.

The appeal stands disposed of in the above terms, so also the pending application(s), if any.

(Sushil Kukreja)
Judge

25th August, 2026
(raman)