



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

246

FAO-4887-2002 (O&M)

Decided on : 21.07.2026

ASHOK KUMAR

...APPELLANT

VERSUS

ROSHAN LAL AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Keshav Pratap Singh, Advocate
for appellant.

Mr. Punit Jain, Advocate
for respondent No.3-Insurance Company.

PARMOD GOYAL, J. (ORAL)

Present appeal has been preferred by appellant-claimant Ashok Kumar Tyagi being aggrieved by impugned award dated 27.02.2002 passed by learned Motor Accident Claims Tribunal, Ambala (hereinafter referred to as '**Tribunal**'), being aggrieved by finding of contributory negligence recorded by learned Tribunal and for enhancement of compensation of Rs.7,52,400/- awarded to him on account of multiple injuries, amputation of leg and 100% permanent disability suffered in motor vehicular accident dated 18.05.2001 allegedly caused due to rash and negligent driving of respondent-driver while driving truck bearing registration No.HR-46-A-3830 (hereinafter referred to as '**offending vehicle**').

2. In the present case, learned Tribunal had awarded the following compensation to appellant-claimant:

Medical expenses	Rs.2,00,000/-
Pain and sufferings	Rs.30,000/-
Permanent disability	Rs.3,60,000/-
Attendant charges	Rs.1,44,000/-
Nutritious diet	Rs.8,400/-
Transportation charges	Rs.10,000/-
Total	Rs.7,52,400/-

3. The learned Tribunal after appreciating evidence of sole eye-witness i.e. injured-appellant-claimant who appeared as PW-1 and after taking into consideration contents of FIR (Ex.P38), concluded that the version given by injured-appellant-claimant before the Court is at variance with the version given in FIR (Ex.P38) which was recorded on the statement none else but son of appellant-claimant namely Parkash who was also traveling with the appellant-claimant at the time of accident, therefore recorded finding of contributory negligence against appellant-claimant to the extent of 25%.

4. In order to appreciate findings given by learned Tribunal, it would be appropriate to note down version given in FIR (Ex.P-38) and version stated by appellant-claimant before the Court and to find out whether appellant-claimant had contributed in causing the accident as has been held by learned Tribunal.

5. In FIR (Ex.P38) son of appellant-claimant had asserted that he (Parkash) along with his father was waiting for a vehicle to go to Ambala City at Saha crossing on G.T. Road, near Shahabad. That on 18.05.2001 at about 05:15 a.m., they saw a truck coming from Shahabad side which was

signaled to stop for lift and in the meanwhile, another canter bearing registration No.HR-46A-3830 also came from Shahabad side, being driven rashly and negligently at fast speed and had hit the truck while they were talking with the driver of offending truck for seeking lift. That on account of said hit, appellant-claimant was crushed and had suffered multiple injuries, including on his legs, resulting into permanent disability. That thereafter, canter driver ran away. The driver of truck also succeeded in escaping. Appellant-claimant-Ashok Kumar-PW1, had stated that when they were standing at crossing on G.T. road, a truck of it own had stopped and while it was standing there and was inquiring about passage to Saha, the canter came and hit the truck due to which truck had also gone out of control and hit him by coming on the katcha berm.

6. Learned Tribunal, after considering statement of PW1 made before the Court and contents of FIR (Ex.P38), concluded that appellant-claimant had also contributed in causing the accident by stopping the truck for taking the lift, which appellant-claimant had conveniently missed out when he had stepped into the witness box and accordingly appellant-claimant was also held liable to the extent of 25% for causing the accident.

7. On consideration of contents of FIR (Ex.P38), as well as the statement of appellant-claimant, while appearing as PW1, it is clearly made out that manner of occurrence as was stated in both the statements i.e. at the time of lodging of FIR and before the Court is almost similar as regards to fact that offending truck was standing and it was hit by another canter, resulting into injuries to appellant-claimant by truck bearing registration No.HR-46A-3830. There is no variance as regards to these facts. Only

variance is that in FIR, it was stated that it was appellant-claimant who had got stopped the truck for taking lift, whereas while appearing as PW1, it was stated that truck had stopped of its own for inquiring the passage to Saha. In both the versions, there is nothing from which it can be concluded that appellant-claimant had contributed in causing the accident by his act of omission and commission. No act of omission and commission could be attributed to the appellant-claimant for causing the accident. In fact, neither the driver of offending vehicle bearing registration No.HR-46A-3830 nor the driver of canter had stepped into the witness box to assert the manner of accident. In both the statements, one before the Court and another before the police, it is nowhere stated by author of FIR or by appellant-claimant that they were on the road when accident had resulted. Both had claimed that accident was resulted while appellant-claimant was at *katcha* portion and were talking to driver of truck. Merely because truck was stopped and appellant-claimant was talking while being on *katcha* portion of the road cannot be held to be an act of negligence on the part of appellant-claimant resulting in the accident. Accordingly, the findings of learned tribunal on issue No.1 is set aside. It is held that accident was a result of composite negligence of vehicle No.HR-46A-3830, owned, driven and by respondents and canter.

8. Appellant-claimant had claimed that on account of injuries, which were grievous in nature, he remained admitted in various hospital on multiple occasions, was operated upon and his legs were amputated resulting into permanent disability of 100%. It was also claimed that he had spent huge amount on his treatment and suffered grave loss due to injury and permanent disability.

9. In order to prove nature of injuries, nature of treatment, extent of permanent disability, expenses incurred upon hospital & medicines and period of hospitalization, appellant-claimant had duly examined Dr. Ashok Sarwal as PW-4, Dr. K.D. Sharma as PW-5 and Dr. R.C. Jindal, Ortho Surgeon, Civil Hospital, Ambala City as PW-3. Apart from examining treating doctor as well as doctor who had certified permanent disability, claimant had also placed MLR as Ex.P-39, treatment record as Ex.P-40 as well as Ex.P-41 to Ex.P-49. Various hospital and medical charges pertaining to hospitalization, surgery as well as medicines had been duly placed on record which were also noticed by the learned tribunal and is reflected in Ex.P-26 to Ex.P-36 and Ex.P-50 to Ex.P-161. From the evidence of doctors PW-4 and PW-5, it is clearly made out that appellant-claimant had remained admitted as indoor patient for 2 ½ months on different occasions at different hospitals. He had suffered multiple injuries and was subjected to multiple surgeries. Amputation of right leg near hip joint was carried out and fixation of external fixator of left leg was done. Left leg was also amputated below knee.

10. Appellant-claimant has also sought enhancement of compensation. It was the claim of appellant-claimant that he, being fruit seller, was earning Rs.8,000/- p.m. and on account of 100% disability suffered due to amputation of his right leg, he is unable to earn his livelihood. However, except for self-serving oral assertions, no material was placed before the learned Tribunal to prove pleaded vocation and income.

Accordingly, learned Tribunal had taken income of injured to be Rs.2,000/-

taking him to be unskilled worker. I do not find any error in the approach of learned Tribunal. Onus to prove pleaded income as well as vocation was upon appellant-claimant. No cogent and reliable documentary/oral evidence was produced which can be taken into consideration for accepting the plea raised by appellant-claimant.

11. Learned Tribunal had taken due notice of evidence led by appellant-claimant noted above and found that appellant-claimant had incurred Rs.1,93,212/-, which is clearly made out from various exhibits placed on record by the appellant-claimant, which includes treatment bills issued by Dr. KD Hospital amounting to Rs.69,740/- as made out from Ex.PW5/A to Ex.PW-5/D. PW-3, who had examined claimant being member of medical board, had found permanent disability to the extent of 100% vide disability certificate (Ex.P1). PW3 duly noted amputation of legs which had resulted in permanent disability.

12. From the evidence led by appellant-claimant, Learned Tribunal had rightly held that appellant-claimant had suffered 100% disability. In view of nature of injuries & extent of permanent disability suffered by appellant-claimant, it is clearly made out that appellant-claimant had suffered 100% functional disability resulting into loss of 100% earning capacity.

13. Appellant-claimant was aged 43 years at the time of accident, therefore multiplier of '14' shall be applicable in view of judgment passed by Hon'ble Supreme Court in **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.**, 2009(6) SCC 121. Future prospects to the extent of 25% shall also be applicable in view of judgment passed by

Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.**, 2017 (16) SCC 680 to determine loss of earning capacity. Accordingly, loss of earning capacity payable to appellant-claimant has to be determined by taking functional disability equivalent to 100% after taking monthly income of the deceased to be Rs.2,000/- as was determined by learned Tribunal, by adding future prospects to the extent of 25% and by applying multiplier of '14'.

14. Learned counsel for appellant-claimant has fairly accepted that all the bills furnished by appellant-claimant were duly taken into consideration by learned Tribunal and an amount of Rs.2,00,000/- was granted as compensation for medical expenses against total bills of Rs.1,93,212/-. In view of this fact, no further enhancement under this head is justified. Appellant-claimant was granted compensation of Rs.30,000/- for **pain and sufferings**, which keeping in view nature of injuries, nature of treatment, permanent disability, period of hospitalization is totally insufficient and same is accordingly enhanced to **Rs.1,00,000/-**. Since appellant-claimant had suffered permanent disability to the extent of 100%, he would have been deprived of future amenities of life as well as future prospects of life, therefore, he shall be entitled to compensation **for loss of future prospects and future amenities of life** which is quantified at **Rs.1,00,000/-**. The learned tribunal has granted amount of Rs.1,44,000/- towards attendant charges. Keeping in view nature of injuries and 100% disability, I do not find any error in the approach of learned Tribunal. Hence, amount of Rs.1,44,000/- under the head of attendant charges is affirmed. Appellant-claimant was also granted compensation of Rs.8,400/- for special

diet which seems to be on lesser side. Accordingly, compensation for special **diet** is enhanced to **Rs.25,000**. Appellant-claimant was also granted compensation for **transportation charges** @ Rs.10,000/- which is enhanced to **Rs.20,000/-** keeping in view nature of injuries and period of hospitalization. Appellant-claimant must have also suffered loss of income for the time he was under treatment and keeping in view period of hospitalization and nature of injury, it is clearly made out that appellant-claimant must have remained out of job for at least 09 months. Accordingly, compensation for **loss of income** during treatment is assessed as Rs.18,000/- (2,000 X 9).

15. On account of amputation of the legs, appellant-claimant would require an artificial limb. Though no evidence has been placed on record regarding the cost of the artificial limb, considering the factum of amputation, it is evident that the appellant would require such an aid. Accordingly, an amount of **Rs.1,50,000/-** is awarded under the head of **future medical expenses**.

16. Re-worked compensation payable to appellant-claimant is as under:-

Income	Rs.2,000/- per month	Rs.2,000/- per month
Future prospects	25% (2,000+ 500)	Rs.2,500/-
100% Permanent disability	100% of Rs.2,500/-	Rs.2,500/-
Multiplier	14	14
Total loss of earning capacity	Rs.2,500 X 14 X 12	Rs.4,20,000/-
Loss of income during treatment	Rs.2,000 X 9	Rs.18,000/-
Special diet	Rs.8,400/- (as awarded by Tribunal)	Rs.25,000/-

Transportation charges	Rs.10,000/- (as awarded by Tribunal)	Rs.25,000/-
Compenation for medical expenses	Rs.2,00,000/- (awarded by Tribunal)	Rs.2,00,000/-
Attendant charges	Rs.1,44,000/- (awarded by Tribunal)	Rs.1,44,000/-
Compensation for pain and sufferings	Rs.30,000/- (as awarded by Tribunal)	Rs.1,00,000/-
Compensation for loss of future prospects and future amenities of life		Rs.1,00,000/-
Compensation for future medical expenditure and artificial limb		Rs.1,50,000/-
Total compensation awarded by the Tribunal	Rs.7,52,400/-	
Total compensation awarded in appeal		Rs.11,82,000/-
Enhanced compensation	Rs.11,82,000 / (awarded in appeal) - Rs.7,52,400/- (awarded by Tribunal)	Rs.4,29,600/-

17. Appellant-claimant shall also be entitled to interest over enhanced amount to the extent of 7.5% from the date of filing of claim petition till its realization. The liability of respondents to pay compensation shall be as per award.

18. Present appeal is allowed in above terms.

19. Pending application(s), if any, stand disposed of.

(PARMOD GOYAL)
JUDGE

21.07.2026
Sunil Chander

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No