

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.231 of 2022

Vipin Singh Appellant

Versus

Mukesh Chamoli and others Respondents

Present:- Mr. Neeraj Uprety and Ms. Indu Sharma, Advocate for the appellant.
Mr. Mukesh Kumar Kaparuwan, Advocate for respondent no.1 & 2.
Mr. D.C.S. Rawat, Advocate for respondent no.3.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against judgment and award dated 24.03.2022, passed in Motor Accident Petition No.92 of 2020, Vipin Singh Vs. Shri Mukesh Chamoli and others, by the the First Additional District Judge/Motor Accident Claims Tribunal, Rishikesh, District Dehradun, by which, the appellant has been awarded total compensation of Rs.9,64,779/- under various heads.

2. Heard learned counsel for the parties and perused the record.

3. The claim petition is filed by the appellant on the ground that on 20.01.2020, while driving the motorcycle bearing Registration No.UK14B 3380 at Shyampur Rishikesh Road near Durga Temple, a car bearing Registration No.UK14D 5498 ("the vehicle") being driven in a rash and negligent manner, hit the motorcycle of the appellant and his friend. They were seriously injured. They were taken to AIIMS, Rishikesh, District Dehradun. He is paraplegic. He is totally dependent on others for his day-to-day works. He is under medical assistance now. It is also the case

of the claimant that he was working in a tent house and was getting Rs.2,40,000/- per annum. With these and other averments, total Rs.34,00,000/- as compensation were claimed. Objections were filed by the respondents.

4. Based on the pleadings of the parties, total four issues were framed and finding was recorded. The Tribunal held that the accident took place due to the rash and negligent driving of the vehicle. The appellant did not contribute in the accident. The Tribunal also held that the vehicle had all the valid documents at the time of accident.

5. On issue no.4, compensation has been calculated as follows:-

Sl. No.	Item	Amount
1.	Monthly income of the appellant	Rs. 6,500/-
2.	Expenditure of personal expenses ½ of Rs.6,500/-	Rs.3,250/-
3.	The actual income for calculation of compensation	Rs.3,250/-
4.	The Annual Income Rs.3,250 x 12	Rs.39,000/-
5.	80% of Rs.39,000/- towards disability	Rs.31,200/-
6.	Future Loss by applying the multiplier of 18:- Rs.31,200 x 18	Rs.5,61,600/-
7.	40% on Future Prospects	Rs.2,24,640/-
8.	Total Compensation on above Heads	Rs.5,61,600/- + Rs.2,24,640/- = Rs.7,86,240/- (A)
9.	Transportation Charges	Rs.15,000/- (B)
10.	Pain and Agony	Rs.25,000/- (C)
11.	Future Expenses	Rs.50,000/- (D)
12.	Expenditure on treatment	Rs.33,539/- (E)
13.	Nursing Attendant	Rs.30,000/- (F)
14.	Special Diet	Rs.25,000/- (G)
	Grand Total (A+B+C+D+E+F+G)	Rs. 9,64,779/-

6. Learned counsel for the appellant submits that the calculation of compensation has wrongly been held. He submits that it is a case of injury. Therefore, there is no question of

detecting half of the amount on personal expenses. The income as such is to be taken into consideration.

7. Learned counsel for the appellant also raised the following points in his submissions:-

- a) Though the appellant has suffered 80% permanent disability, but it led to 100% earning loss. He is totally bedridden and he is dependent on others for his day-to-day work. He would submit that accordingly, the compensation has to be calculated.
- b) In addition to it, it is argued that for future medical expenses though Rs.5,00,000/- were claimed, but no allowance has been awarded. At least Rs.2,00,000/- minimum should be awarded under this head and accordingly, the compensation should be enhanced.

8. Learned Counsel for the respondent no.3/insurance company would submit that for future medical expenses, Rs.2,00,000/- is on higher sides. He would submit that the appellant is 80% disabled, therefore, 80% loss to earning capacity is just compensation.

9. In the case of injury, there is no question of deduction of personal expenses, therefore, the monthly income of the appellant should be taken as Rs.6,500/- and accordingly, the compensation has to be given.

10. The question is, whether the appellant is entitled to 80% earning loss or 100% earning loss?

11. In the case of Raj Kumar Vs. Ajay Kumar and another, (2011)1 SCC 343, the Hon'ble Supreme Court has considered the concept of disability as well as the loss of earning. In para 19, the law has been summarized by the Hon'ble Supreme Court. It reads as under:-

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 the percentage of loss of earning capacity is the same as the 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 to 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.

12. Disability and earning loss are co-related, but somehow distinct. A person may have 50% disabled without loss of earning. But, in some cases, less percentage of disability may even amount to 100% loss of earning. It depends upon the occupation which a person takes in his life.

13. In the instance case, the claim petition was filed by the appellant through his father. It is stated that appellant is bedridden. He is dependent on his day-to-day works on others. In fact, PW3 Dr. Dharmendra Kumar Tripathi, who had issued the disability certificate, has stated that the appellant is 80% disabled,

it is *Traumatic Paraplegia* with head injury fracture of T 10 vertebra with follow up case of polytrama. PW3 doctor has stated that the appellant even cannot move; he cannot complete his day-to-day work.

14. In the instant case, though the disability of the claimant is 80%, but since he is paraplegia, he is bedridden. He could not do anything on his own. This 80% disability has resulted into 100% of his loss of earning capacity. Therefore, while calculating the compensation, 100% loss of earning capacity has to be taken into consideration.

15. The appellant is paraplegia, 80% disabled. He has not been awarded any compensation for future medical expenses. Rs.5,00,000/- has been claimed. Learned counsel for the appellant has submitted that Rs.2,00,000/- has to be awarded. Learned counsel for the respondent no.3/insurance company has stated that it is on higher sides. There is no mathematical formula to calculate the future medical expenses. It is subject to vary. This Court is of the view that Rs.2,00,000/- under the head of future medical expenses is not on higher sides. The appellant is entitled to it. Therefore, the compensation to which the appellant is entitled is calculated as below:-

Sl. No.	Item	Amount
1.	Monthly Salary	Rs. 6,500/-
2.	The Annual Income Rs.6,500 x 12	Rs.78,000/-
3.	Future Loss by applying the multiplier of 18:- Rs.6,500 x 12 x 18	Rs.14,04,000/-
4.	Future Prospects 40% of Rs.14,04,000/-	Rs.5,61,600/-
5.	Total Income	Rs.19,65,600/- (A)

6.	Future Medical Expenses	Rs.2,00,000/- (B)
7.	Transportation Charges	Rs.15,000/- (C)
8.	Pain and Agony	Rs.25,000/- (D)
9.	Expenditure on treatment	Rs.33,539/- (E)
10.	Nursing Attendant	Rs.30,000/- (F)
11.	Special Diet	Rs.25,000/- (G)
	Grand Total (A+B+C+D+E+F+G)	Rs.22,94,139/-

16. In view of the calculation as aforesaid, the compensation in calculated at Rs. 22,94,139/-. The appellant shall be entitled for interest on the awarded amount @ 9% per annum.

17. The appeal is allowed.

18. The impugned judgment and award is modified to the extent as indicated above.

(Ravindra Maithani, J.)
04.06.2026

Sanjay