

AT CHANDIGARH

FAO No.5472 of 2013 (O&M)

Date of Decision: **March 29, 2016**

Kirti Yadav

...Appellant

Versus

Sunil Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Sandeep Kumar Yadav, Advocate
for the appellant.

Mr.M.B.Jain and Mr.Punit Jain, Advocates for
respondent – Insurance company.

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HARINDER SINGH SIDHU, J.

Kirti Yadav – appellant had met with an accident on 3.6.2011, which occurred due to rash and negligent driving of car No.HR-16J-7001, as a result of which he suffered injuries. He filed claim petition before MACT, Narnaul, which awarded him compensation as under:-

<i>Head of compensation</i>	<i>Amount (in Rs.)</i>
Medical Expenses	33315/-
Pain and suffering	20000/-
Special diet	15000/-
Transportation	15000/-
Loss of future income	52790/-
Loss of amenities	90000/-
Loss of income	2500/-
TOTAL	2,28,605/-

Feeling dissatisfied with the compensation, the injured has filed the present appeal.

The factum of accident and the injuries suffered by the

appellant are not in dispute.

The argument of Ld. counsel for the appellant is that the Tribunal has erred in assessing his functional disability at 5%. In fact it is much more, considering that his disability is permanent in nature and resultantly, he would be rendered unfit for a large number of services including the Armed Forces, Police and even certain private services. Further very little amount has been awarded for 'pain and suffering'. The Tribunal has failed to award any amount under the heads of 'attendant charges' and 'loss of amenities and marriage prospects'.

In **Govind Yadav vs. The New India Insurance Company Limited, 2011(10) SCC 683**, the Hon'ble Supreme Court elaborated on the principles for grant of compensation in personal injury cases and also outlined the heads, under which the compensation is to be awarded, as under:-

“14. In Raj Kumar v. Ajay Kumar 2011(2) R.C.R.(Civil) 101 : 2011(1) Recent Apex Judgements (R.A.J.) 571 : 2010(3) AICJ 453 : (2011) 1 SCC 343, the Court considered some of the precedents and held:

“The provision of the Motor Vehicles Act, 1988 (“the 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 the 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.

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalisation, 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.”*

(emphasis supplied)

15. In our view, the principles laid down in **Arvind Kumar Mishra v. New India Assurance Company Ltd.** (supra) and **Raj Kumar v. Ajay Kumar** (supra) must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.”

The Hon'ble Supreme Court in **Subulaxmi vs. M.D.,Tamil**

Nadu State Transport Corporation and another, 2012(10) SC 177 and

Manickam vs. Metropolitan Transport Corp. Ltd., 2013 AIR (SC) 2629

has held that an injured is entitled to separate amount for permanent disability apart from compensation under the head 'loss of earning' or 'earning capacity'.

In the present case, the appellant, an unmarried young boy, aged 19 years, who was a student of B.Com. in K.L.P. College, Rewari suffered fracture of right eye orbital wall, which resulted in permanent disability to the extent of 30% on account of visual handicap as mentioned in the Disability Certificate Ex.PW5/A, proved on record by Dr.Ashok Yadav (PW5). Dr. Yadav in his cross-examination clearly denied the suggestion that his right eye is functional and recoverable with the passage of time. The appellant remained hospitalised from 3.6.2011 to 14.6.2011. In these circumstances, the assessment of permanent functional disability of the appellant as 5% by the Tribunal does not appear to be commensurate with the nature of the disability. Dr. Ashok Yadav has clearly stated that the right eye is not functional and is not recoverable with the passage of time. In other words, as a result of the accident the appellant has lost the sight of one eye. In these circumstances, there can be no denying the fact that the appellant has been rendered unfit for a large number of services including the Armed Forces, Police etc. Besides, his chances of securing employment elsewhere are also seriously impaired. Accordingly in my view his functional disability is liable to be assessed at least to be 30% and the loss of future income calculated accordingly. There can further be no denying that the injury would considerably impair his marriage prospects for which also he needs to be compensated.

The compensation is re-assessed as under:-

Head	Total
Medical Treatment (as awarded by Tribunal)	Rs.33,315/-
Transportation (as awarded by Tribunal)	Rs.15,000/-
Special Diet (as awarded by Tribunal)	Rs.15,000/-
Pain and Suffering	Rs.50,000/-
Loss of Income during treatment (as awarded by Tribunal)	Rs.2,500/-
Loss of future income (30%)	Rs.3,16,742/-
Loss of enjoyment of life, discomfort, including loss of prospects of marriage	Rs.2,50,000/-
Compensation for permanent disability	Rs.1,00,000/-
TOTAL	Rs.7,82,557/-

Accordingly, the appeal is allowed and the Award of the Tribunal is modified to the extent that the appellant is held entitled to total compensation of Rs.7,82,557/-, that is, Rs.5,53,952/- (782557-228605) over and above the amount awarded by the Tribunal. The interest on the enhanced amount shall be paid at the rate of 7.5% per annum from the date of filing of claim application till realisation.

March 29, 2016

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(HARINDER SINGH SIDHU)
JUDGE