

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

**FAO No.894 of 2005
Date of Decision: 26.04.2019**

Birbal Singla

.....Appellant

Versus

State of Haryana and others

.....Respondents

Coram: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by: Mr. Akshay Bhan, Senior Advocate assisted by
Mr. Rohit Nagpal, Advocate for the appellant.

Mr. Kapil Aggarwal, Addl. A.G. Haryana
for respondents No.1 and 2.

Respondent No.3 already proceeded ex-parte.

Mr. R.M. Suri, and Mr. Sandeep Suri, Advocates
for respondent No.4.

ARUN KUMAR TYAGI, J.

1. The injured-claimant (hereinafter referred to as 'appellant') has filed the present appeal seeking enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal') vide award dated 26.10.2004 passed in **MACT Case No.192 of 2001 titled Birbal Singla Vs. State of Haryana and others** on account of injuries suffered by him in a motor vehicle accident, which took place on 26.09.2000.

2. Briefly stated, the facts which are relevant for disposal of the present appeal are that the appellant filed claim petition under

Section 166/140/141 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 26.09.2000 at about 10.00 a.m., he boarded bus bearing registration No.HR-46A-1228 for going from Kaithal to Pehowa. The bus was being driven by respondent No.3 in a rash and negligent manner. When the bus reached near Village Gumthala Garhu the same dashed against a tree due to which his head struck against the iron pipe of his front seat and he suffered multiple grievous injuries on his head as well as on left eye. FIR No.281 dated 19.10.2000 was registered under Sections 279, and 337 of the Indian Penal Code, 1860 in Police Station, Pehowa, District Kurukshetra regarding the accident. The appellant being aged 41 years was earning ₹35,000/- per month by working as Manager in M/s Saraswati Tractors Corporation, Kaithal Road, Pehowa and Chief Executive in M/s Manchanda Filling Station, Pehowa. After the accident, he was admitted in Amar Hospital, Patiala, where he remained admitted till 03.10.2000. Thereafter he was shifted to P.G.I. Chandigarh where he remained admitted from 05.10.2000 to 14.10.2000. He had lost 75% vision in his left eye and was feeling pain in his head continuously and was unable to do any work. He spent amount of ₹1,00,000/- on his medical treatment. The appellant accordingly sought award of compensation of ₹1,01,40,000/- with costs and interest against the respondents No.1 and 2-owners, respondent No.3-driver and respondent No.4-insurer jointly and severally.

3. The petition was contested by the respondents. In their joint written statement respondents No.1 and 2 denied the accident in

question for want of knowledge and pleaded that registration of FIR after 25 days of the accident by itself proved falsity of the present claim petition. Respondents No.1 and 2 denied their liability while pleading that the offending bus was insured with respondent No.4.

4. Initially respondent No.3 contested the petition. In his written statement respondent No.3 pleaded that the bus was being driven by him in normal speed observing all traffic rules. All of a sudden, a motor cyclist came in front of his moving bus. At that time, it was drizzling as a result of which the road had become slippery. He applied brakes to save the said motor cyclist, but since the road was slippery his bus struck against a Safeda tree by going on katcha portion of the road. No passenger of his bus received injuries and false FIR was registered after 24/25 days. However, subsequently respondent No.3 suffered himself to be proceeded against ex-parte.

5. In its written statement respondent No.4-Insurance Company took objections as to respondent No.1 not having valid and effective driving licence and breach of the terms and conditions of insurance policy. Respondent No.4 denied the accident, controverted the material averments made in the petition and prayed for dismissal of the claim petition.

6. The Tribunal framed the issues and recorded the evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties the Tribunal held that the appellant suffered injuries due to accident caused by rash and negligent driving of the bus by respondent No.3 and awarded compensation of ₹3,35,000/- and

directed respondents No.1 to 4 to pay the same jointly and severally with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization.

7. Feeling aggrieved, the appellant has filed the present appeal.

8. I have heard the learned counsel for the parties and gone through the record.

9. Learned Counsel for the appellant have argued that as per Ex.P-74 date of birth of the appellant is 05.04.1960 and the appellant was aged 41 years at the time of the accident. By oral evidence of PW-7 Meena Singla wife of appellant, PW-5 Dr. Ashwani Gupta, Chartered Accountant and Salary Certificates Ex.P-6 and Ex.P-7 income tax intimation slips Ex.P-9 and Ex.P-10 filed prior to the accident it is proved that the appellant was earning ₹35,000/- per month by working as Manager in M/s Saraswati Tractors Corporation, Kaithal Road, Pehowa and Chief Executive in M/s Manchanda Filling Station, Pehowa. Due to injuries suffered in the accident he had lost 75% vision in his left eye and suffered permanent disability to the extent of 75% in relation to Central Nervous System resulting in low intelligence and poor memory. Due to inability of the appellant to work his functional permanent disability is liable to be assessed as 100%. The Tribunal awarded lumpsum amount of ₹1,50,000/- evidently at the rate of ₹2,000/- per percent on account of loss of future earnings due to permanent disability without applying the multiplier method. In view of his age and permanent nature of his employment and observations in **National Insurance Company Limited Vs. Pranay Sethi and**

Others, 2017 (4) R.C.R. (Civil) 1009 addition of 30% ought to have been made to his income of ₹35,000/- towards future prospects and compensation for loss of future earnings due to permanent disability ought to have been worked out by applying multiplier of 16 as per second schedule of the M.V. Act.

10. Learned Counsel for the appellant have further argued that after the accident, the appellant was taken to Amar Hospital, Patiala, where he remained admitted till 03.10.2000. Thereafter he was shifted to P.G.I. Chandigarh where he remained admitted from 05.10.2000 to 14.10.2000. He spent amount of ₹3,00,000/- on his medical treatment. Due to his being under medical treatment and also permanent disability, the appellant could not maintain and produce all the bills. The Tribunal merely awarded amount of ₹50,000/- towards medical treatment and wrongly denied the remaining amount of ₹2,50,000/- towards medical treatment. The Tribunal awarded lumpsum amount of ₹1,00,000/- towards pain and suffering, mental agony, transportation and attendant and did not award appropriate compensation under the heads of conveyance, attendant, special diet and loss of amenities. The compensation awarded is not just and adequate. Therefore, the appeal may be allowed and compensation awarded may be enhanced.

11. On the other hand, learned counsel for respondents No.1 and 2 and learned Counsel for respondent No.4 have argued that the appellant did not produce any cogent and reliable evidence to quantify loss of future earnings due to functional permanent disability. The observations in **Pranay Sethi's Case (Supra)** are restricted in applicability to death cases and no addition was required to be made

to income of the appellant towards future prospects. The Tribunal rightly awarded a lumpsum amount of ₹1,50,000/- at the rate of ₹2,000/- per percent on account of loss of future earnings due to functional permanent disability. The Tribunal has awarded just and adequate compensation to the appellant and he is not entitled for enhancement thereof. Therefore, the appeal may be dismissed.

12. It is now well settled that in personal injury cases compensation can be awarded under the following heads:-

(1) **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; and
 - (b) Loss of future earnings on account of permanent disability; and
- (iii) Future medical expenses

(2) **Non-pecuniary damages (General damages)**

- (i) Damages for pain, suffering and trauma as a consequence of the injuries;
- (ii) Loss of amenities (and/or loss of prospects of marriage); and
- (iii) Loss of expectation of life (shortening of normal longevity).

Reference in this regard may be made to decisions of Hon'ble Supreme Court in **Raj Kumar Versus Ajay Kumar and another (2011) 1 Supreme Court Cases 343** and **R. D. Hattangadi Versus Pest Control (India) Limited and others 1995 ACJ 366**.

13. So far as the claim of the appellant for expenses relating to treatment, hospitalization and medicines is concerned PW-7 Meena

Singla wife of the appellant examined as his next friend has testified as to suffering of injuries by the appellant in the accident, his medical treatment in Amar Hospital and P.G.I., Chandigarh as pleaded. PW-7 Menna Singla has also testified that they spent amount of ₹3,00,000/- on the medical treatment of the appellant. Testimony of PW-7 Meena Singla is supported by the testimony of PW-1 Dr. Arun Bansal, Neuro Surgeon, Amar Hospital, Patiala and PW-3 B.L. Sharma, Deputy Registrar and Convener, Disability Board, P.G.I., Chandigarh. PW-1 Dr. Arun Bansal, Neuro Surgeon, Amar Hospital, Patiala has testified regarding admission and treatment of the appellant in his hospital and proved medico legal history Ex.P-1 and bill and receipt Ex.P-2 and Ex.P-3. PW-3 B.L. Sharma, Deputy Registrar and Convener, Disability Board, P.G.I., Chandigarh has testified that the appellant remained admitted in P.G.I. from 05.10.2000 to 14.10.2000 and was operated upon for left side endoscopic optic nerve decompression and proved his Disability Certificate Ex.P-4 and Discharge Certificate Ex.P-5. The appellant has also produced bills/receipts Ex.P-2, Ex.P-3, Ex.P-13, Ex.P-14, Ex.P-16, Ex.P-18 to Ex.P-22, Ex.P-26 to Ex.P-40, Ex.P-42 to Ex.P-62, Ex.P-64, Ex.P-65, Ex.P-68, Ex.P-69 and Ex.P-71 to Ex.P-73 which show that the appellant incurred expenses of ₹39,271/- on his treatment. In view thereof the Tribunal has awarded amount of ₹50,000/- to the appellant towards expenses incurred on his medical treatment. The appellant has not examined any other doctor or chemist and has not produced any other bill or receipt to show that the appellant incurred any further amount on his medical treatment. In the absence of examination of the concerned doctors/chemists and

production of the relevant bills/receipts, remaining amount of ₹2,50,000/- claimed cannot be awarded to the appellant on the assumption of the same having been spent by him on his medical treatment. In the facts and circumstances of the case, amount of ₹50,000/- awarded to the appellant by the Tribunal towards expenses incurred on his medical treatment cannot be said to be unjust and inadequate.

14. It is also pertinent to observe here that the appellant has not produced any medical evidence to prove requirement of his medical treatment in future. Therefore, the appellant is not entitled to award of any compensation towards future medical treatment.

15. In the present case, the Tribunal did not award specific amounts towards transportation, attendant and special diet and included the same in the amount of ₹1,00,000/- awarded towards pain and suffering, mental agony, transportation, and attendant etc. instead of specifying the amounts specifically awarded under various heads. PW-7 Meena Singla has testified as to having hired vehicle at the rate of ₹1,200/- per visit for taking appellant to P.G.I. but the appellant has not produced any bills/receipts to prove the amounts spent on transportation, conveyance and attendant. However, it is common knowledge that in such cases expenses are incurred on conveyance, attendant and special diet. In view of the nature of injuries suffered by the appellant and the period of medical treatment and other attendant circumstances, it will be appropriate to award amount of ₹10,000/- towards transportation, ₹10,000/- towards attendant and ₹10,000/- towards special diet.

16. So far as claims as to award of compensation under the head loss of earnings during medical treatment and loss of future income due to permanent disability are concerned, the Tribunal awarded amount of ₹35,000/- towards loss of earnings for one month during medical treatment and amount of ₹1,50,000/- towards loss of future income due to permanent disability which have been challenged to be unjust and inadequate.

17. For proper assessment of the compensation under above-said heads it is necessary to determine income of the appellant at the time of the accident. PW-7 Meena Singla has testified that prior to the accident the appellant was having income of ₹35,000/- per month by serving as Manager in M/s Saraswati Tractors Corporation, Kaithal Road, Pehowa on salary of ₹20,000/- per month and as Chief Executive in M/s Manchanda Filling Station, Pehowa earning ₹15,000/- per month. To corroborate her deposition the appellant has examined Dr. Ashwani Gupta, Chartered Accountant as PW-5 who has proved certificates Ex.P-6 and Ex.P-7 and produced copies of income tax intimation slips Ex.P-9 and Ex.P-10. A perusal of certificate Ex.P-6 and income tax intimation slip Ex.P-9 for the assessment year 2001-02 shows that the appellant was getting salary of ₹20,000/- per month by serving as Manager in M/s Saraswati Tractors Corporation, Kaithal Road, Pehowa. A perusal of certificate Ex.P-7 and Ex.P-10 shows that the appellant was getting amount of ₹15,000/- per month from M/s Manchanda Filling Station, Pehowa as Karta of M/s Birbal Singla and Sons (Hindu Undivided Family). Since, the claimant received the

amount of ₹15,000/- per month from M/s Manchanda Filling Station, Pehowa as Karta of M/s Birbal Singla and Sons (Hindu Undivided Family) the same could not be treated as his personal income. No doubt, the appellant was unable to work in M/s Manchanda Filling Station, Pehowa as Karta of Hindu Undivided Family during the period of his medical treatment due to injuries suffered in the accident and during the subsequent period due to functional permanent disability thereby caused but the Hindu Undivided Family continued and some other member of the family would have become Karta of Hindu Undivided Family and the income as Karta of the Hindu Undivided Family would have continued. Therefore, there would be no loss of income to Hindu Undivided Family and the appellant would have also got a share of the income of Hindu Undivided Family. There is no evidence on record to prove discontinuation of the Hindu Undivided Family or income of ₹15,000/- per month accruing to the appellant as Karta of the Hindu Undivided Family from M/s Manchanda Filling Station, Pehowa. Therefore, the amount of ₹15,000/-, which the appellant was getting as Karta of Hindu Undivided Family, cannot be included in his income at the time of the accident for assessing loss of earnings during medical treatment and loss of future earnings due to functional permanent disability. Therefore, the appellant must be held to be having income of ₹20,000/- per month at the time of the accident. Consequently, the finding of the Tribunal as to income of the appellant at the time of the accident being ₹35,000/- per month being against the evidence on record is liable to be reversed. Accordingly, the compensation of ₹35,000/- awarded by the Tribunal to the appellant

towards loss of earnings for one month during the period of his medical treatment is liable to be reduced to ₹20,000/-.

18. So far as the question of assessment of loss of future earnings due to functional permanent disability is concerned, PW-7 has testified that the appellant is unable to do any work and is without any job due to permanent disability caused by the injuries suffered by him in the accident. This testimony of PW-7 is corroborated by PW-3 B.L. Sharma Deputy Registrar and Convener, Disability Board, P.G.I., Chandigarh who has proved Disability Certificate of the appellant Ex.P-4 which certified that Sh. Birbal Singla age 41 years, male s/o Sh. Babu Ram Singla C.R. No.489459/NS-77246 is case of head injury leading to no vision left eye, low intelligence, poor memory. He is physically handicapped and has 75% impairment in relation to his Central Nervous System. It was further certified that his condition is not likely to improve and re-assessment is not recommended.

19. In **Raj Kumar Vs. Ajay Kumar and another : 2011 (2) RCR (Civil) 101** Hon'ble Supreme Court considered in detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it and in paragraphs No.10, 11 and 13 of its judgment made the following observations:-

“10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii)

whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. **For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in Government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less.** In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in Government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

11. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to 'hold an enquiry into the claim' for determining the 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct

position so that it can assess the 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

13. 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.”

(Emphasis Supplied)

20. In the present case, the appellant suffered from 75% impairment in relation to Central Nervous System due to head injury resulting in loss of vision in left eye, low intelligence and poor memory. In view of 75% impairment in relation to Central Nervous System, the appellant would no longer be able to render managerial services. In the facts and circumstances of the case, functional permanent disability and consequent loss of future earning capacity of the appellant must be considered to be 100%. The Tribunal awarded compensation of ₹1,50,000/- to the appellant on account of loss of future earnings due to permanent disability without applying the multiplier method. The Tribunal was required to assess the loss of future earnings due to functional permanent disability by applying the multiplier method. Reference in this regard may be made to the observations in **Raj Kumar's Case (Supra)**. The appellant was aged about 41 years and was having income of ₹20,000/- per month at the time of the accident to which addition of 25% ($20,000 \times 25/100 =$) ₹5000/- has to be made towards future prospects as per observations made by Hon'ble Supreme Court in para No.61(iv) of its judgment **Pranay Sethi's Case (Supra)** which are also applicable to personal injury cases. In view of the observations in **Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741 (SC)** income tax would be deductible from the above-said income of the appellant. As per rates of personal income tax for the assessment year

2001-02 income tax of ₹67,860/- would be payable on taxable income of ₹2,30,000/- after excluding exempted income of ₹50,000/- and standard deduction of ₹20,000/- out of total income of ₹3,00,000/-. After deduction of income tax net income of the deceased comes to ₹19,345/- per month and ₹2,32,140/- per annum. In view of the age of appellant and the observations made by Hon'ble Supreme Court in para No.21 of its judgment **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77**, multiplier of 14 is applicable and multiplier of 16 given in Second Schedule of the M.V. Act which is restricted in applicability to claim petition under Section 163-A of the M.V. Act is not applicable. In view of the observations made by Hon'ble Supreme Court in para No.20 of its judgment in **Raj Kumar's Case (Supra)** deduction of 1/3rd of the income is not required to be made towards personal expenses of the appellant for assessment of compensation for loss of future earnings due to permanent disability. On application of the multiplier of 14 to the income of the appellant compensation payable to the appellant for loss of future earnings due to functional permanent disability and consequent loss of future earning capacity to the extent of 100% comes to (₹19,345/- X 12 X 14 =) ₹32,49,960/-.

21. So far as the non-pecuniary general damages are concerned, the Tribunal awarded lumpsum amount of ₹1,00,000/- towards pain and suffering, mental agony, transportation and attendant etc. without specifying the amounts under various heads. The Tribunal did not award any amount under the head of loss of amenities. However, in view of the observations made by Hon'ble Supreme Court

in para No. 10 of its judgment in **Raj Kumar’s Case (Supra)** and award of substantial amount as compensation for loss of future earnings on account of functional permanent disability, nominal amounts have to be awarded under the heads of pain and suffering and loss of amenities. In the facts and circumstances of the case, it would be just and proper to award amount of ₹10,000/- towards pain and suffering and ₹10,000/- towards loss of amenities.

22. It follows from the above discussion that the appellant is entitled to payment of compensation as calculated under the following heads:-

Sr. No.	Head	Compensation
1.	Expenses relating to medical treatment, hospitalization and medicines	₹50,000/-
2.	Future medical treatment	-nil-
3.	Expenses relating to Transportation, Special Diet and Attendant	₹30,000/-
4.	Loss of earnings during the period of treatment	₹20,000/-
5.	Loss of future earnings due to functional permanent disability (after deduction of income tax)	₹32,49,960/-
6.	Pain and suffering	₹10,000/-
7.	Loss of amenities	₹10,000/-
8.	Shortening of longevity of life	-nil-
9.	Total Compensation	₹33,69,960/-

23. It follows from the above discussion that the appellant is entitled to payment of amount of ₹33,69,960/- from the respondents No.1 to 4 jointly and severally with costs and interest at the rate of 9% per annum from the date of institution of the petition till realization. Amount of ₹3,35,000/- already awarded to the appellant shall be liable to be deducted from the above-said enhanced amount. On deposit 40% of the enhanced compensation be paid to the appellant in cash

and 60% thereof be deposited in some nationalized bank in five FDRs spread over a period of five years i.e. one, two, three, four and five years respectively.

24. In view of the above discussion, the appeal is allowed with costs in the above terms and award dated 26.10.2004 is modified as discussed above.

(ARUN KUMAR TYAGI)
JUDGE

26.04.2019
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Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No