

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

Date of Decision: 08.03.2019

(1) FAO No. 2433 of 2016 (O&M)

Reliance General Insurance Company Ltd.

.....Appellant

Versus

Riya Munjal and others

.....Respondents

(2) FAO No. 6069 of 2016 (O&M)

Riya Munjal and others

.....Appellants

Versus

Tahir Hussain Khan and others

.....Respondents

(3) FAO No. 2419 of 2016 (O&M)

Reliance General Insurance Company Ltd.

.....Appellant

Versus

Nitin Kumar Julah and others

.....Respondents

(4) FAO No. 4621 of 2016 (O&M)

Nitin Kumar Julah

.....Appellants

Versus

Tahir Hussain Khan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjeev Kodan, Advocate
for the appellant-Reliance General Insurance Company in FAO No.
2433 of 2016.

Mr. Kanish Jindal, Advocate and Mr. Nitesh Singla, Advocate for
Mr. Rishav Jain, Advocate
for appellant in FAO No. 4621, 6069, 4831
(Respondent No.1 in FAO No. 2419 of 2016)

Mr. Arihant Jain, Advocate
for the respondents in FAO No. 2433 of 2016 and
for appellants in FAO Nos. 6069 of 2016

Mr. Naveen Singh Panwar, Advocate
for (Tahir Hussain Khan-driver and Kamal Khan-owner).

Mr. Paul S.Saini, Advocate
for respondent No.5-National Insurance Company
in FAO No.2419, 4621, 6069 of 2016 and
for respondent No.8 in FAO No. 2433 of 2016.

AVNEESH JHINGAN, J.(oral)

These are four appeals filed against award dated 30.1.2016 passed by the Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as 'the Tribunal') under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The appeals arise from same award, these are being disposed of by a common order.

The facts emanating from the record are that on 1.10.2012 Hitesh Munjal alongwith Nitin Kumar and Naveen Kumar was going from Sonapat to Delhi in the car driven by Naveen Kumar. The car was being followed by Vijay Kumar and Virender Mehta in a separate car bearing registration No.HR-10-M-6102. When the car reached near Bakoli Bus stand, a tempo bearing registration No.HR-63-A-5492 (for short 'offending vehicle') was going ahead of the car and driver of the offending vehicle without giving any signal stopped the vehicle on the extreme right side of the road near the divider. The driver of the car applied breaks but rammed into the offending vehicle. As a result of the impact the occupants of the car sustained grievous injuries. Injured were taken to Civil Hospital Narela, from where they were taken to S.R.H.C. Hospital, where Hitesh Munjal was declared brought dead. Others two were taken to MAX Super-speciality Hospital, where Naveen Kumar was declared brought dead. Nitin Kumar-injured remained admitted in the hospital for treatment. FIR No. 342 dated 1.10.2012 was registered at P.S. Alipur, Delhi.

FAO Nos. 2433 and 6069 of 2016

FAO No. 2433 of 2016 has been filed by the insurer of the offending vehicle and FAO No. 6069 of 2016 has been filed by the legal heirs of Hitesh

Munjal. Both the appeals are arising out of MACT Case No. 1866 of 2014.

The claim petition was filed by the legal heirs of Hitesh Munjal. Driver, owner and insurer (i.e. Reliance General Insurance Co. Ltd.) of the offending vehicle and owner of Maruti Wagon-R Car bearing registration No.HR-10-L4373 (for short 'the car') and insurer (i.e National Insurance Company Ltd.) of the car were arrayed as respondents before Tribunal.

In the claim proceedings, it was proved that Hitesh Munjal was 30 years of age. His income tax returns for the assessment years 2009-10, 2010-11, 2011-12 were produced. It was pleaded that he was carrying on Tour and Travel business. The Tribunal relied upon the income tax return for the assessment year 2011-12, considered the income as ₹ 1,64,810/- after deducting income tax payable of ₹ 600/-, $\frac{1}{4}$ th deduction for self-expenses was made and multiplier of 17 was applied. A sum of ₹ 25,26,370/- was awarded along with interest at the rate of 7.5% per annum. The amount awarded included ₹ 1,00,000/- for loss of consortium and ₹ 2,00,000/- for loss of love and affection to the minor children and ₹ 1,00,000/- for loss of estate and ₹ 25,000/- for funeral expenses.

Heard learned counsel for the parties and perused the relevant document produced by them.

Learned counsel for the insurer raises two fold submission-firstly that the Tribunal erred in considering the income as ₹ 1,64,810/- as it included income from other source which continued even after the death of Hitesh Munjal. Secondly, that the amount awarded under the conventional heads are on higher side and no amount is to be awarded for loss of love and affection.

Learned counsel for the claimants argued that no future prospects have been awarded.

It was not disputed that the income from other sources disclosed in the return filed for the assessment year 2011-12 continued even after the death of

From the perusal of the income tax return for the assessment year 2011-12, it is evident that the income under the head business and profession was ₹ 1,45,035/-. There was income of ₹ 26,800/- from other source and income tax payable was ₹ 600/-. The income from other sources shall not be considered for calculating the compensation as that income continues even after the death of Hitesh Munjal. As such, the income of ₹ 1,45,035/- less ₹ 500/- (tax payable) is considered as the earning of the deceased. The compensation shall be calculated on the annual income of ₹ 1,44,535/-.

The deceased was below 40 years of age and self-employed. Having due regard to the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157**, 40% future prospects are awarded.

There is no dispute between the parties with regard to 1/4th deduction made for self-expenses and multiplier of 17 applied.

In consonance with the decision of the Supreme Court in **Pranay Sethi's case (supra)**, the claimants are entitled to ₹ 15,000/- each for loss of estate and for funeral expenses and ₹ 40,000/- is awarded to the widow for loss of consortium. No amount is awarded for loss of love and affection.

In view of the above discussion, the compensation is recalculated as under:

Sr. No.	Particulars	Amount awarded
1.	Annual income	₹ 1,44,535/-
2.	40% future prospects	₹ 57,814/-
3.	1/4 th deduction for self expenses	₹ 50,587/-
4.	Applying multiplier of 17 (151762x17=25,79,954)	₹ 25,79,954/-
5.	Conventional heads	₹ 70,000/-
6.	Total	₹ 26,49,954/-

The award dated 30.1.2016 is modified to the extent that amount awarded of ₹ 25,26,370/- by the Tribunal is enhanced to ₹ 26,49,954/-.

The claimants shall be entitled to the enhanced amount along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the realization of the amount.

Both the above mentioned FAOs are disposed of in the aforesaid terms.

FAO Nos.2419 and 4621 of 2016

FAO No.2419 of 2016 has been filed by insurer and FAO No. 4621 of 2016 has been filed by Nitin Kumar-claimant.

The grievance raised in both the appeals is with regard to quantum of compensation awarded under Section 166 of the Act for 100% disability suffered by the claimant in the accident. The claimant was 23 years old at the time of accident. In the proceedings before the Tribunal, disability certificate Ex.PW14/A issued by Civil Surgeon, Sonipat was produced to prove that the claimant has suffered 100% disability qua the whole body. Dr. S.P. Sharma, SMO General Hospital, Sonapat deposed as PW14 and proved the disability certificate and nature of the injuries sustained by the claimant. The appellant sustained brain disuse axonal, dislocation of right hip, right hemiparesis, fracture of ribs, fracture of femur, multiple hemorrhagic contusion in/onto, vertebra completely damaged, femur repositioned, fracture in right acetabular cup, lost his speaking power/cannot speak a single word, no sensation in the body as the right side of the body has been paralyzed and is in a vegetative stage.

The final bill Ex.P46 was produced and proved. The same was worth ₹ 10,49,438/-. Apart from the final bill, other receipts and bills from various pharmacies Ex.P47 to Ex.P136, were also produced and proved. It was also

In the claim petition, it was pleaded that the claimant was MBA and was working as a Manager in a Hotel and earning ₹ 20,000/- per month. The owner of Hotel Tourist Bunglaw at Paharganj, Delhi, deposed before the Tribunal that the claimant was employed by him as a Manager and he was paying ₹ 20,000/- per month to him. He produced the salary certificate and attendance register. His deposition was not found worth reliance. With regard to the salary paid he admitted that he had not brought any income tax return or Books of account pertaining to the hotel. The Tribunal considering that the claimant was an able bodied person, assessed his monthly income as ₹ 6000/-, applied multiplier of 18 and awarded ₹ 12,96,000/- for loss of future income. In total, a sum of ₹ 37,15,100/- along with interest at the rate of 7.5% per annum was awarded. The details of compensation awarded by Tribunal is reproduced below:

Sr.No.	Particulars	Amount awarded by Tribunal
1.	Towards-Medical treatment/transport Expenses	₹ 16,90,100/-
2.	Towards-Loss of Income/Future Earnings on account of permanent disability	₹ 12,96,000/-
3.	Towards-Expenses on special diet and attendant costs	₹ 3,00,000/-
4.	Towards Pain and suffering, loss of future amenities of life and future medical expenses	₹ 3,00,000/-
5.	Expenses spent on medical equipment	₹ 1,29,000/-
	Total	₹ 37,15,100/-

Learned counsel for the insurer contends that as per final bill Ex.P46 ₹ 10,05,999/- was payable to hospital, the Tribunal erred in awarding ₹ 16,90,100/- for medical treatment and transport expenses. His grievance is that

Tribunal erred in assessing the income assessed of ₹ 6000/- per month. He further contends that the amount awarded for special diet, attendant, pain and suffering, loss of future amenities of life and future medical expenses are on higher side.

Learned counsel for the claimant contends that apart from bill Ex.P46, the other bills were exhibited as Ex.P47 to Ex.P136, which were from various chemists, he defends the amount awarded of ₹ 16,90,100/- for medical treatment. He contends that transportation, attendant, special diet would be required for entire life and hence, the amounts awarded are on lower side. His grievance is that the income assessed needs to be enhanced.

In the claim petition, it was pleaded that the claimant was MBA and was employed as Manager in a Hotel, the employer deposed that he was paying ₹ 20,000/- per month. The claimant is 100% disabled and is paralysed below neck. Various pecuniary and non-pecuniary heads have not been considered by the Tribunal, while awarding compensation. After going through the record, it is evident that though the deceased is alive but he is in vegetative state. Detail of injuries proved by the Doctor are self evident to show the condition he is in.

In cases of death, the courts have to arrive at just and equitable compensation to calculate the loss of dependency suffered by the family members. In cases where there is 100% permanent disability, it is not only the loss of dependency suffered which is to be assessed but various pecuniary and non-pecuniary damages sustained are also to be considered. Especially the fact that apart from injured, entire family is affected.

The Supreme Court in ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another***, (2013) 12 SCC 455, held as under:

"It is settled law that compensation in personal injury cases should be determined under the following heads:

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).

12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident 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."

A perusal of the above decisions shows that in case of personal injury pecuniary damages (special damages) should be given under various heads. It was further held that non-pecuniary damages should also be compensated.

Further the Supreme Court in *Anant son of Sidheshwar Dukre Versus Pratap son of Zhamnnappa Lamzane and another 2018(4) RCR (Civi) 124* held as under:

"5. In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but

also for the non-pecuniary losses which he has suffered due to the injury. The claimant is entitled to be compensated for his inability to lead a full life, and enjoy those things and amenities which he would have enjoyed, but for the injuries.

6. The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.

This Court in **Yadav Kumar v. The Divisional Manager, National Insurance Company Ltd., 2010 (4) R.C.R. (Civil) 155** : explained "just compensation" in the following words:

"It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field."

The parties have not disputed the fact the claimant was MBA. There is no reliable evidence on record to prove the monthly earning of the deceased as the testimony of PW4 does not invoke confidence with regard to payment of salary. It prima-facie appear that the salary of ₹ 20,000/- so claimed is exonerated. The owner of hotel in New Delhi produced a salary certificate and brought attendance register but it was strange to note that either he was not maintaining the books of account or the documents were intentionally not produced. It was further claimed that the said salary was being paid in cash.

Section 40(A)(3) of the Income Tax Act, is quoted below:

"(3) Where the assessee incurs any expenditure in respect of which a payment or aggregated of payments made to a person in a day, otherwise, than by an account payee cheque drawn on a bank or account payee bank draft, [exceeds twenty thousand rupees] no deduction shall be allowed in respect of such expenditure."

From the Section it is forthcoming that the owner of the Hotel shall not get the deduction of payment made to the claimant as salary as his business expenses. Section 40A(3) of the Income-tax Act, 1961 provides that any expenditure incurred in respect of which payment is made in a sum exceeding ₹ 20,000/- otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft, shall not be allowed as a deduction. No prudent businessman will make payment to his employee in cash for which he will not be getting deduction under Income Tax Act, 1961.

In view of the above discussion, the statement of witness cannot be relied upon for assessing the monthly income of the claimant. In the absence of any proof with regard to the monthly earning, one of the safest yardstick is to consider the minimum wages prevalent in the State at the time of accident. The claimant being MBA cannot be considered as an unskilled labourer. He was 23 years of age, with his qualification he had a bright future ahead of him. Considering the above facts, his monthly income is assessed as ₹ 7,000/-, as there is 100% permanent disability, which has made him bed ridden, his future prospects are badly affected, to compensate the same, considering the decisions of Supreme Court in **Pranay Sethi's case (supra)** and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480**, 40% future prospects are awarded.

Multiplier of 18 is applied as per the decision of the Supreme Court in

Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6

SCC 21.

The loss of future income on account of permanent disability is calculated as under:

Sr. No.	Particulars	Amount awarded
1.	Monthly income	₹ 7000/-
2.	40% future prospects	₹ 2800/-.
3.	Multiplier of 18 (9800 x12x18)	₹ 21,16,800/-.

The challenge of learned counsel for the insurer to the amount awarded of ₹ 16,90,100/-, towards medical treatment and transport expenses is not well founded. There is final bill of ₹ 10,05,999/- of the hospital, apart from the said bill, there are exhibits for purchase of medicine etc. from medical stores outside the hospital, the same were produced and proved. The amount awarded by the Tribunal of ₹ 16,90,100/- included transportation expenses also. There being 100% disability, special transportation would be required through out his life. He would not be able to move of his own and there would be need of specialized vehicle even for taking him for check up. In such circumstances, no interference is called for in the amount awarded by the Tribunal of ₹ 16,90,100/-.

The Tribunal awarded of ₹ 3,00,000/- towards expenses for special diet and attendant charges. The claimant being bed ridden would not be able to have normal food and would require special diet for rest of his life. An attendant would also be required around the clock. Considering the said fact, the amount awarded of ₹ 3,00,000/- is enhanced to ₹ 4,00,000/-.

₹ 3,00,000/- was awarded towards pain and suffering and loss of future amenities of life and medical expenses. For the facts noted above, the pain and suffering is not being suffered only by the claimant but the entire family. There would be continues expenses for medicines for rest of his life. The said amount is

enhanced to ₹ 4,50,000/-.

The expenses spent on medical equipment have been duly proved and are maintained as it is i.e. ₹ 1,29,000/- with the type of injuries and disability.

There would be shortening of life and loss of marriage prospects. To compensate both the heads ₹ 3,00,000/- are awarded for these two heads.

In view of above discussion, the compensation is re-calculated as under:-

Sr. No.	Particulars	Amount awarded
1.	Loss of income	₹ 21,16,800/-.
2.	Medical expenses and transportation charges	₹ 16,90,100/-
3.	Special diet and attendant charges	₹ 4,00,000/-
4.	Pain and suffering, loss of future amenities of life and medical expenses	₹ 4,50,000/-
5.	Expenses spent on medical equipment	₹ 1,29,000/-
6.	Shorteneing of life and loss of marriage prospects	₹ 3,00,000/-
7.	Total	₹ 50,85,900/-

The award dated 30.1.2016 is modified to the extent that amount awarded of ₹ 37,15,100/-by the Tribunal is enhanced to ₹ 50,85,900/-.

The claimants shall be entitled to the enhanced amount alongwith interest at the rate of 7.5% per annum from the date of filing of the claim petition till the realization of the amount.

Both the above said FAOs are disposed of in the aforesaid terms.

08.03.2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes
Whether Reportable: Yes