

(206)

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

**FAO-3476-2001 (O&M)
Date of Decision: 18.08.2022**

Rattan Singh @ Mika

...Appellant

Versus

Satbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Vibha Nagar, Advocate for
Mr. Pritam Singh Saini, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for the respondent No.3-Insurance Company.

HARKESH MANUJA, J.(ORAL)

1. Present appeal has been filed against the award dated 05.04.2001 passed by the learned Motor Accident Claims Tribunal, Panipat (for short 'Tribunal') whereby, a sum of Rs.2,05,000/- has been awarded as compensation in favour of the injured appellant along with interest at the rate of 9% per annum from the date of filing of claim petition till its realization.

2. Brief facts of the case are that appellant sustained injuries in a road accident dated 03.09.1998 on account of rash and negligent driving of the offending vehicle i.e. Canter bearing registration No.HR-10-A-1793 being driven by respondent No.1.

3. In the claim petition filed at the instance of appellant, learned Tribunal held that the accident occurred on account of rash and negligent driving of the offending vehicle being driven by

respondent No.1 and awarded a sum of Rs.2,05,000/- as compensation along with interest at the rate of 9% per annum. The details of compensation awarded by the learned Tribunal are mentioned hereinbelow :-

Date of Accident		03.09.1998
Sr. No.	Heads of Claim	Amount (Rs.)
1.	Expenses on account of medicines	25,000/-
2.	Compensation for Special diet	10,000/-
3.	Pain and suffering, loss of income during the period he remained under treatment & loss of future earnings	1,70,000/-
	Total	2,05,000/-

4. Learned counsel for the appellant has contended that as a result of the accident in question, appellant suffered multiple grievous injuries including fractures on right leg i.e. right Tubrocity (R) Humas (on Rt. Shoulder), Fracture on lat. Condyle Rt. Femur (Rt. Knee) Fracture on Shaft Femur; and Fracture on 2nd, 3rd, an 4th metacorpoal (Rt. Foot), resulting into 50% operational physical disability. It has been further contended that on account of 50% disability which has been functional in nature, a sum of Rs.1,70,000/- was awarded to the appellant under the joint heads of pain and sufferings, loss of income for the period, the appellant remained under treatment including loss of future earnings without assessing his annual income. Learned counsel has further argued that compensation under the head “loss of income during the period he remained under treatment” as well as “loss of future earnings” should have been awarded separately after assessing the annual income and future prospects in accordance with the settled

law of the Hon'ble Supreme Court in catena of judgments. Learned counsel also pointed out that at the time of accident, the appellant was 22 years of age and was working as a TV/VCR mechanic and the injuries suffered in the accident affected his matrimonial prospects which also resulted into mental and physical agony in life, besides praying for compensation under other heads as well.

5. On the other hand, learned counsel for the insurance company has submitted that considering the injuries suffered by the appellant, he has been adequately compensated by granting just and suitable compensation under the head of pain and suffering, besides compensation awarded under the other heads and, therefore, the award warrants no interference.

6. Having heard learned counsel for both the parties as well as on a careful perusal of the injuries suffered by the appellant as delineated in paragraph No.10 of the impugned award and also the permanent disability certificate (Ex.PA) which shows 50% disability of appellant, I am of the considered view that there is merit in the contention of learned counsel for the appellant.

7. The present being a case of permanent operational/functional disability, Learned Tribunal should have first assessed the annual income of the appellant and then, proceeded to calculate compensation under the head "loss of income" for the period he remained under treatment" as well as "loss of future earnings" based on the functional disability. The appellant made a very categorical averment that he had been working as TV/VCR mechanic which has not been rebutted by the respondents in so many words. With regard to the income of the claimant/ appellant, who was allegedly working in

an unorganized sector, it has been held in catena of judgments that in such a scenario it was not possible for him to prove his income by leading cogent documentary evidence. Reliance in this regard can be placed on the judgment of Hon'ble Supreme Court in **Syed Sadiq and others Vs. Divisional Manager, United Insurance Company Limited**, (2014) 4 SCC 735, wherein in para 8, it has been observed as under:-

“8. The appellant/claimant in his appeal further claimed that he had been earning Rs.10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs.3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income.....”

Thus, even if the appellant has not been able to produce any documentary evidence to prove that he was working as a TV/ VCR mechanic, in the absence of any cogent reason or without finding any inconsistency in his statement, he cannot be disbelieved. Therefore, considering the appellant to be a semi-skilled labourer and taking minimum wages as applicable in the year 1998, his monthly income could be safely assumed to be around Rs.2000/-per month.

8. Appellant suffered 50% permanent operational disability on account of injuries suffered in the accident, as detailed in the preceding part of this judgment, thereby restricting his movement of leg, thereby causing loss of earning capacity due to reduced mobility. Though it is

settled law that the functional disability could be more or less than the permanent disability shown in the disability certificate depending upon the nature of work being performed by the claimant/appellant, however, in the facts and circumstances of this case, functional disability would remain at 50%. Therefore, in view of the law laid down by the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) 77 as well as **'Kajal vs. Jagdish Chand and others', 2020 (2) R.C.R. (Civil) 27**. claimant/appellant would be entitled to Rs.2,16,000/- (Rs.2000 x 12 x 18 x 0.5) on account of loss of future income. Relevant portion of paragraph 5 & 6 of **Kajal's** case (supra) is reproduced hereunder for reference:-

"5. The principles with regard to determination of just compensation contemplated under the Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as (i) loss of earning; (ii) expenses on treatment which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. Damages can be pecuniary as well as non-pecuniary, but all have to be assessed in Rupees and Paise.

6. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the

compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.”

9. Further, in view of the law laid down by the Hon'ble Supreme Court in '**National Insurance Company Limited vs. Pranay Sethi and others**' **2017(4) R.C.R (Civil) 1009**, considering the age of the injured which is 22 years, he shall also be entitled to 40% appreciation under future prospects.

10. As per the documents available on record, it has been held by the Id. Tribunal that the appellant remained admitted in the hospital for a period of two months and must have remained on bed thereafter. However, learned Tribunal failed to take into account the loss of income during the entire period of treatment when the appellant was not able to pursue his avocation whether as in-patient or out-patient. Therefore, loss of income has to be calculated and awarded for the period of treatment and even for a period of six months beyond that as on account of injuries suffered by the appellant and treatment being availed, he could not have been able to earn his livelihood.

11. In addition, considering the age of the injured to be 22

years at the time of the accident, appellant needs to be suitably compensated on account of loss of marriage prospects in future. Injuries have resulted into functional disability of the appellant, thereby affecting his employment efficiency as well as physical status. Sight cannot be lost of the fact that Indian Society is very conservative while arranging the marriages and the physical status and the avocation of the prospective groom are prime considerations. On this aspect, I am supported by the law laid down by Hon'ble the Supreme Court in case titled **'Pappu Deo Yadav vs. Naresh Kumar and others', 2020 (4) R.C.R. (Civil) 404**, relevant paragraph No.22 is reproduced hereunder:-

"22. In parting, it needs to be underlined that courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nitpick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured

victim.”

12. Learned Tribunal also erred in law while not awarding any compensation under the head of ‘attendant charges’ and ‘transportation charges’ merely on account of absence of any documentary evidence. In my considered opinion, it is always not possible to adduce the documentary evidence in such cases, however, the expenses incurred under these heads cannot be denied when the treatment continued for such a long time. Further, the claimant/ appellant should have been suitably awarded under other relevant heads as well, which are applicable in the facts and circumstances of this case considering the nature of injuries. However, the compensation of Rs.1,70,000/- was awarded under the head ‘Pain and Sufferings’, ‘loss of future earning’ and ‘loss of income during treatment’; but as the compensation under ‘loss of future earning’ and ‘loss of income during treatment’ has been calculated separately, the compensation under the head ‘pain and sufferings’ has to be adjudicated independently and same would thus obviously be now on the lesser side.

13. In view of what has been stated hereinabove, the appellant shall be entitled for the grant of following compensation:-

Sr. No.	Nature	Amount in Rupees
1.	<i>Annual Income of deceased (Rs.2000x 12)</i>	<i>Rs.24,000/-</i>
2.	<i>Add 40% of Future prospects</i>	<i>Rs.9600/-</i>
3.	<i>Total Income (Rs.24000/- + Rs.9600/-)</i>	<i>Rs.33600/-</i>
4.	<i>Multiplier of 18 as per age of 22 years (Rs.33,600 /- X 18)</i>	<i>Rs.6,04,800/-</i>
5.	<i>Loss of future earning capacity/ income</i>	<i>Rs.3,02,400/-</i>

	<i>[50% (percentage disability) of total income]</i>	
6.	<i>Medical Expenses</i>	<i>Rs.25,000/-</i>
7.	<i>Pain and sufferings</i>	<i>Rs.50,000/-</i>
8.	<i>Disability to the extent of 50%</i>	<i>Rs.50,000/-</i>
9.	<i>Compensation for special diet</i>	<i>Rs.10,000/-</i>
10.	<i>Transportation and attendant charges</i>	<i>Rs.20,000/-</i>
11.	<i>Loss on account of marriage prospects</i>	<i>Rs.50,000/-</i>
12.	<i>Loss of income during treatment (Rs.2000 x 8) [for eight months]</i>	<i>Rs.16,000/-</i>
13.	<i>Future medical expenses</i>	<i>Rs.15,000/-</i>
	Total Compensation	<i>Rs. 5,38,400/-</i>
	Amount Awarded by the Tribunal	<i>Rs.2,05,000/-</i>
	Enhanced Amount	<i>Rs.3,33,400/-</i>

14. The appellant shall also be entitled for award of interest of 9% per annum on the amount of compensation awarded to him from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted out of the enhanced compensation.

15. Pending miscellaneous applications, if any, stand disposed of.

(HARKESH MANUJA)
JUDGE

August 18, 2022
Manpreet

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