

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

FAO-6056-2010 (O&M)

Date of Decision: August 30, 2022

Imran

..... Appellant

Versus

Kallu and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Vikas Kumar, Advocate for the appellant.
Mr. Sanjeev Pabbi, Advocate
for respondent No.2-Insurance Company.

HARKESH MANUJA, J.

Present appeal has been filed against the award dated 29.04.2010 passed by learned Motor Accident Claims Tribunal Faridabad, (hereinafter referred to as 'the Tribunal'); whereby a sum of Rs.5,19,000/- has been awarded as compensation in favour of appellant-injured along with interest @ 7.5% per annum from the date of institution of the claim petition till its realization.

Brief facts which lead to the filing of the present appeal are that on 12.08.2008 at about 1.00 PM, appellant-claimant was going to his Village Dhauj along with his father on a motorcycle. When they reached at a distance of 100 sq. yards from Village Mohbtabad Mor, one Alto Car bearing registration No. HR-51-V-7130, being driving by respondent No.1 in a rash and negligent manner, hit their motorcycle due to which both fell down and appellant/ claimant sustained multiple grievous injuries all over his body including head injury and fractures in his right fore-arm and right leg.

After going through the claim petition and evaluating the evidence led by both the parties, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of respondent No.1. In view of the nature of head injury with Diffuse Axonal injury & Spastic quadriparesis and the evidence that the appellant became permanent disabled to the extent of 75% (Disability Certificate Ex.PB1), awarded compensation in the following manner:-

Sr. No.	Heads of claim	Amount (in Rs.)
1.	<i>Expenses on treatment</i>	<i>Rs.2,75,000/-</i>
2.	<i>Pain and sufferings</i>	<i>Rs.50,000/-</i>
3.	<i>Permanent disability</i>	<i>Rs.1,50,000/-</i>
4.	<i>Attendant Charges</i>	<i>Rs.12,000/-</i>
5.	<i>Nutritious Diets</i>	<i>Rs.12,000/-</i>
6.	<i>Loss of Studies</i>	<i>Rs.20,000/-</i>
	Total	Rs.5,19,000/-

Learned counsel for the appellant/ claimant contends that no compensation has been awarded on account of loss of earning capacity as the appellant suffered 75% disability and because of the disability, claimant/ appellant would never be able to work with full efficiency and will always be on the back of the row while seeking work opportunities. He again contends that learned Tribunal should have first assessed the notional income of the claimant and then after considering the permanent disability suffered by the claimant; future loss of income should have been calculated based on his functional disability. He further contends that no compensation has been awarded on account of loss of prospects of marriage while on account of the permanent disability suffered by the claimant/ appellant, his prospects of marriage would be severally affected.

He further contents that on the other heads either no compensation has been awarded; or it is on extremely lower side.

On the other hand, learned counsel for respondent No.2- Insurance Company submits that considering the injuries suffered by the appellant and other facts and circumstances of the case, he has been adequately compensated and hence, present appeal is liable to be dismissed.

I have heard learned counsel for the parties, perused the paper-book as well as gone through the records of the case. I find force in the arguments advanced by learned counsel for the claimant/ appellant. Before proceedings further let us try to understand medical and physical impact of the injuries suffered by the appellant as delineated in the disability certificate Ex.P81 and their impact on his life in following manner:-

- (a) Diffuse Axonal Injury: It is common for such individual to have difficulty with thinking skills especially for memory & learning new information.*
- (b) Spastic Quadriplegia: Unusual stiffness of muscles- inability to control specific motion of arms, legs, feet or head.*

In this case, the claimant/ appellant was a student of 11th class and it was stated by PW9 Akbar (his father) that he had been assisting her mother in running the shop. Even otherwise, the Hon'ble Supreme Court in **Kajal Vs. Jagdish Chand and others**, reported as 2020 (2) RCR (Civil) 27, observed that:-

“20. Both the courts below have held that since the girl was a young child of 12 years only notional income of Rs.15,000/ per annum can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than Rs.15,000/ per annum. Each case has to be decided on its own evidence but taking notional income to be Rs.15,000/ per annum is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is Rs.4846/ per month. In our opinion this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be Rs.6784.40/ per month, i.e., 81,412.80 per annum. Applying the multiplier of 18 it works out to Rs.14,65,430.40, which is rounded off to Rs.14,66,000/-.”

In view of the observations of the Hon'ble Supreme Court, it cannot be ruled out that as a minimum the claimant/ appellant would have at least earned the income of a skilled labour, had he not been incapacitated on account of the disability suffered by him in the accident. Since he was a child and his functional disability cannot be determined as it was not known which profession he would pursue, however, considering the injuries and their impact, I am taking permanent disability as the functional disability while calculating the future loss of income. Further, future prospects @ 40% should have been awarded in view of the law laid down by the Hon'ble Supreme Court in **Pappu Deo Yadav vs. Naresh Kumar and others', 2020 (4) R.C.R. (Civil) 404.**

I also find force in the argument of learned counsel for the claimant/ appellant that the compensation awarded on account of permanent disability is on extremely lower side. In ***Master Mallikarjun Vs. Divisional Manager, the National Insurance Company Limited & Anr.*** reported as 2013 (4) RCR (Civil) 295, wherein it was held as under:-

“12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.”

Therefore, as per the law laid down in **Master Mallikarjun’s** case (supra), claimant/ appellant should have been awarded Rs.5 lacs as he suffered 75% permanent disability.

In addition, considering the age of the injured to be 16 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 permanent disability of 75% of the appellant, which in turn will affect his marriage prospects to a large extent. 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. In my considered opinion, on this count as well, the appellant should be adequately compensated by awarding a sum of Rs.1 lac.

With respect to the transportation charges, claimant/ appellant brought on record bills/ receipts amounting to Rs.16450/-, however, learned Tribunal rejected their plea on the ground that the same are not genuine. However, the fact remains that when the claimant/ appellant remained in hospital for about a month, he should have spent some amount on transportation and therefore, sum of Rs.10000/- in lumpsum are awarded under this head. Besides it, the medical record also shows that the injured was repeatedly advised physiotherapy, accordingly another sum of Rs.50,000/- is awarded under this head, including for future prospects in this regard.

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.	Annual Income of deceased (Rs.4000x 12)	Rs.48,000/-
2.	Add 40% of Future prospects	Rs.19200/-
3.	Total Income (Rs.48000/- + Rs.19200/-)	Rs.67200/-
4.	Multiplier of 19 as per age of 16 years (Rs.67200 /- X 19)	Rs.1276800/-
5.	Loss of future earning capacity/	Rs.9,57,600/-

	<i>income [75% (percentage disability) of total income]</i>	
6.	<i>Medical Expenses</i>	<i>Rs.2,75,000/-</i>
7.	<i>Pain and sufferings</i>	<i>Rs.50,000/-</i>
8.	<i>Disability to the extent of 75%</i>	<i>Rs.5,00,000/-</i>
9.	<i>Compensation for special diet</i>	<i>Rs.12,000/-</i>
10.	<i>Transportation and attendant charges (Rs.10000 + Rs.12000)</i>	<i>Rs.22,000/-</i>
11.	<i>Loss on account of marriage prospects</i>	<i>Rs.1,00,000/-</i>
12.	<i>Loss of Studies</i>	<i>Rs.20000/-</i>
	Total Compensation	Rs.19,36,600/-
	Amount Awarded by the Tribunal	Rs.5,19,000/-
	Enhanced Amount	Rs.14,17,600/-

The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon’ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513 approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claims shall be deducted from the enhanced compensation.

It may be relevant to point out here that the appellant had claimed a sum of Rs.10 lacs as compensation in this claim petition filed before the learned Tribunal, still, considering the facts and circumstances

of the present case as regards the injuries suffered by him and their impact on his future life, he is being awarded compensation in the aforementioned terms being the just and fair one.

Consequently, the present appeal is disposed off in the manner indicated above.

Pending miscellaneous application(s), if any, shall also stand disposed of.

August 30, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>