

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-6785-2019 (O&M)
Date of decision: 16.08.2022

Shri Ram General Insurance Company Ltd.

.... Appellant

Vs.

Satprakash and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: None for the appellant.

Mr. Akshay Jindal, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal is to set aside the judgment dated 07.08.2019 passed by the Motor Accident Claims Tribunal-1, Gurugram, vide which an amount of Rs.37,20,000/- along with interest @7.5% per annum from the date of institution of the claim petition till the realization of whole amount of compensation, was awarded.

Brief facts of the case are that claimant Satprakash, aged about 42 years, was working as Customer Care Executive with SRS Ltd., Gurugram and was getting salary of Rs.9,000/- per month and he met with

an accident due to rash and negligent driving of truck bearing registration No.HR-74A-2230, by Asru. A claim petition was filed by Satprakash through his wife Munesh Devi. The Tribunal, on issue No.1, recorded a finding that the accident in question was caused due to rash and negligent driving of the offending vehicle bearing registration No.HR-74A-2230, by Asru, which resulted into multiple injuries to the claimant.

Claimant Satprakash, with regard to compensation, examined his wife Munesh Devi as PW2 as well as PW3 Dr. Renu Saroha, Deputy Civil Surgeon, GH, Sector-10, Gurugram, who proved disability certificate Ex.P3. While deciding issue No.2, regarding assessment of just and fair compensation, the Tribunal recorded the following findings: -

“21. In order to prove the quantum of compensation, it is a fact that the injured-claimant himself has not stepped into the witness box because it is proved from the testimony of PW-3 Dr. Renu Saroha, Deputy Civil Surgeon, General Hospital, Sector 10, Gurugram, a Member of the Disability Board, who proved the disability Certificate, Ex.P-3, coupled with the medical record that the claimant has suffered a disability to be of more than 60% on account of fracture of the different limbs and disability of ophthalmology and he is not even mentally stable on account of the impact of the injuries. Then it is also a fact that during the course of arguments the claimant was also produced before the undersigned on a wheel chair and on interaction, he was not able to interact, speak but he was trying to interact through signals.

22. Then the medical record shows that on account of this accident he has suffered multiple fractures including (i)

fracture of left pterygoid plates is noted; (ii) fracture of mid portion of bony nasal septum; (iii) fracture of right petrous part of temporal bone (longitudinally oriented), coursing through the right middle ear and up to the right lateral wall of sphenoid sinus. Further extension to the roof of sphenoid sinus and cribriform plate of ethmoid is noted on right side; (iv) fracture of right limb of lambdoid suture is also noted. And thus it is proved that he is not in a position to face the cross-examination and to make any statement on account of various medical issues. On the contrary, his wife when stepped into the witness box as PW-2 has categorically stated that on account of accident the claimant sustained serious injuries including multiple fractures as a result he has become permanently disabled and not able to live like a normal person at his own. His mental condition is also not good. The testimony of this witness remains unrebutted on various issues

23. Then as mentioned above, we have detailed medical record of the claimant on record which shows that after being hit by the Dumper, the claimant was taken to Medanta Hospital on 07.10.2016 where after initial treatment he got himself discharged and then shifted to Aarvy Hospital where he remained admitted in ICU till 14.10.2016 and after treatment it was found that there was no response to the verbal commands and ultimately he remained admitted there upto 24.10.2016 but on the same night he was again shifted to the hospital and then was again admitted in the ICU and ultimately he was discharged from the hospital on request on 26.10.2016 and at the time of discharge also there was no response to the verbal commands. He was non-reactive, no response to the painful stimuli and it was in high distress. Then it is a fact that being

an employee of a private company he was also taken to ESI Hospital, Gurugram from where he was again referred to the higher hospital and then again brought to the Aarvy Hospital. Lastly, he was again taken to Artemis Hospital on 31.10.2016 as his condition remains as it is. Where he remained admitted upto 07.11.2016 and at the time of discharge he was again asked to come up for neuro surgery OPD of Dr. Aditya. This entire medical records remains unrebutted and goes to prove that the claimant has suffered serious injuries and made him permanently disabled physically as well as mentally.

24. Then it is also argued by the counsel for the claimant that since the claimant was not in his senses and he is being taken care of by his wife on a wheel chair as he cannot do anything at his own and the doctors have diagnosed him a neurological problems but no further treatment of the claimant was taken although he was under treatment through OPD for a long time and still not fit. Thus from the medical evidence on record coupled with the disability certificate proved by PW-3, it is proved that the claimant suffered multiple injuries including fractures and neurological problems including problems to his eyes and he was brought to the Court on a wheel chair and was not in a position to talk or respond. The undersigned made repeated efforts to interact with him and thus it can be safely held he is a case of 100% disability on account of the multiple medical problems and on account of his family's bad condition no further treatment is being taken by him and he is being taken care of by his wife and thus keeping in view all facts and circumstances including the peculiar fact that on account of the disability suffered by him he is permanently disabled physically as well as mentally and

requires care and support throughout his life.

25. As far as pecuniary loss is concerned, from the entire medical evidence on record as discussed above coupled with the medical bills and other documents, it comes out that the claimant has incurred about ₹18,22,994/- including hospitalization, purchase of medicines and other charges during his treatment. Thus, in total, claimant is held entitled to this sum of ₹18,23,000/- (in round figure) as compensation on account of expenses incurred on hospitalization and treatment.

*26. Now let us take the question of compensation on account of disability suffered by the claimant. Before taking the question of compensation and its quantum, let us take what is the legal position as far as the general principles relating to compensation in injury cases and Assessment of future loss of earnings due to permanent disability, is concerned. However this issue is no more res integra as legal principles on the issue are settled at rest by the Hon'ble Apex Court and recently in **Raj Kumar Vs. Ajay Kumar and others, 2011(1), ACJ, 1**, the Hon'ble Apex court after considering the entire case law laid down that:-*

“The provision of the Motor Vehicles Act, 1988('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 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 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. (See C.K.Subramonia Iyer Vs. T. Kunhi Kuttan Nair, 1970, ACJ, 110(S.C.), R.D.Hattangadi Vs. Pest Control (India) Pvt. Ltd., 1995 , ACJ, 366(SC) and Baker Vs. Willoughby, 1970 ACJ, 259(HL,England).

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

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 no been injured, comprising:

(a) Loss of earnings 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. Assessment of pecuniary damages under item (i) and under item(ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses—item(iii)---depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages-- items(iv),(v)and (vi)--involves determination of lump sum amounts with reference to circumstances such as age, nature of injury, deprivation and disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability—item(ii)(b). We are concerned with that assessment in this case.

27. Similarly the Hon'ble Apex Court further laid down the guidelines to assess the compensation on account of future

loss of earning due to permanent disability and laid down that:-

“Therefore, the Tribunal has to first decide whether there is any permanent disability and if so, the extent of such permanent disability. This means that Tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement; (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

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 (sic disability) (this is also relevant for awarding compensation under the head 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 per cent. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, 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 per cent as in the case of a driver or carpenter, nor 60 per cent 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 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 be found suit able 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 per cent (or even anything more than 50 per cent), 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 be.”

*28. Applying the above said proposition of the law to the facts in hand, it comes out that so far as the loss of future income on account of disability is concerned, from the testimony of PW-3 Dr. Renu Saroha, it is proved that the claimant has suffered a disability of 50% on account of orthopedic complications and additional disability of 20% on account of ophthalmological issues. Besides this it is also proved that he has also suffered neurological setback and thus a case of 100% disability as it is a fact that he was never examined by neurological expert after his treatment as he suffered neurological loss also as observed above and thus as per the proposition of law and principle settled in **Raj Kumar case supra**, sine the present medical condition of the claimant is*

very pathetic as discussed above and he is proved to be a permanently disabled person physically as well as mentally and thus it is a fact that he is not in a position to earn his livelihood and has to depend upon his family for whole life even for his daily chores. And thus he is to be compensated for the future loss on the basis of multiplier method after assessing his income and future loss after adding the future prospects etc.

29. Accordingly in order to prove his profession and income his wife has stated that the injured-claimant was working as a Customer Care Executive at SRS Limited, Sector 57, Bestech Mall, Gurugram and was earning about 9000/- ₹ per month. No doubt, as admitted by the wife of the claimant no documentary proof has been placed on record to prove the employment of the claimant. But even otherwise, if we treat the claimant to be an unskilled labourer in all probabilities he must be earning about 9000/- per month at the time of this ₹ accident. As he is a married person and having a family to support and was aged about 43 years at the time of accident and thus taking from any angle it is a fact that he must be earning 9000/- per month and by passage of time his income ₹ must increase even if it was a private job. As such, for want of any contrary evidence and rebuttal of this evidence and taking into consideration the account of nature of the injuries and disability and its overall impact it can be safely said that in all circumstances the claimant is entitled for future loss of income by treating his salary as 11000/- per month or 1,32,000/- ₹ ₹ per annum and multiplying it with a multiplier of 14, it is held that the claimant is entitled to ₹18,48,000/- (11,000x12x14) ₹ towards loss of income present and future on account of

disability suffered in this accident as well as all charges to have an attendant to take care of him as he is not in a position to take care of himself at his own and it also includes future medical requirement.

30. As far as non-pecuniary damages under other heads such as loss on account of pain and suffering, expenses incurred on special diet, transportation etc. and other heads etc. is concerned, admittedly, the claimant has suffered pain during treatment and even after that because of these injuries suffered in this accident and he has to remain on bed for such period and thus, he suffered the loss of amenities of life also during this period. Then he must have approached the hospital for follow up treatment and incurred some amount on transportation and have to take special diet to make him fit for doing his work. Accordingly, keeping in view the nature of the injuries and its treatment and other facts and circumstances, a lump sum amount of ₹49,000/- (Rupees forty nine thousand only) is also granted to the claimant under all the heads. Thus, in all, claimant is held entitled to a total sum of ₹37,20,000/- (₹ Thirty Seven Lakhs Twenty Thousand only) as compensation for the injuries suffered by him in this accident.

31. Now it is to be seen who is liable to make the payment of the amount of compensation. The offending vehicle was insured with respondent No.3, driven by respondent No.1 and owned by respondent No.2 at the time of this accident. Resultantly all the respondents will be liable to pay the compensation jointly and severally. Hence, this issue is answered in favour of the claimants and against the respondents subject to findings on issue No.3.”

The Insurance Company filed the present appeal challenging

the quantum of compensation as assessed by the Tribunal and operation of the impugned award beyond disbursement of Rs.27.00 lacs was stayed, which is continuing since 2019.

Today, none appeared for the appellant-Insurance Company.

The photocopy of lower Court record was provided by learned counsel for the respondent-claimaint.

It is case of the appellant-Insurance Company that the Tribunal considered permanent disability of injured Satprakash to the extent of 100%, whereas, as per disability certificate, it cannot be more than 60%. It is further stated that in the absence of any income proof or income of the claimant, minimum wages, as prescribed by the Govt., should be taken as income of the claimant, therefore, amount of Rs.37,20,000/- has been wrongly assessed. It is also stated that as per disability certificate, the Medical Board opined disability of limbs – 50% (in consultation with Orthopedic Surgeon), disability of the ophthalmology- 20% and combined disability-59%. The disability certificate is dated 25.07.2018, whereas subsequently statement of PW2 Munesh Devi wife of the claimant was recorded, who also produced the claimant before the Tribunal, at the time of recording of her statement. The Presiding Officer interacted with the claimant and only thereafter, it was found that the claimant had, in fact, suffered 100% disability on account of his multiple medical problems due to accident.

Learned counsel for respondent No.1-claimant has submitted

that out of total amount of compensation awarded by the Tribunal, Rs.18,23,000/- have already been incurred on the hospitalization and medical treatment of the claimant, who suffered multiple injuries in the accident. It is further submitted that in terms of judgment of the Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar and others, 2011 (1) ACJ 1**, as relied upon by the Tribunal, functional disability has been assessed by the Tribunal to be 100%, therefore, the Tribunal has rightly assessed the amount of compensation.

So far ground taken by the appellant-Insurance Company that there is no documentary evidence of income of deceased, it is held by the Hon'ble Supreme Court in **Chandra @ Chanda Vs. Mukesh Kumar Yadav, 2021 (4) RCR (Civil) 492** that merely because the claimants are unable to produce documentary evidence of income of deceased, the Court should not adopt lower tier of minimum wages.

After carefully going through the grounds of appeal, statements of the claimant's witnesses, hearing learned counsel for respondent No.1-claimant, going through the record and finding no illegality or infirmity with the findings recorded by the Tribunal, present appeal is dismissed.

[**ARVIND SINGH SANGWAN**]
JUDGE

16.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No