302 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) ***FAO-521-1999***

Date of Decision: 13.01.2023

AMARJIT KAUR …Appellant

Versus

SURINDER SINGH AND OTHERS …Respondents

(2) ***FAO-522-1999***

SARABJIT KAUR …Appellant

Versus

SURINDER SINGH AND OTHERS …Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Karan Singla, Advocate
for the appellant(s).

Mr. Arun Jindal, Advocate
and Mr.Varun Jindal, Advocate
for respondents No.1 and 2.

Mr.Vinod Chaudhary, Advocate
for respondent No.3.

Mr. Sandeep Jain, Addl. A.G., Punjab.

HARSH BUNGER, J.

This order shall dispose of ***FAO-521-1999*** and ***FAO-522-1999***, which arise out of the impugned award dated 08.10.1998 passed by the Motor Accident Claims Tribunal, Patiala (here-in-after referred to as `the Tribunal').

FAO-521-1999 has been filed by one of the claimants namely, Amarjit Kaur, and ***FAO-522-1999*** has been filed by another claimant namely, Sarabjit Kaur, both seeking enhancement of compensation awarded to them vide same impugned award dated 08.10.1998.

Brief facts, which are necessary for adjudication of the above said appeals, are that the claimants filed their respective petitions under Section 166 of the Motor Vehicles Act, 1988 (for short `the Act'), seeking compensation on account of grievous injuries suffered by them in a Motor Vehicular Accident, which took place on 01.06.1996. In the claim petitions, it was pleaded that both the claimants namely, Amarjit Kaur and Sarabjit Kaur had come to Patiala on 01.06.1996 from their Village Nadampur and at about 5:20 p.m., they boarded Bus No.PB-11-B-8517 from Patiala for going to their Village. The said bus was being driven by one Surinder Singh and was owned by National Transport Company Limited. It was pleaded that the bus was being driven in a very rash and negligent manner and with un-controllable speed. When the said bus reached near Air Port, Patiala, it tried to overtake another bus and in the meantime, bus bearing No.PB-12-A-9806, which was being driven by one Gurdev Singh and owned by Punjab Roadways, Muktsar Depot, was coming from opposite side at a fast speed. At about 5:30 p.m., the driver of bus bearing No.PB-11-B-8517, wherein, the claimants were travelling, struck on the right side of the Punjab Roadways Bus bearing No.PB-12-A-9806, resulting in a very serious accident, whereby, 26-27 passengers from both the buses were injured and two passengers expired. The driver of the Punjab Roadways bus was also injured. Claimants-Amarjit Kaur and Sarabjit Kaur were seriously injured, who were taken out of the bus by Military men present at the site and were shifted to Rajindra Hospital, Patiala in other vehicles. It was stated in the claim petition that one Satnam Singh son of Pritam Singh witnessed the accident, who was also travelling in Bus No.PB-11-B-8517. Drivers of both the buses were responsible for causing the accident and thus, all the respondents in the claim petitions were jointly and severally liable to pay compensation. Amarjit Kaur claimed a sum of Rs.8 lacs and Sarabjit Kaur claimed a sum of Rs.10 lacs as compensation. At the time of accident, claimant-Amarjit Kaur was 45 years of age and claimant-Sarabjit Kaur was 17 years of age and was a student.

It is worth noticing that one another passenger namely, Surinder Ram Singh, who was travelling in Punjab Roadways Bus No.PB-12-A-9806 had suffered head injuries in the above said accident, resulting thereto, he died and FIR No.98 dated 01.06.1996 under Sections 279/338/304-A of the Indian Penal Code was registered against the driver of Bus No.PB-11-B-8517 at Police Station Civil Lines, Patiala.

The claim petitions were contested by the driver and owner of bus bearing No.PB-11-B-8517 by filing a joint written statement.

Oriental Insurance Company also contested the claim petition by filing its separate written statement, wherein, all the allegations of the claimants were denied. Another plea was taken by the Insurance Company that Surinder Singh (driver of Bus No.PB-11-B-8517) was not holding a valid driving licence. Gurdev Singh son of Jaila Singh, who was driving the Punjab Roadways Bus bearing No.PB-12-A-9806 filed a separate written statement, claiming that bus No.PB-11-B-8517 was being driven in a rash and negligent manner and he denied that Bus No.PB-12-A-9806 was also being driven at a fast speed. Even the Punjab Roadways department maintained the stand that it was Bus No.PB-11-B-8517, which was being driven rashly and negligently.

From the pleadings of the parties, the following issues were framed ;

(i) Whether Amarjit Kaur wife of Raghbir Singh, Sarabjit Kaur daughter of Raghbir Singh received injuries and Surinder Ram Singh died in Motor Vehicular accident which took place on 01.06.96 at about 5.30 PM on Patiala-Sangrur road, near Aviation Club, Patiala due to rash and negligent driving of Bus No.PB-11-B-8517 on the part of its driver Surinder Singh driver-Respondent No.1 ? OPP

(ii) Whether the Claimants of all the three petitions are entitled to compensation ? If so to what extent ? OPP

(iii) Whether Respondent No.1 was not holding a valid driving licence at the time of alleged accident ? If so, its effect ? OPR.

(iv) Relief.

Under Issue no.1, it was held that Amarjit Kaur and Sarabjit Kaur received grievous injuries in a Motor Vehicular Accident, which took place on 01.06.1996 on Patiala-Sangrur road due to rash and negligent driving by Surinder Singh (driver of Bus No.PB-11-B-8517).

Under Issue no.3, it was held that originally the licence of Surinder Singh (driver of Bus No.PB-11-B-8517) may not be valid but it was validly renewed by the D.T.O. Office, Patiala and copy of the driving licence of Surinder Singh was placed on record as Exhibit R-1. By placing reliance upon the judgment of Division Bench rendered in the case of ***National Insurance Co. Ltd. Vs Sucha Singh 1994(1) P.L.R. 140***, it was held that even if the original driving licence is not valid but renewal is valid, in that case, it gets its validity and the Insurance Company is liable to reimburse the insured. Consequently, the Insurance Company was held liable.

Under Issue no.2, the learned Tribunal, upon appreciation of evidence, found that the injuries on the person of Amarjit Kaur were proved by Dr. Sukhcharn Singh Brar (AW-9). Dr. Raj Kumar Mittal (AW-14), who operated upon Amarjit Kaur for her fractures and he proved the discharge slip (Exhibit P-51). On account of the accident, Amarjit Kaur suffered shortening of right lower limb by 1½ ” and she suffered permanent disability to the extent of 60%. The disability certificate is Exhibit P-48, which reads as under :-

> *“Certified that Pt. Amarjit Kaur w/o Raghbir Singh is an old case of malunited fracture shaft femur, malunited fracture tibial condyle (R)with stiff knee and ankle R side with shortening of R lower limb 1½ and is permanently physically handicapped, the disability being 60% sixty percent.”*

After considering the entire evidence in the shape of medical bills, medical treatment and also the nature of job of Amarjit Kaur, who is stated to be supplying 14-17 litres of milk daily, the tribunal came to the conclusion that she was entitled to get compensation under different heads as under :-

i)	Pain and Suffering	Rs.40,000/-
ii)	Shortening of leg and suffering of 60% disability	Rs.40,000/-
iii)	Actual medical expenses on receipts (Ex. A 18 to A 36 and Ex. A 68 to A 78).	Rs.11,700/-
iv)	Conveyance/Transportation Charges	Rs.3,600/-
v)	Loss of income and future suffering of pain and agony in life and engaging of attendant.	Rs.24,700/-

On the other hand, Sarabjit Kaur also suffered serious injuries, which were proved by Dr. Sukhcharan Singh Brar (AW 9) and Dr. Raj Kumar Mittal (AW 14) proved her disability and permanent scar on her forehead. The disability certificate of Sarabjit Kaur is Exhibit P-49 and the relevant extract of the same reads as under :-

> *"Certified that Pt. Sarabjit Kaur d/o Raghbir Singh is an old case of fracture shaft femur and fracture tibial condyle (L) with severe stiffness L knee and shortening of L leg by one inch and is permanently physically handicapped, the disability being 50% fifty percent."*

Thus, Sarabjit Kaur suffered 50% disability, which is stated to be permanent one and also the shortening of left leg by one inch. At the time of accident, Sarabjit Kaur was a student and had passed her matriculation examination on 31.03.1996. Her date of birth is stated to be 28.02.1980.

Keeping in view all the circumstances of the case, the learned Tribunal held that Sarabjit Kaur was entitled to compensation under different heads as under :-

i)	Pain and Suffering	Rs.40,000/-
ii)	Permanent disability and shortening of leg.	Rs.60,000/-
iii)	Actual medical expenses based on receipts.	Rs.7,600/-
iv)	Conveyance/Transportation Charges	Rs.3,600/-
v)	Suffering of dis-figuration of face and spoiling better chances of Marriage.	Rs.25,000/-
vi)	Loss of Study and future suffering of pain and agony in life.	Rs.13,800/-

Thus, Amarjit Kaur and Sarabjit Kaur (both) were awarded compensation of Rs.1,50,000/- each and the award was announced against Surinder Singh (driver of Bus No.PB-11-B-8517), the owner of Bus

No.PB-11-B-8517 (National Transport Company Limited) and Oriental Insurance Company and they were held liable for payment of compensation in the following manner :-

i)		***<u>In the Case of Amarjit Kaur Claimant</u>:***	
	(a)	*Surinder Singh, Respondent No.1*	*Rs.20,000/-*
	(b)	*National Transport Co. Respondent No.2*	*Rs.30,000/-*
	(c)	*Oriental Insurance Co. Respondent No.3*	*Rs. One Lac*
ii)		***<u>In the Case of Sarabjit Kaur Claimant</u> :***	
	(a)	*Surinder Singh, Respondent No.1*	*Rs.20,000/-*
	(b)	*National Transport Co. Respondent No.2*	*Rs.30,000/-*
	(c)	*Oriental Insurance Co. Respondent No.3*	*Rs. One Lac*
iii)		***<u>In the Case of Manpreet Kaur Claimant</u> :***	
	(a)	*Surinder Singh, Respondent No.1*	*Rs.15,000/-*
	(b)	*National Transport Co. Respondent No.2*	*Rs.15,000/-*
	(c)	*Oriental Insurance Co. Respondent No.3*	*Rs.50,000/-*

The claimants were also allowed interest @ 12% per annum from the date of petition till the payment is made.

By way of the afore-stated appeals, both Amarjit Kaur and Sarabjit Kaur, are seeking enhancement of compensation.

Appellant-Amarjit Kaur has claimed that she has suffered injuries in the accident, which resulted in permanent physical disability of 60% inasmuch as that her right lower limb has been shortened by 1½". She had further suffered damage to her teeth/lower jaw and the learned Tribunal has awarded only Rs.1,50,000/- as compensation, which is not just and proper and the same is liable to be enhanced. It is claimed that on account of the accident, she had remained confined to bed and was completely immobile for 1½ year. Even the evidence of her income of Rs.4,000/- from the milk business has not been appreciated by the learned Tribunal and the calculation for loss of income has been wrongly assessed at Rs.24,700/-. Even the compensation for suffering pain and agony in life and for engaging an attendant has not been properly granted. It is also claimed that even the medical expenses, conveyance/transportation charges have not been adequately awarded. Accordingly, it has been prayed that her appeal be allowed and the award under appeal be modified by granting just and proper compensation.

Appellant-Sarabjit Kaur has contended that at the time of accident, she was minor and un-married. On account of the accident, she has suffered disability to the extent of 50%, which is permanent with shortening of left leg by one inch., and she walks with crutches, thus, the compensation awarded to her is neither just nor proper. It has also been contended that on account of her disability, the chances of her marriage with good match receded and the Tribunal has not granted any compensation on this account. It is also contended that on account of this accident, she suffered multiple injuries, which resulted into dis-figuration of face. However, the Tribunal has granted a meagre amount of Rs.25,000/-. It is also contended that even the medical expenses have been assessed inadequately. Accordingly, it has been prayed that the award under appeal be modified by accepting the appeal and just and proper compensation be awarded to her.

Learned counsel representing the driver and owner of Bus No.PB-11-B-8517, has brought to the notice of this Court that they had filed their independent appeals against award dated 08.10.1998, including appeal i.e. ***FAO-1355-1999*** against Amarjit Kaur and ***FAO-1356-1999*** against Sarabjit Kaur, wherein, they had challenged the findings of the learned Tribunal, whereby, the driver and owner of Bus No.PB-11-B-8517 were ordered to make payment by apportioning the same between the driver, owner of the offending vehicle and the Oriental Insurance Company as the driver was found to be rash and negligent and the owner was held responsible because he had been unable to exercise due control over its driver and restrain him from indulging in rash and negligent driving. It has been submitted that the aforesaid appeals were allowed by a Co-ordinate bench of this court vide order dated 19.10.2015, wherein, the following findings have been recorded :-

> *"11. When the insured has taken adequate care and caution and taken reasonable steps to verify the genuineness of the driving licence held by driver of the offending vehicle, his liability to pay compensation is not attracted. The owner had verified from licencing authority that driving licence of Surinder Singh was valid. The observations of the Tribunal that because of the rashness and negligence of driver and lapse on the part of owner they should bear the part of compensation amount, are not sustainable and not based on proper appreciation of law on the point. The entire liability was of Insurance Company to pay the amount of compensation awarded by the Tribunal. Consequently, these appeals have merit and the same are accepted. The awards passed by the Tribunal are modified to the extent that the entire amount of compensation shall be payable by the Insurance Company.*
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> *12. However, keeping in view the peculiar facts and circumstances of the case, the parties are left to bear their own costs."*

On the other hand, the counsel representing Insurance Company has submitted that the learned Tribunal has awarded just, fair and proper compensation to both the claimants after considering all the relevant material and mitigating circumstances and there is no scope for any interference in the award under appeal. Accordingly, it has been submitted that both the appeals may be dismissed.

I have heard learned counsel for the respective parties, perused paper books and the judgment of Tribunal with their able assistance.

It is well settled that in case of injury and disability in motor accident cases, it is difficult to award perfect compensation and the principle to be followed is to place the victim in as near a position as the victim was before the accident, by directing appropriate compensation. In this regard, reference can be made to the decision rendered by Hon'ble Apex Court in ***Govind Yadav v. New India Insurance Co. Ltd., 2011(10) SCC 683***.

It is apposite to note that the appellants-claimants would be entitled to fair and just compensation in order to place the appellant(s) in such a position as close to how the appellant(s) was/were living prior to the accident, as held by Hon'ble Apex Court in ***National Insurance Company Limited v. Pranay Sethi and Others, 2017(16) SCC 680*** and in the case of ***Raj Kumar v. Ajay Kumar 2011(1) SCC 343***.

For determining just and fair compensation in Motor accident cases, one of the key component is to find out/assess income/notional income of the victim; especially in cases where no proof of income of the victim (injured) is forthcoming as is the situation in the instant case also.

Further, in cases of permanent disablement arising on account of motor-accident, the claimant can seek compensation for future loss of income and also for future prospects.

In ***Kirti v. Oriental Insurance Company Ltd., 2021(1) RCR (Civil) 478***, Hon'ble Apex Court, while discussing the issue of proving the income of the victim, observed thus:

> “18. There are two distinct categories of situations wherein the Court usually determines notional income of a victim. The first category of cases relates to those wherein the victim was employed, but the claimants are not able to prove her actual income, before the Court. In such a situation, the Court "guesses" the income of the victim on the basis of the evidence on record, like the quality of life being led by the victim and her family, the general earning of an individual employed in that field, the qualifications of the victim, and other considerations.
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> 19. The second category of cases relates to those situations wherein the Court is called upon to determine the income of a non-earning victim, such as a child, a student or a homemaker. Needless to say, compensation in such cases is extremely difficult to quantify.
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> 20. The Court often follows different principles for determining the compensation towards a non-earning victim in order to arrive at an amount which would be just in the facts and circumstances of the case. Some of these involve the determination of notional income. Whenever notional income is determined in such cases, different considerations and factors are taken into account. For instance, for students, the Court often considers the course that they are studying, their academic proficiency, the family background, etc., to determine and fix what they could earn in the future. [See M. R. Krishna Murthi v. New India Assurance Co. Ltd., 2019 SCC Online SC 315]
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> 21. One category of non-earning victims that Courts are often called upon to calculate the compensation for are homemakers. The granting of compensation for homemakers on a pecuniary basis, as in the present case, has been considered by this Court earlier on numerous occasions. A three-Judge Bench of this Court in Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197, while

dealing with compensation for the victims of a fire during a function, granted compensation to housewives on the basis of the services rendered by them in the house, and their age. This Court, in that case, held as follows:

> "10. So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs. 12,000 per annum in cases of some and Rs. 10,000 for others, appears to us to be grossly low. It is true that the claimants, who ought to have given data for determination of compensation, did not assist in any manner by providing the data for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs. 3000 per month and Rs. 36,000 per annum..."

22. ***In Arun Kumar Agrawal v. National Insurance Co. Ltd., (2010) 9 SCC 218***, this Court, while dealing with the grant of compensation for the death of a housewife due to a motor vehicle accident, held as follows:

> "26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot

be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

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26. The sheer amount of time and effort that is dedicated to household work by individuals, who are more likely to be women than men, is not surprising when one considers the plethora of activities a housemaker undertakes. A housemaker often prepares food for the entire family, manages the procurement of groceries and other household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much more. In rural households, they often also assist in the sowing, harvesting and transplanting activities in the field, apart from tending cattle [See Arun Kumar Agrawal (supra); ***National Insurance Co. Ltd. v. Minor Deepika rep. by her guardian and next friend, Ranganathan, 2009 SCC Online Mad 828]***. However, despite all the above, the conception that housemakers do not "work" or that they do not add

economic value to the household is a problematic idea that has persisted for many years and must be overcome.

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31. The issue of fixing notional income for a homemaker, therefore, serves extremely important functions. It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural norms. It signals to society at large that the law and the Courts of the land believe in the value of the labour, services and sacrifices of homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic condition of the family, and the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses. It is a reflection of changing attitudes and mindsets and of our international law obligations. And, most importantly, it is a step towards the constitutional vision of social equality and ensuring dignity of life to all individuals.

32. Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the Court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances [See R.K. Malik v. Kiran Pal, (2009) 14 SCC 1].

33. One method of computing the notional income of a homemaker is by using the formula provided in the Second Schedule to the Motor Vehicles Act,

1988, which has now been omitted by the Motor Vehicle (Amendment) Act, 2019. The Second Schedule provided that the income of a spouse could be calculated as one-third of the income of the earning surviving spouse. This was the method ultimately adopted by the Court in the Arun Kumar Agrawal (supra) case. However, rationale behind fixing the ratio as one-third is not very clear. [See Arun Kumar Agrawal (supra)]

34. Apart from the above, scholarship around this issue could provide some guidance as to other methods to determine the notional income for a homemaker.[13*]Some of these methods were highlighted by a Division Bench of the Madras High Court in the case of Minor Deepika (supra) which held as follows:

[13* See Ann Chadeau, What is Households' Non-Market Production Worth, OECD Economic Studies No. 18 (1992); Also see United Nations Economic Commission for Europe, supra note 7].

"10. The Second Schedule to the Motor Vehicles Act gives a value to the compensation payable in respect of those who had no income prior to the accident and for a spouse, it says that one-third of the income of the earning surviving spouse should be the value. Exploration on the internet shows that there have been efforts to understand the value of a homemaker's unpaid labour by different methods. One is, the opportunity cost which evaluates her wages by assessing what she would have earned had she not remained at home, viz., the opportunity lost. The second is, the partnership method which assumes that a marriage is an equal economic partnership and in this method, the homemaker's salary is valued at half her husband's salary. Yet another method is to evaluate homemaking by determining how much it would cost to replace the homemaker with paid workers. This is called the Replacement Method."

(emphasis supplied)

35. However, it must be remembered that all the above methods are merely suggestions. There can be no exact calculation or formula that can magically ascertain the true value provided by an individual gratuitously for those that they are near and dear to. The attempt of the Court in such matters should therefore be towards determining, in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation.

36. Whichever method a Court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The Court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to claimants [National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680; Kajal v. Jagdish Chand, (2020) 4 SCC 413].

37. Once notional income has been determined, the question remains as to whether escalation for future prospects should be granted with regard to it. Initially, the awarding of future prospects by this Court was related to the stability of the job held by the victim [See General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs), (1994) 2 SCC 176; Sarla Dixit (Smt) v. Balwant Yadav, (1996) 3 SCC 179]. This focus on the stability of the job of the victim, while awarding future prospects, was continued in the

judgment of this Court in Sarla Verma (Smt) v. Delhi Transport Corporation, (2009) 6 SCC 121…

38. However, there was a shift in jurisprudence regarding future prospects with the five-Judge Bench decision of this Court in Pranay Sethi (supra). This Court extended the benefit regarding future prospects to even self-employed persons, or those on a fixed salary…

39. The rationale behind the awarding of future prospects is therefore no longer merely about the type of profession, whether permanent or otherwise, although the percentage awarded is still dependent on the same. The awarding of future prospects is now a part of the duty of the Court to grant just compensation, taking into account the realities of life, particularly of inflation, the quest of individuals to better their circumstances and those of their loved ones, rising wage rates and the impact of experience on the quality of work.

40. Taking the above rationale into account, the situation is quite clear with respect to notional income determined by a Court in the first category of cases outlined earlier, those where the victim is proved to be employed but claimants are unable to prove the income before the Court. Once the victim has been proved to be employed at some venture, the necessary corollary is that they would be earning an income. It is clear that no rational distinction can be drawn with respect to the granting of future prospects merely on the basis that their income was not proved, particularly when the Court has determined their notional income.

41. When it comes to the second category of cases, relating to notional income for non-earning victims, it is my opinion that the above principle applies with

equal vigor, particularly with respect to homemakers. Once notional income is determined, the effects of inflation would equally apply. Further, no one would ever say that the improvements in skills that come with experience do not take place in the domain of work within the household. It is worth noting that, although not extensively discussed, this Court has been granting future prospects even in cases pertaining to notional income, as has been highlighted by my learned brother, Surya Kant, J., in his opinion [Hem Raj v. Oriental Insurance Company Limited, (2018) 15 SCC 654; SunitaTokas v. New India Insurance Co. Ltd., (2019) 20 SCC 688].

42. Therefore, on the basis of the above, certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows:

a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation…"

In ***Kajal v. Jagdish Chand and Others2020(4) SCC 413***, Hon'ble the Apex Court observed as under:

14. ***In M/s Concord of India Insurance Co. Ltd. v. Nirmala Devi and others***, this Court held:

"2….The determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales."

15. In ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd***., dealing with the different heads of compensation in injury cases, this Court held thus:

"9. Broadly speaking, while fixing the amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non pecuniary damages are concerned, they may include:

(i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

16. In ***Raj Kumar v. Ajay Kumar and others***, this Court laid down the heads under which compensation is to be awarded for personal injuries.

"6. 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 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).

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."

17. In ***K. Suresh v. New India Assurance Company Ltd. and Ors***., this Court held as follows :

"2. There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity 'the Act') stipulates that there should be grant of "just compensation". Thus, it becomes a challenge for a court of law to determine "just compensation" which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance."

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Loss of earnings

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 ***Helen C. Rebello (Mrs.) and Others v. Maharashtra State Road Transport Corporation and Another, 1999(1) SCC 90***, it was held that the Motor Vehicles Act, 1988 is a beneficial piece of legislation and hence the object of the Courts ought to be to assist the injured/deceased person.

In ***Nagappa v. Gurudayal Singh and Others, 2003(2) SCC 274***, and in ***Laxman alias Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited and Another, 2011(10) SCC 756***, Hon'ble the Apex Court had categorically stated that there is no restriction that the Tribunal/Court cannot award compensation amount exceeding the claimed amount.

In case of permanent disability, the injured is entitled to grant of compensation/damages towards permanent disability as well as loss of earning capacity. The determination of compensation/damages for loss of earning capacity on the basis of multiplier method was held to be a proper exercise in view of ratio laid down in ***K. Suresh v. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312***. In such determination, some guess work and hypothetical considerations based on sympathy cannot be ruled out, but ultimate purpose is to apply objective standards without undertaking flight in fancy. The amount should correspondent to reasonableness and should be in consonance with conventional norms. In any case, the endeavour should be made to award just and proper damages in view of sufferings of the injured persons.

Keeping in view the legal position as indicated above and upon consideration of the peculiar facts and circumstances of this case, this Court proceeds to examine the claim for enhancement of compensation in the case of appellants.

In the instant case, admittedly, both the victims have suffered shortening of limb(s), which restricts everyday routine more particularly the physical activity and leads to:

(i) loss of earning capacity
(ii) deprivation of simple pleasures and amenities of life,
(iii) long term secondary complications requiring continuous care, medical treatment and hospitalization,
(iv) feeling of helplessness, depression, anger, stress, anxiety, etc.

To determine the just compensation payable in these cases, it would be necessary to first determine income / notional income of the appellants-claimants in these cases. In the case of Amarjit Kaur, there is some oral evidence in the shape of statement of AW8-Raj Singh that Amarjit Kaur was involved in business of supplying milk by keeping buffaloes, however the same was not taken into account for arriving at any conclusion qua income/notional income of Amarjit Kaur. Similarly, in case of Sarabjit Kaur also, there is no finding qua her income/notional income.

It is observed that over a period of time various methods have been suggested / followed for arriving at notional income, however all the methods are merely suggestions. It is well accepted that there can be no exact calculation or formula that can ascertain the true value provided by an individual gratuitously to his near and dear ones and the Court should attempt to determine in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation. Similarly, in case of students, the Court often considers the course that they are studying, their academic proficiency, the family background, etc., to determine and fix what they could earn in the future.

Considering the fact that the accident occurred in the year 1996 and keeping in view the observations made by Hon'ble Apex Court in ***Kirti's*** *case (supra)*, it is observed that in the case of Amarjit Kaur, even if it is taken that Amarjit Kaur was not exclusively dealing in supplying milk then atleast she can be considered as a homemaker who would be helping her husband/ family in supplying milk, then also the family of Amarjit Kaur must be having a decent living standard, thus the notional income of Amarjit Kaur can be taken as Rs. 2,000/- per month.

On the other hand, in case of Sarabjit Kaur, at the time of accident she was 17 years of age and was a '***student***' doing matriculation. Thus having regard to the age of the appellant-Sarabjit Kaur at the time of accident in the year 1996 and the prospects of her good academic career, the adverse effect of her permanent disability as a result of the motor accident on her future prospects, the notional income of Sarabjit Kaur can be taken as Rs. 2,500/- per month.

The next step is to determine "Functional disability" of the victims-claimants. The Tribunal has not assessed the functional disability of the appellants-claimants. Normally, the absence of clear and sufficient evidence would have necessitated remand of the case for further evidence on this aspect. However, instead of remanding the matter for a finding on this issue, at this distance of time after more than 25 years of accident, on the facts and circumstances, to do complete justice, this Court proposes to assess the permanent functional disability in the both the cases.

It cannot be disputed that because of the accident the appellants-claimants would be finding difficulty in walking because of shortening of leg of each appellant-claimant. No amount of compensation can restore a physical frame of the appellants-claimants. No amount of compensation can be said to be sufficient for such a loss but still a methodology is required to be applied for determination of compensation in such cases and there cannot be any rigid test which should be applied in all situation.

In cases of motor accidents, the endeavour is to put the dependants/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he/she had not suffered on account of the wrong.

So far as Amarjit Kaur is concerned, on account of the accident she suffered shortening of right lower limb by 1½ inch and she suffered permanent disability to the extent of 60%. The disability certificate is Exhibit P-48. Since Amarjit Kaur has been taken as “homemaker”, accordingly the aforesaid disability must have hindered her day to day physical activity, accordingly this Court proposes to assess the permanent functional disability of the body as 50% and the loss of future earning capacity as 50%.

In case of Sarabjit Kaur, on account of the accident, she suffered shortening of left leg by one inch and she suffered permanent disability to the extent of 50%. The disability certificate is Exhibit P-49. Since Sarabjit Kaur has been taken as "student", thus the aforesaid disability must have hindered her day to day physical activity, however, the said extent of permanent physical disability of the limb could not be considered to be the functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity. Accordingly, in case of Sarabjit Kaur, this Court proposes to assess the permanent functional disability of the body as 40% and the loss of future earning capacity as 40%.

Keeping in view the abovesaid position, the compensation is to be awarded under various heads, which are as under:

<u>Pecuniary Expenses</u>

(1) <u>Loss of earning due to disability</u>

In the case of Amarjit Kaur, a perusal of medical record placed on the file shows that she was about 45 years of age at the time of accident and taking her notional income of Rs. 2,000/- and taking her functional disability as 50% and the loss of future earning capacity as 50%, accordingly, in her case the computation would be as under:

S.No.	Head	Amount
1	Notional Income per month	Rs. 2000/-
2	25% increase towards future prospects [By taking Amarjit Kaur (aged 49 year) as homemaker (self-employed / fixed salary)]	Rs. 2000/- + Rs. 500/- = Rs. 2500/-
3	Annual income	Rs. 2500/- X 12 = 30000/-
4	Income after applying multiplier of 13 (since age of Amarjit Kaur is 49 years)	Rs. 30000 X 13 = 3,90,000/-
5	50% of the total income assessed towards loss of future earnings	Rs. 195000/-

Similarly, in case of Sarabjit Kaur, at the time of accident, she was 17 years of age and was a '***student***' doing matriculation and taking her notional income as Rs. 2500/- and taking her functional disability as 40% and the loss of future earning capacity as 40%, accordingly, in her case, the computation would be as under:

S.No.	Head	Amount
1	Notional Income per month	Rs. 2500/-
2	40% increase towards future prospects (By taking Sarabjit Kaur (aged 17 years) as self-employed / fixed salary)	Rs. 2500/- + Rs. 1000/- = Rs. 3500/-
3	Annual income	Rs. 3500/- X 12 = 42000/-
4	Income after applying multiplier of 18 (since age of Sarabjit Kaur is 17 years)	Rs. 42000 X 18 = 7,56,000/-
5	50% of the total income assessed towards loss of future earnings	Rs. 302400/-

(2) *Loss of earning for two years*

Under the aforesaid head, no compensation was awarded by the Tribunal, however, this Court is of the view that on account of the accident wherein both the victims have suffered disability on account of shortening of limbs, it must have taken at least two years to come to terms with the trauma suffered by them and to be able to start the new life with disability. Accordingly, in the case of Amarjit Kaur, applying the notional income of Rs. 2,000/- per month, it is deemed appropriate to award the compensation under this head as under:-

2000 x 24 = INR 48,000/-

Similarly, in the case of Sarabjit Kaur, applying the notional income of Rs. 2,500/- per month, it is deemed appropriate to award the compensation under this head as under:

2500 x 24 = INR 60,000/-

(3) *Medical Expenses*

Based on receipts (Exhibits A-18 to A-36 and Exhibits A-68 to A-78), Amarjit Kaur was granted actual medical expenses of Rs.11,700/- and Sarabjit Kaur was granted Rs.7,600/-.Since, the said amount awarded by the Tribunal is based on Exhibits A-18 to A-36 and Exhibits A-68 to A-78, the same is maintained.

(4) *Future Medical Expenses*

The Tribunal has not awarded any amount under this head. It cannot be disputed that on account of permanent physical disability on account of shortening of limbs, the appellants-claimants would have required medical check-ups and physiotherapy session etc., accordingly, this Court deems it just to grant compensation of Rs. 25,000/- each towards future medical expenses to both the victims (appellants)

(5) *Attendant Charges*

So far as this head is concerned, the Tribunal has awarded a lumpsum amount of Rs. 24,700/- on account of "Loss of income and future suffering of pain and agony in life and engaging of attendant" only in case of Amarjit Kaur, however no amount has been awarded to Sarabjit Kaur. It is not in dispute that the appellant(s) will not be able to walk and work in the same manner as they used to prior to the accident. Accordingly, considering the period of treatment undergone by the appellants-claimants and also the fact that the appellants would have been taken care of by the attender during the period of treatment, this Court is inclined to award Rs. 20,000/- (in each case) towards attender charges.

(6) *Litigation Expenses*

Under this head, the Tribunal has not awarded any amount.

In ***Syed Sadiq v. Divisional Manager, United India Insurance Company Limited***, 2014(4) SCC 735, Hon'ble the Apex Court held as under:

> *"14. Further, along with compensation under conventional heads, the appellant claimant is also entitled to the cost of litigation as per the legal principle laid down by this Court in Balram Prasad v. Kunal Saha [(2014) 1 SCC 384 : (2014)1 SCC (Civ) 327]."*

Accordingly, this Court awards an amount of Rs. 20,000/- (in each case) towards litigation expenses to both the appellants.

(7) *<u>Special Diet and Loss of Conveyance</u>*

So far as this head is concerned, the Tribunal granted only Rs.3600/- (each) for conveyance/transportation charges, however, nothing granted for special diet. This Courts deems it just and appropriate to award Rs. 20,000/- towards special diet and loss of conveyance.

<u>Non-Pecuniary Expenses</u>

(8) *<u>Pain and Suffering</u>*

So far as this head is concerned, the Tribunal granted Rs.40,000/- (each) to Sarabjit Kaur and Amarjit Kaur on account of pain and sufferings.

In ***Divisional Controller, KSRTC v. Mahadeva Shetty and another, 2003(7) SCC 197***, Hon'ble the Apex Court observed as under:

> "15. ......It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of

physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features,if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness..."

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"18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident throughout his life and a feeling is developed that he is no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities of life, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned…"

Therefore, considering that fact that at the time of accident, the appellant-Amarjit Kaur was 45 years old and the appellant-Sarabjit was only

17 years of age and both of them suffered a permanent physical disability of 60%, and 50% respectively, they are entitled to be awarded compensation under this head.

Accordingly, this Court deems it just and appropriate to award an amount of Rs. 50,000/- (in each case) as compensation for pain and suffering by looking into the circumstances of these cases.

(9) *Marriage Prospects*

So far as this head is concerned, the Tribunal has awarded an amount of Rs. 25,000/- to Sarabjit Kaur only.

In ***Ibrahim v. Raju and Others, 2011(10) SCC 634***, Hon'ble Supreme Court held:

> "19. On account of the injuries suffered by him, the prospects of the appellant's marriage have considerably reduced. Rather, they are extremely bleak. In any case, on account of the fracture of pelvis, he will not be able to enjoy the matrimonial life. Therefore, the award of Rs 50,000 under this head must be treated as wholly inadequate. In the facts and circumstances of the case, we feel that a sum of Rs 2 lakhs should be awarded to the appellant for loss of marriage prospects and enjoyment of life."

Accordingly, this Court deems it just and appropriate to award an amount of Rs. 1,00,000/- towards loss of marriage prospects only to Sarabjit Kaur.

(10) *Loss of Amenities*

Under this head, the Tribunal has not awarded any amount.

In ***Govind Yadav v. New India Insurance Company Limited*** 2011(10) SCC 683,Hon'ble Supreme Court held as under:

> "18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. (2010) 10 SCC 254

and Raj Kumar v. Ajay Kumar(2011) 1 SCC 343 must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

Considering the fact that at the time of accident, the appellant-Amarjit Kaur was 45 years old and the appellant-Sarabjit was only 17 years of age and both of them suffered a permanent physical disability of 60%, and 50% respectively, this Court deems it just and appropriate to award an amount of Rs.25,000/- (in each case) for the loss of amenities.

Thus, the total compensation awarded by this Court under different heads is as under:

S.No.	Compensation	**Amarjit Kaur**	**Sarabjit Kaur**
		Amount (in Rupees)	Amount (in Rupees)
1	Loss of earning due to disability	1,95,000/-	3,02,400/-
2	Loss of earning for two years	48,000/-	60,000/-
3	Medical expenses	---	---
4	Future medical expenses	25,000/-	25,000/-
5	Attendant charges	20,000/-	20,000/-
6	Litigation Charges	20,000/-	20,000/-
7	Special Diet / Loss of conveyance	20,000/-	20,000/-
8	Pain and sufferings	50,000/-	50,000/-
9	Marriage Prospects	NIL	1,00,000/-
10	Loss of amenities	25,000/-	25,000/-
	TOTAL	**4,03,000/- (INR)**	**6,22,400/- (INR)**

In so far as rate of interest is concerned, the Tribunal has awarded interest at 12% per annum from the date of filing of claim petition till payment; however, in the facts and circumstances of this case, the rate of interest is reduced to 6% per annum from the date of filing of claim petition(s) till realization.

In view of the above, this Court directs the respondent No. 1 herein - Insurance Company to pay the appellant(s)-claimant(s) the difference in the compensation awarded herein as against the amount of Rs. 1,50,000/- (*in each case*) as awarded by the Tribunal below. The amount awarded by this Court shall be deposited by respondent No. 1 - Insurance Company within a period of three months from today after adjusting the amount already paid / deposited.

As a result, the appeals are partly allowed and the compensation/amount awarded by the Motor Accident Claims Tribunal, Patiala, is modified upto the aforesaid extent. There shall be no order as to costs.

Pending application, if any, stands disposed of accordingly.

The appeals are accordingly disposed of in abovesaid terms.

January 13, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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