

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

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FAO-2104-1995 (O&M)

Date of decision: 01.12.2023

Jagtar Singh

....Appellant

Versus

Rajbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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

Mr.Deepak Suri, Advocate for respondent No.3-Insurance
Company.

AMAN CHAUDHARY, J.

1. Injured-appellant has filed the present appeal seeking enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') vide award dated 10.05.1995, on account of the injuries received by him in a motor vehicular accident.

2. Learned counsel contends that the injured-appellant had met with an accident on 02.05.1993, wherein he had suffered multiple injuries including fracture of his left leg and arm, on account of which, he was unable to perform work. He remained admitted in the hospital for about 45 days. At the time of the said accident, he was 29 years old and earning Rs.2,500/- per month by doing agriculture work. The appellant had suffered 35% permanent disability which has been assessed to be 70% on account of shortening of leg and he is still taking treatment for it. His marriage prospects have also got adversely affected. The

Tribunal has awarded a meager amount of Rs.60,000/-, which is inadequate.

3. On the other hand, the learned counsel for respondent No.3-insurance company has opposed the present appeal with vehemence by stating that just and reasonable compensation has already been awarded to the appellant, which requires no enhancement.

4. Heard and perused.

5. For proceeding further to adjudicate the matter, it would be apposite to make a reference to the judgment in **Sidram vs. United India Insurance Co. Ltd.**, (2023) 3 SCC 439, wherein Hon'ble the Supreme Court observed that, "This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives." Further, while allowing the appeal the compensation was enhanced by taking into consideration the following:

"56. The evidence on record indicates that the appellant suffered paraplegia due to the accident. Paraplegia is a form of paralysis of lower body. It restricts everyday routine more particularly the physical activity and leads to (i) deprivation of simple pleasures and amenities of life, (ii) 100% loss of earning capacity, (iii) long term secondary complications requiring continuous care, medical treatment and hospitalization, (iv) feeling of helplessness, depression, anger, stress, anxiety, etc. In short, paraplegia impairs physical, mental and psychological health and has devastating impact on the social and financial well being of the victim.

57. In the case on hand, the appellant was in the business of

selling utensils and used to travel to various villages to sell the same. With this disability in the form of paraplegia being suffered by the appellant, it is not possible for him now to walk a long distance or stand for a long period. His business could be said to have been gravely impacted. Further, the appellant at the time of accident was just 19 years old...”

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(9) Marriage Prospects

99. The Tribunal held that the appellant was young, and due to the physical disability, his marriage prospects are now almost nil. The Tribunal awarded to Rs. 20,000/- under this head. The High Court upheld the amount of Rs. 20,000/-.

100. In Sanjay Kumar (supra), this Court observed as under:

“14... On the point of loss of marriage prospects, we feel that it is a major loss, keeping in mind the young age of the appellant and the High Court has gravely erred in not awarding adequate compensation separately under this head and instead clubbed it under “loss of future enjoyment of life” and “pain and suffering”. We thereby award Rs 75,000 towards loss of marriage prospects...”

101. In *Ibrahim v. Raju and Others*, (2011) 10 SCC 634, this 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.”

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103. In view of the aforesaid, we award a sum of Rs. 3,00,000/- towards loss of marriage prospects.

(10) Loss of Amenities

104. The Tribunal held that an amount of Rs. 30,000/- should be awarded towards loss of amenities. The High Court upheld the amount of Rs. 30,000/- as awarded by the Tribunal. The claim of the appellant towards loss of amenities is Rs. 50,000/-.

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105. This Court in the case of Pappu Deo Yadav (supra), observed:

“6. The principle consistently followed by this court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he

was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions.

[Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683]"

106. In R.D. Hattangadi (supra) it has been held:

“12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards.

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17.When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life.....”

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110. Vijaykumar Babulal Modi (supra), the High Court of Gujarat observed as under:

“It appears that the claim under this head is to the tune of Rs.3 lac. However, the Tribunal has not awarded any sum under the head 'loss of amenities'. We are of the opinion that this head must take into account all aspects of a normal life that have been lost due to the injury caused. As per R.D. Hattangadi's case (supra), this includes a variety of matters such as the inability to walk, run or sit, etc. We include here too the loss of childhood pleasure such as the ability to freely play, dance, run, etc., the loss of ability to freely move or travel without assistance. Then, there is the virtual impossibility of marriage as well as a complete loss of the ability to have sex and to have and nurture children.”

111. In view of the aforesaid, we award an amount of Rs. 50,000/- for the loss of amenities taking into consideration the fact that the appellant was 19 years old at the time of the accident, and also considering the nature of injuries suffered by him and the extent of his disability.”

112. The total compensation awarded by us under different heads is as under:

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| 1. | Loss of earning due to disability | :Rs.7,77,600/- |
| 2. | Loss of earning for 6 months: | Rs.48000/- |
| 3. | Medical expenses | Rs.1,55,000/- |

4.	Future medical expenses	Rs.2,16,000/-
5.	Attendant charges	Rs.4,32,000/-
6.	Litigation charges	Rs.50,000/-
7.	Loss of conveyance	Rs.50,000/-
8.	Pain and suffering	Rs.1,00,000/-
9.	Marriage prospects	Rs.3,00,000/-
10.	Loss of amenities	Rs.50,000/-
	Total	Rs.21,78,000/-”

6. Hon’ble The Supreme Court in **Mohd. Sabeer vs. U.P. SRTC**, 2022 SCC OnLine SC 1701, wherein the permanent disability had been caused to the claimant, a 37 year old man, as his right lower limb had been hindering his mobility proving functional disability severely impacting his earning capacity and having to use prosthetic limb, awarded Rs.38,70,120/- (including Rs.2,00,000/- for pain and suffering, Rs.15000/- special diet, Rs.2,00,000/- loss of amenities of life) by observing that it is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that “just compensation” must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place. In **Lakshmana Gowda B.N. vs. Oriental Insurance Co. Ltd.**, 2023 SCC OnLine SC 786, a case of 75% disability on account of the injuries sustained, the compensation was enhanced considering marriage prospects having become bleak and there being loss of future income, as the injured, a graduate, was working as Marketing Executive and earning an amount of Rs.8000/- per month, which was accepted as it stood substantiated by producing his salary certificate as Ex.P6, observing that the High Court had fallen in error in construing the income as Rs.3000/-.

7. Moving back to the present case, there is no dispute with regard to

the accident that was caused by respondent No.1, driver of the offending vehicle wherein the appellant had suffered multiple injuries, resulting in serious consequences. In terms of the accident, the manner of its taking place, as well as liability fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several are concerned, it is pertinent to mention that no challenge to the Award has been made and thus, this issue does not warrant any further examination. The appellant remained hospitalized for about 45 days. In para 14 of the Award, it has been specifically recorded that “PW-3 Dr.KD Sharma deposed that Jagtar Singh petitioner was brought to his hospital on 2.5.1993 and on examination, he found that he was suffering from open, contaminated crushed injury of the left leg and ankle and the bones were exposed and the joints were open and there was vascular embarrassment to the leg and foot and there were serious danger of the limb going into gangrene. He stated that debridement, surgical leave and external fixation was done by him and the patient remained admitted upto 2.6.1993. He stated that three operations were done and the limb could be saved. ..He stated that Jagtar Singh petitioner was again admitted on 13.7.1993 and discharged on 27.7.1993 and during this period, he was treated for infection.... He stated that thereafter, the petitioner kept on coming to him for follow up treatment. ...He stated that Jagtar Singh petitioner was having mal-position of left ankle and joint was destroyed and he walks with a limp and his permanent disability was 35%.” The disability being taken as above on account of the injuries suffered, which resulted in shortening of leg, would have affected not only his earning capacity, obstruction in performing household chores and even diminishing his matrimonial prospects.

8. Keeping in view the peculiarity of facts and circumstances in light of the aforesaid dictum of law, this Court finds that for the ends of justice to be adequately met, the amount of compensation awarded to the appellant deserves to be and is enhanced thus:

i.	Loss of earning due to disability: 800 x12x17:	Rs.163200
ii	Pain and suffering	Rs.50,000/-
iii.	Loss of earning for 6 months (2500x 6):	Rs.15,000/-
iv.	Future medical expenses	Rs.50,000/-
v.	Attendant, transportation, special diet etc. charges	Rs.50,000
vi.	Marriage prospects	Rs.1,00,000/-
vi.	Loss of amenities of life	Rs.50,000/-

9. Accordingly, the enhanced amount of compensation of Rs.4,17,800/- over and above the amount of Rs.60,000/- already awarded by the Tribunal, alongwith interest @ 7.5% per annum shall be paid to the claimant-appellant within a period of two months from the date of receipt of a certified copy of this judgment, failing which, the amount shall accrue an interest at the rate as already awarded by the Tribunal.

10. Modifying the award to the aforesaid extent, the present appeal is disposed of.

(AMAN CHAUDHARY)
JUDGE

01.12.2023
gsv/Ankur

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