

**855 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO NO. 2268 OF 2012 (O&M)
DATE OF DECISION : 12.04.2023****Mandeep Kaur ...Appellant****Versus****Jaimal Singh and another ...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA****Present :** Mr. R. K. Shukla, Advocate,
For the appellant.Mr. Vishal Jassal, Advocate for
Mr. Vikas Suri, Advocate,
For respondent No.1.Ms. Madhu Sharma, Advocate,
For respondent No.2-Insurance Company.**ARUN MONGA, J. (ORAL)**

Before she got crippled and confined to bed for rest of her life, Mandeep Kaur aspired to become a doctor, but little did she know what the cruel fate had in store for her on the fateful day, when she met with a road accident. On that day, what appeared to be yet another usual day as any other, she had left home for her tuition class as a pillion on the scooter being driven by her father. More of it later.

Aggrieved by inadequate compensation, claimant has assailed herein an Award dated 06.01.2012 passed by learned Motor Accidents Claims Tribunal, Patiala (hereinafter referred to "as the Tribunal"), seeking enhancement thereof.

2. Succinct facts as noted by the Tribunal are as below :

2.1 On 01.02.2009, Gurnam Singh s/o Joginder Singh was going to drop his daughter Mandep Kaur (appellant herein) for her tuition class at Photon Institute Rajpura on Activa bearing registration No. PB-39-D-6224. When they reached at ITI chowk and crossed more than half of the

chowk, one Indica car bearing registration No.PB-13-R-5901 came from Patiala side, being driven rashly and negligently and hit against the Aactiva, due to which Mandeep Kaur fell on mettled portion of the road and received head injury. Due to said injury, she became 100% disable. Hence, the claim petition.

2.2 Upon notice, respondent No.1 appeared and filed written statement alleging that no accident had taken place and false FIR had been registered.

2.3 Respondent-Insurance Company filed separate written statement taking objection that respondent No.1 was not holding valid and effective driving license at the time of alleged accident. However, all other averments were denied and dismissal of claim petition was prayed.

3. Based on rival pleadings, learned Tribunal framed following issues :

1) Whether claimant had sustained injuries in an accident caused by respondent No.1 while driving Indica car No. PB-13-R-5901 rashly and negligently on 10.02.2009 as alleged ? OPP

2) Whether the claimant is entitled to compensation, if so to what amount and from whom ? OPP

3) Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident ? OPR

4) Relief.

4. On appraisal of record/evidence, learned Tribunal decided Issue No.1 was decided in favour of the claimant and against the respondents. Consequently, claim petition was allowed and compensation to the tune of Rs.6 lacs along with interest @ 6% per annum from the date of filing the claim petition till its realization, was awarded.

5. I have heard competing contentions of both learned counsels and have gone through the case file with their assistance.

6. Learned counsel for the appellant-claimant argues that appellant suffered permanent functional disability which will affect her earning capacity as she is unable to move and perform even her basic routine chores. At the time of accident, claimant was 18 years of age and was studying in 10+2 class (medical stream). It is further pleaded that appellant is now dependent on others for her livelihood. Disability Certificate is duly proved on record.

7. Learned counsel would further argue that a sum of Rs.1,00,000/- for loss of future earnings, awarded by the Tribunal, is on lower side, in view of judgment rendered by Hon'ble Supreme Court in case titled "*Smt. Sarla Verma and others v. Delhi Transport Corporation and another*" reported in 2009 (3) *The Punjab Law Reporter* 22.

7.1 It has been further argued that learned Tribunal has also erred in awarding Rs.1,50,000/- on account of loss/reduction of marriage prospects as the same is also on lower side. The amount awarded for transportation charges is also much lower on the ground that appellant has become 100% permanently disable and she requires transportation charges for moving from one place to another throughout her life

7.2 Other argument of learned counsel for appellant is that amount awarded under the head of attendant charges is also very less as the appellant requires one attendant for rest of her entire life.

7.3 Amount awarded on account of future medical expenses is also very meager. The appellant is 100 % permanently disabled and she requires continuous medical treatment.

7.4 Learned counsel further argues that only a sum of Rs.25,000/- has been awarded towards pain and suffering which is also on lower side. Appellant suffered a lot of pain and agony at the time of accident and she has to remain in pain and suffering for the rest of her life.

8. Per contra, learned counsel for respondent No.2-Insurance Company opposes the prayer and submits that since respondent No.1 was not holding valid and effective driving license at the time of alleged accident, therefore, insurance company is not liable to pay any compensation.

9. Having heard rival contentions and on perusal of impugned award, I find that the submissions made herein by learned counsel for respondent No.2, as noted in para-8 above, were also raised before learned Tribunal which were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. Respondent No.2 has not filed any appeal or cross objections in the case.

10. The learned Tribunal awarded compensation under various heads as under:

Sr. No.	Convention of Heads	Amount (in rs.)
01	Expense for treatment, hospitalization and medicines.	2,25,000/-
02	Transportation	15,000/-
03	Attendant charges	25,000/-
04	Special diet and nutrition	35,000/-
05	Future medical expenses	25,000/-
06	Pain, suffering and trauma	25,000/-
07	Diminution/loss of marriage prospects	15,0000/-
08	Loss of future earnings	1,00,000/-

10.1 Taking into consideration the facts and circumstances of the case, I am of the opinion that total compensation of Rs. 6 lakhs awarded by the learned Tribunal is grossly inadequate and needs enhancement.

10.2 In *Joginder Singh and another v. ICICI Lombard General Insurance Co¹*, the accident took place on 10.09.2009 when the deceased was aged 20 years. She was undertaking air hostess training programme. The Tribunal took her notional monthly income at Rs. 15000/- which was also adopted by the Apex Court. In present case, at the time of accident on 01.02.2009, the claimant was 18 years of age and a student of 10+2 class (medical stream) obviously aspiring for a professional's career including that of a doctor. Considering the claimant's case in the light of the Apex Court's judgment in *Joginder Singh supra*, I am of the opinion that it would be fair and reasonable if the notional monthly income of the claimant herein is taken at Rs. 12,000/-.

10.3 In *Kajal v. Jagdish Chand and others²*, young girl (claimant) aged 12 years was accident victim who suffered injuries resulting in incontinence i.e she did not have control over her bodily functions like passing urine and faeces. Growing older, she would not be even able to handle her periods. She thus required an attendant virtually 24 hours a day who would ensure that she does not suffer from bed sores. The Apex Court allowed compensation for re-imbursement of expenses of an attendant and assessed the same equivalent to the wages of a skilled labourer. It was observed that the multiplier system is used to balance out various factors and when compensation is paid in lump sum, the court has always followed the multiplier system. It was also held that the

¹ 2019 AIR (Supreme Court) 3814

SHALINI BHATIA² 2020 AIR (Supreme Court) 776
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I attest to the accuracy and
integrity of this order/ judgment

multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc. In the said case the amount awarded was more than the amount claimed. The Apex Court observed that it is settled law in motor accident claim petitions, the court must award just compensation and if the just compensation is more than the amount claimed, that must be awarded especially where the claimant is a minor.

10.4 In the instant case, the claimant's age was 18 years when accident took place on 01.02.2009. As per evidence on record, injuries suffered by her are on most vital part of the body i.e. brain which has resulted into 100% permanent total disability of the claimant. Her disability relates to loss of intelligence quotient, memory, difficulty in verbal performance, loss of sensation of smell and loss of ability to write or study. She is not even able to move and perform her basic daily work. There is no chance of future recovery. Such being the overall condition of the claimant, I am of the opinion that the claimant requires a suitable attendant round the clock for the rest of her life to take care of and perform her basic daily work and/or provide her the active help and support to move about and perform the same. Considering the age and overall condition of the claimant, to my mind, fair and just wages of a suitable attendant required for her may be assessed at Rs.6,000/- per month.

10.5 Taking into consideration the overall facts and circumstances of the case, in my opinion, compensation for transport expenses of Rs.50,000/-, loss of marriage prospects Rs.3,00,000/-, future medical treatment Rs.5,00,000/-, pain, suffering and loss of amenities of life Rs.10,00,000/- would be just and fair.

11. In view of the foregoing discussion, computation of compensation under various heads is determined/ modified as below:

Name of injured/victim	Mandeep Kaur
Date of accident	01.02.2009
Age	18 years
Disability	100% permanent
Notional monthly income	Rs.12,000/-
Add 40% for future prospects	Rs.12,000 + Rs.4,800 = Rs.16,800
Loss of monthly dependency after deducting 50% for personal expenses	Rs.16,800 - Rs.8,400 = Rs.8,400
Total loss of dependency by applying multiplier of 18	Rs.8,400 x 12 x 18= Rs.18,14,000
Expenses for an attendant @ Rs.6,000/- p.m. by applying multiplier of 18 (12 x 18 x 6,000)	Rs.12,96,000
Special diet	Rs.50,000/-
Past medical expenses	Rs.2,25,000/-
Future medical treatment/expenses	Rs.5,00,000/-
Transportation	Rs.50,000/-
Loss of marriage prospects	Rs.3,00,000/-
Pain, suffering and loss of amenities of life	Rs.10,00,000/-
Total (18,14,000+12,96,000+50,000+2,25,000+5,00,000+50,000+3,00,000+10,00,000)	Rs.52,35,000/-

13. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation after adjusting the amount, if any, already paid shall be payable to the claimant along with interest, as awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimant within a period of 2 months of his approaching the Insurance Company along with web print of instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of claim petition till payment.

APRIL 12, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No