

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

Order Reserved On: 21.04.2023

Order Pronounced On: 19.05.2023

1. FAO-3730-2012 (O&M)

Harbinder Kaur

..... Appellant

Versus

Navdeep and others

..... Respondents

2. FAO-3731-2012(O&M)

Jaspreet Kaur

..... Appellant

Versus

Navdeep and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vivek Sharma, Advocate for the appellant(s).

**Ms. Yagyasree, Advocate
for Mr.Rajneesh Malhotra, Advocate
for respondent No.3-Insurance Company in both the cases.**

HARPREET SINGH BRAR, J.

1. The above mentioned two appeals have been filed by the injured/claimants seeking enhancement of compensation granted to them by Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as ‘the Tribunal’ for short) vide common award dated 21.01.2012. The same are being disposed of by this judgment as they have arisen out of the same award.

FACTUAL BACKGROUND

2. Succinctly, the facts of the case are that on 31.10.2008 the appellant, along with her daughter Jaspreet Kaur, was going from village Ghulal to Dhandari on motor cycle bearing registration No. PB10-CD-5349 which was being driven by Jugraj Singh. At about 7.00 p.m., when they reached near Gurudwara Katana Sahib where a Santro car bearing registration No. HR26-AE-1536 being driven in a rash and negligent manner by respondent No.1-Navdeep, came from opposite side and struck against the motor cycle of the appellants. As a result thereof, all the three occupants of the motor cycle fell on the road and received serious injuries. Both the appellants/injured were immediately taken to Sidhu Hospital, Doraha and from there appellant/injured-Harbinder Kaur was referred to Rattan Hospital, Ludhiana whereas appellant/injured-Jaspreet Kaur was referred to Apollo Hospital, Ludhiana. It is pleaded that an amount of Rs. 4,50,000/- had already been spent on medical treatment of appellant-Harbinder Kaur and an amount of Rs. 6,00,000/- on the medical treatment of appellant-Jaspreet Kaur. At the time of accident, appellant-Harbinder Kaur was 42 years of age and appellant-Jaspreet Kaur was 19 years of age.

3. It is further pleaded that due to the accident in question appellant-Harbinder Kaur has suffered permanent disability due to fracture of right side of pelvis and is unable to pursue her avocation of stitching clothes and dairy farming, from which she used to earn Rs. 20,000/- per month. Appellant-Jaspreet Kaur also suffered permanent disability to the tune of 6% due to fracture in mandible and right shoulder. Prior to accident, she is alleged to have been studying in B.A. (1st year) and taking tuitions as

well, from where she used to earn about Rs. 5000/- per month.

4. The Tribunal awarded a sum of Rs. 61,500/- along with interest at the rate of 6% p.a. to appellant-Harbinder Kaur and a sum of Rs. 3,48,700/- along with interest at the rate of 6% p.a. to appellant-Jaspreet Kaur, from the date of filing of the claim petition(s) till realisation.

OBSERVATION AND ANALYSIS

5. Having heard counsel for the parties and perusing the record of the case carefully, this Court is of the opinion that the amount of compensation needs to be redetermined as per the judgments of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others, (2017)16 SCC 680** and **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (6) SCC 121**. In order to award just and fair compensation in motor accident cases where the victim has suffered disability, the essential element is to assess the income of the victim, specially when there is no proof of his/her income. The victim is also entitled to compensation for future loss of income due to the permanent disability.

6. A three Judge Bench of the Hon'ble Supreme Court in **Kirti vs. Oriental Insurance Company Ltd., 2021(1) RCR (Civil) 478**, speaking through Justice N.V. Ramana, held as follows regarding :-

“ 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.

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.*

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**]*

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 and another vs. National Insurance Co. Ltd. and others, 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 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 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.]*

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 wherein the Court held as follows:

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. The Court held as follows:*

"57. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardisation, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities....Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an

addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable."

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 vigour, 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; *Sunita Tokas 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."

7. A two-Judge Bench of the Hon'ble Supreme Court in **Raj Kumar vs. Ajay Kumar, 2011(1) SCC 343**, speaking through Justice R.V. Raveendran, had laid down the guidelines for awarding compensation under different heads for personal injury.

"5. 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.”

8. Undisputedly, appellant-Harbinder Kaur has suffered 5% permanent disability on account of fracture of right side of pelvis and appellant-Jaspreet Kaur suffered permanent disability to the extent of 6% on account of fracture of mandible as per disability certificate Ex.PY. It is proved on record that appellant-Jaspreet Kaur was studying in B.A. (1st Year) in Malwa College, Samrala, as per the testimony of PW4 coupled with documents Ex.PW4/A to Ex.PW4/E. Considering that appellant-Harbinder Kaur was 42 years of age and appellant-Jaspreet Kaur was 19 years of age at the time of accident, the learned Tribunal has assessed the notional income of both the appellants at Rs. 3000/- per month. Accordingly, this Court

proposes to assess the compensation to be awarded under various heads to both the appellants as follows:-

9. The learned Tribunal has not granted anything towards future prospects to both the appellants. This Court deems it appropriate to grant future prospects to the extent of 15% to both the appellants.

10. Further, the Tribunal has also not awarded any amount towards future loss of earnings. The same should have been assessed by the learned Tribunal by adopting the multiplier method. The Hon'ble Supreme Court in **Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009(6) SCC 121**, has considered the different operative multipliers in various pronouncements and finally laid down the multiplier to be used in case of death/injury falling in the age group of 16 to 65 years. The principle of multiplier laid down in **Smt.Sarla Verma (supra)** was affirmed by a three Judge bench in **Reshma Kumari vs. Madan Mohan, 2013(9) SCC 65** and further affirmed by a Constitution Bench in **National Insurance Company Ltd. vs. Pranay Sethi, (2017) 16 SCC 680**. Keeping in view the law laid down in the aforesaid judicial pronouncements, this Court thinks it proper to apply a multiplier of '14' in view the age of appellant- Harbinder Kaur to be 42 years and that of '18' in case of appellant-Jaspreet Kaur considering her age to be 19 years at the time of accident.

11. The Tribunal has also not awarded any amount with respect to future medical expenses, cost of litigation and towards special diet to the appellants. The same are assessed and awarded at Rs. 25,000/-, Rs. 15,000/- and Rs. 10,000/- respectively to both the appellants.

12. The learned Tribunal had awarded an amount of Rs. 20,000/- each on account of pain and suffering which is stated to be on the lower side. This Court deems it fit to increase the amount of compensation under this head to Rs. 40,000/- to each of the appellants. Furthermore, this Court allows an amount of Rs. 50,000/- to appellant-Jaspreet Kaur as the disability suffered by her has diminished her marriage prospects.

CONCLUSION

13. Accordingly, compensation under different heads is determined as under:-

Sr.No.	Compensation	Harbinder Kaur	Jaspreet Kaur
1.	Income	Rs. 3000/- per month	Rs.3000/- per month
2.	Annual Income	Rs. 3000 x 12= Rs. 36,000/-	Rs. 3000 x 12= Rs. 36,000/-
3.	Future prospects (15%)	Rs. 36000 x 15/100= Rs.5400/-	Rs. 36000 x 15/100= Rs.5400/-
4.	Loss of future earnings	Rs. 36,000/- + Rs. 5400/-= Rs.41,400/- Rs.41,400 x 14= Rs.5,79,600/-	Rs. 36,000/- + Rs. 5400/-= Rs.41,400/- Rs. 41,400 x 18= Rs. 7,45,200/-
5.	Future Medical Expenses	Rs. 25,000/-	Rs.25,000/-
6.	Cost of litigation	Rs. 15,000/-	Rs.15,000/-
7.	Special diet	Rs. 10,000/-	Rs.10,000/-
8.	Pain and suffering	Rs. 40,000/-	Rs.40,000/-
9.	Loss of amenities	Rs.25,000/-	Rs.25,000/-
10.	Marriage Prospects	-----	Rs. 50,000/-
11.	Loss of studies	-----	Rs. 15,000/-
	Total	Rs.6,94,600/-	Rs. 9,25,200/-

16. In view of judgments in **Pranay Sethi (supra)** and **Smt.Sarla Verma (supra)**, the rate of interest is enhanced from 6% to 7.5% which would be payable from the date of filing of the claim petition till the date of actual payment. It is made clear that amount already paid would be

deducted from claim determined hereinabove. The respondent No.1-insurance company is directed to make the payment of compensation within a period of two months from the date of passing of this order.

17. Appeal is allowed in the aforesaid terms.

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

**(HARPREET SINGH BRAR)
JUDGE**

19.05.2023

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Whether Reasoned/Speaking : Yes/No

Whether Reportable : Yes/No