

2023:PHHC:055003

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

(i)

FAO-1546-2014 (O&M)

Nadeem

...Appellant

VERSUS

Parveen and others

...Respondents

(ii)

FAO-1557-2014 (O&M)

Maroof

...Appellant

VERSUS

Parveen and others

...Respondents

(iii)

FAO-1562-2014 (O&M)

Fahima

...Appellant

VERSUS

Parveen and others.

...Respondents

Date of Decision: April 19, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ram Bilas Gupta, Advocate
for the appellants (in all the appeals).

Mr.Ajay Singla, Advocate
for respondent No.3-Insurance Company (in all the appeals).

ARCHANA PURI, J.

These three appeals emanate from common Award dated

10.09.2013 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation to the appellants-claimants namely, Nadeem, Maroof and Fahima, on account of the injuries sustained by them, in a motor vehicular accident.

The aforesaid three appeals have been filed by the appellants-claimants, thereby, seeking enhancement of the compensation, so granted and also disputed the deduction made, on account of contributory negligence, to the extent of **30%**.

So far as, the fact of accident and involvement of jeep bearing Chassis No.C69565, Engine No.B37827, in the accident, as well as imputation of rashness and negligence, on the part of respondent No.1-Parveen, is concerned, suffice to consider the findings, so recorded by learned Tribunal, which have not been challenged further, by the persons, so made liable. However, the appellants-claimants, who are seeking enhancement of compensation, also disputed the negligence attributed to them, to the extent of 30% and the deduction accordingly made, from the computation of compensation, so worked upon by learned Tribunal.

As per version of the appellants-claimants, on 16.05.2011, all the appellants namely, Nadeem, Maroof and Fahima, were coming from Kairana to Pathargarh, on a motorcycle bearing registration No.HR-60B-8245, which was being driven by Maroof, at a moderate speed, on correct left side of the road. When they reached near village Panjeeth Churaha, on Kairana-Panipat road, the offending Bolero bearing letters A/F on its number plate and bearing Chassis No.C69565, Engine No.B37827, came

from Panipat side, which was driven by respondent No.1, rashly and negligently, at high speed and by coming on the wrong side, respondent No.1-Parveen had struck his vehicle against the motorcycle of the appellants-claimants. As a result thereof, all the appellants fell along with the motorcycle and received multiple and grievous injuries, on their persons. Even, the motorcycle was also badly damaged. However, relative of appellant-claimant Maroof, namely Shamim along with one Sharif was following the appellants and he had shifted the injured-appellants to the hospital.

It is categoric claim of all the appellants-claimants, in their respective claim petitions about accident to have taken place due to rash and negligent driving of the offending Bolero vehicle, driven by respondent No.1-Parveen. On the basis of statement of Shamim, relative of Maroof, FIR was got registered.

On the basis of the evidence adduced, learned Tribunal reached the conclusion about the involvement Bolero bearing Chassis No.C69565, Engine No.B37827, in the accident in question and further also, took note of the fact that there were three occupants on the ill-fated motorcycle. It was being driven by Maroof and Nadeem and Fahima, were other two pillion riders, besides the driver. By riding on a motorcycle, the pillion riders have also legally consented the driver of the motorcycle, namely Maroof, to commit violation of law and precisely, on this account, contributory negligence of the riders of the motorcycle was also held to be there, to the extent of 30%. In the light of the same, it was concluded that the accident

had taken place, on account of rash and negligent driving by respondent No.1-Parveen, to the extent of 70% and 30% of the negligence was attributed to the riders of the motorcycle, namely, Nadeem, Maroof and Fahima.

In the appeals, in hand, appellants-claimants, have assailed this specific finding of contributory negligence being there, at the instance of all the appellants. It is submitted by learned counsel for the appellants that mere fact that three persons were riding on the motorcycle, is no ground to hold them to be also contributory negligent. It is further submitted that the triple riding on a two wheeler, may be a traffic offence, but it does not constitute the contributory negligence.

Rather, on the other hand, learned counsel for the insurance company has contended that there is no defect in the findings recorded by learned Tribunal, as triple riding on the motorcycle is prohibited under the provisions of the Act and he also submitted that if three persons are riding on the motorcycle, which is designed to carry two persons, the driver is not supposed to have any effective control over the vehicle. The over-weight on account of third passenger, will also affect the stability of the vehicle. Thus, he contended that the appellants were also contributory negligent.

In view of the submissions, so made, the evidence has been appraised again. It is the categorical claim of the appellants-claimants, in their respective claim petitions, about the accident to be result of rash and negligent driving of Bolero vehicle in question, being driven by respondent No.1-Parveen. All the three appellants-claimants, namely Nadeem, Maroof

and Fahima, had stepped into witness box as PW-1, PW-2 and PW-3, respectively. All the three said witnesses, in their respective affidavits, have categorically stated in consonance with the version, so pleaded, in the claim petitions. Besides the said witnesses, even an eye witness to the accident, namely Shamim, who was following the motorcycle in question and at whose instance, FIR was got registered, has also raised imputation of rashness and negligence, on the part of respondent No.1. Besides the same, attested copy of FIR has been proved as Ex.P169. Certified copies of site plan and charge-sheet have also been proved in evidence.

At this stage, it is pertinent to mention that respondent No.1, who in the capacity of being driver of the offending vehicle, was the most important person to rebut the claim of the appellants-claimants, has not stepped into witness box, to assert about there to be contributory negligence, on the part of occupants of the ill-fated motorcycle also. It is further pertinent to mention that when three persons are travelling on a motorcycle, they may be held guilty of traffic offence, but there is no reason or ground to make any inference regarding negligence as contributory by the only fact that three persons were going on a motorcycle. If the evidence was brought before the Court that the driver of the Bolero was responsible for the accident, the Court could not have without any explanation from the driver of the Bolero itself, reach the conclusion that the accident took place by any negligent conduct of the occupants of the motorcycle in question. A finding of contributory negligence is not a matter of conjectural inference in the manner done by the Tribunal, but it shall be on the basis of specific

evidence. The most important factor to be taken into consideration is the categorical claim made at the instance of the appellants-claimants, about the accident, to be result of rashness and negligence, on the part of respondent No.1, while driving the Bolero vehicle.

Besides the same, all the three appellants-claimants have stepped into witness box and deposed in consonance with the pleaded case, which also further gains strength from the statement of an eye witness, as already observed aforesaid. Not only this, even the site plan proved on record, in a pointer about the Bolero vehicle, coming on the wrong side and having struck against the motorcycle. In the light of the said evidence, to rebut the same, the testimony of respondent No.1 was of vital importance, but however, he had chosen to remain away from the witness box, as a result of which, adverse inference, ought to be drawn against him. Moreover, there is nothing as such, coming on record, about the driver of the motorcycle, to be not having any effective control over the motorcycle in question, at the relevant time. But, for the violation of law, while travelling of three persons, on a motorcycle, without anything more coming on record, it cannot lead to a finding of contributory negligence, unless, it is established that this very act of the driver of the motorcycle, riding along with two other persons, contributed either to the accident or to the impact of the accident, upon the victim. In the light of the same, the deduction made, on account of contributory negligence, to the extent of 30%, vis-a-vis, the appellants-claimants, is a erroneous finding and the same, as such, is hereby set aside. It is concluded about the accident to be result of solely rashness

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and negligence, on the part of respondent No.1-Parveen, while driving the offending Bolero, in question.

Now, coming to the computation of compensation, as done by learned Tribunal. On appraisal of the evidence, so adduced, learned Tribunal had held appellant Nadeem to be entitled to compensation as detailed herein:-

1.	Medical expenses	Rs.51,000/-
2.	Loss of income	Rs.1,200/-
3.	Disability	Rs.18,000/-
4.	Pain & Suffering	Rs.15,000/-
5.	Better diet	Rs.10,000/-
6.	Transportation charges	Rs.10,000/-
	Total	Rs.1,05,200/-

Likewise, appellant Maroof was held entitled to compensation, as herein given:-

1.	Medical expenses	Rs.90,600/-
2.	Loss of income	Rs.3,600/-
3.	Disability	Rs.40,000/-
4.	Pain & Suffering	Rs.20,000/-
5.	Better diet	Rs.10,000/-
6.	Transportation charges	Rs.10,000/-
	Total	Rs.1,74,200/-

Similarly, appellant Fahima, was held to compensation, as under:-

1.	Medical expenses	Rs.3,46,000/-
2.	Loss of income	Rs.5,550/-
3.	Pain & Suffering	Rs.25,000/-

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4.	Better diet	Rs.15,000/-
5.	Transportation charges	Rs.10,000/-
	Total	Rs.4,01,550/-

In the light of the compensation, so granted by learned Tribunal, learned counsel for the appellants has assiduously submitted that the compensation so granted by the Tribunal, is a meagre amount. It has been worked upon on lower side and as such, requires extensive enhancement. It is submitted that learned Tribunal has worked upon the compensation, on account of disability of Nadeem and Maroof, in a mechanical manner, while taking Rs.2000 per %age of the disability. Also, it has not taken into consideration the impact of the disability, upon the lives of the appellants-claimants and not only to relating to the income generating capacity, but also about non-quantifiable implications, on the life of the appellants-claimants. Furthermore, learned counsel for the appellants has submitted that nature of the injuries, have also not been appraised in appropriate manner and consequently, the loss of income, has also been worked upon on lower side.

Thus, learned counsel for the appellants, vis-a-vis, all three appeals, has made a prayer for extensive enhancement of the compensation, so awarded by learned Tribunal to the appellants-claimants.

On the other hand, learned counsel for the insurance company has refuted the claim of the appellants-claimants, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. Thus, he submits that all the appeals sans merit and deserve to be

dismissed.

Firstly, coming to the nature of injuries, so sustained by appellant-claimant Nadeem, in the accident in question. As per version of Nadeem, he remained admitted in DR. Prem Hospital from 16.05.2011 to 23.05.2011, i.e. for eight days. Dr.Sudhir Batra, Deputy Civil Surgeon, Civil Hospital, Panipat, has been examined as PW-6. He has proved the disability certificate of Nadeem, which is Ex.P95. He categorically deposed about examination of Nadeem by the Board of Doctors, of which, he was also member and has deposed that in pursuance of examination, Nadeem was found to be case of '*old united fracture of both bones leg right side with implant in situ, Old united fracture acetabulum right with decrease ROM right hip joint*'. On the basis of the examination of the injured-Nadeem, he deposed that disability certificate was issued for **9%** permanent disability.

Besides the same, PW-5 Prem Kumar, Accountant, has also proved the medical bills Ex.P2 to Ex.P12 and PW-7 Harsh Arya, Accountant has proved the medical bills Ex.P97 to Ex.106, vis-a-vis, Nadeem and vide these bills, Nadeem had paid an amount of Rs.50,953/-, which has been rounded off by learned Tribunal to **Rs.51,000/-**.

Summary discharge of Nadeem has been proved as Ex.P108. Nadeem remained admitted in the hospital from **16.05.2011 to 23.05.2011**. In his affidavit, Nadeem has categorically deposed about kind of injuries, sustained by him and he also deposed that he was an agriculturist by profession, prior to the accident and was earning Rs.8000/- per month.

However, it has been rightly observed by learned Tribunal that in the cross-examination, Nadeem has deposed that he does not own any agricultural land. Thus, keeping in view no authentic evidence coming on record, about the extent of earnings of Nadeem, in modest estimate, as per prevalent minimum wages, his income has been taken as Rs.4,500/-, which is just and appropriate. Even if the income is so worked upon, then also, the extent of compensation, so calculated, does not commensurate with the kind of injuries, sustained by aforesaid appellant-claimant. Only Rs.1,200/- has been given as loss of income, on account of admission in the hospital for eight days. Besides the same, while considering 9% permanent disability, by taking Rs.2000 per %age of the disability, it has been worked upon as **Rs.18,000/-**. For pain and suffering, another sum of **Rs.15,000/-** has been given and for special diet also, a sum of **Rs.10,000/-** has been given. Besides the same, on the count of transportation charges, a sum of **Rs.10,000/-** has been given. The total compensation, as such, has been worked upon as **Rs.1,05,200/-**. However, this extent of compensation is on lower side, which shall be re-appraised in the later part of the judgment.

Now, coming to the injuries, as such, sustained by Maroof. As per the version of appellant-Marooof, he remained admitted in the hospital from **16.05.2011 to 23.05.2011** and from **04.06.2011 to 19.06.2011**, i.e. for **24** days. Besides pleading in the claim petition, Marooof has also stated in his affidavit about his indulgence in agricultural work and earning **Rs.12,000/-** per month. However, considering the fact of the said witness also, while facing cross-examination, having stated that he does not own

any agricultural land, his income, as such, has been taken to be Rs.4,500/- per month, as daily wager and this is the most appropriate one. Considering it to be so, on the count of 'loss of income', compensation has been granted for a period of 24 days of his admission in hospital, which comes to **Rs.3,600/-**. However, it is also on lower side.

PW-6 Dr.Sudhir Batra, has also proved the disability certificate of Maroof, which is Ex.P96. He has categorically deposed about examination of Maroof by the Board of Doctors on 04.04.2012 and it was found that he was having **20% disability, with regard to 'old operated fracture femur right side with implant in situ with mild pain, united fracture fibula right with uglyscar over left leg with restriction of extension and ankle joint'**. On the basis of this disability certificate, considering the disability to be 20%, while working upon as Rs.2000 per % age of the disability, a sum of Rs.40,000/- has been granted. This too is not appropriate manner of making assessment.

Besides the aforesaid, on the count of 'pain and suffering', another sum of **Rs.25,000/-** has been given and for 'special diet' also, a sum of **Rs.10,000/-** has been given. Besides the same, on the count of 'transportation charges', a sum of **Rs.10,000/-** has been given. In total, compensation has been worked upon as Rs.1,74,200/-. This compensation, so worked upon, is definitely on lower side, , which shall re-appraised hereinafter.

Now, coming to the compensation, so granted to appellant-Fahima. As per version of appellant Fahima, soon after the accident, she

remained admitted in DR. Prem Hospital, from 16.05.2011 to 21.06.2011 i.e. for 37 days. Though, appellant Fahima asserted in the affidavit to be indulging in agricultural work and earning Rs.8000/- per month, but however, it was concluded that there is no evidence, as such, produced by appellant-Fahima, qua her earnings, but however, considering the numerous duties performed by the housewife, while looking after her household and family members, the value of her services was taken as Rs.3,000/- per month and on the count of 'loss of income', on account of admission in hospital, which was for 37 days, it was worked upon as Rs.5,550/-, which is also not appropriate one.

Besides the same, on the count of 'pain and suffering', another sum of Rs.25,000/- has been given and for 'special diet' also, a sum of Rs.15,000/- has been given and another amount of Rs.10,000/- was given, on the count of 'transportation charges'. In total, compensation so worked upon, qua the injuries, so sustained in the accident, qua Fahima, was to the extent of **Rs.4,01,550/-**. The compensation, as given aforesaid, definitely is on lower side, which shall re-appraised hereinafter.

Very true, as so pointed out by learned counsel for the insurance company that the kind of injuries, as asserted by the appellants-claimants, have not been proved by way of examination of medical witness. However, it is pertinent to mention that the Motor Vehicles Act is benevolent piece of legislation and summary proceedings are to be conducted in the same. In a criminal case, in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter

is to be decided, on the basis of preponderance of evidence, but in a claim petition, before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of evidence. As such, assessment of the nature of the injuries, ought to be made, on the basis of the material coming forth.

The discharge summary relating to appellant Nadeem has been proved as **Ex.P108**. Though, it has been tendered into evidence, but still, it can be looked into, as it relates to Nadeem, his particulars, as such, have been mentioned and furthermore, it co-relates to the date of accident, as pleaded in the claim petition. Therein, it is specifically mentioned about discharge diagnosis to be '*# Pelvis ¯ # Tibia & Fibula : ® (closed reduction done)*'. In the resume of history, it has been mentioned as '*alleged RSA on motorbike on 16/5/11. MLR done, PI Sent*'. Clinical examination was '*Pain & tenderness ¯ deformity : ® LL, L/E: ® L.L. in addition & int. rotation with puncture wound over ® Leg*'. Furthermore, it also mentions about the '*closed reduction of # done*'. The kind of injuries, so stated in the discharge summary, co-relate to the injuries, as deposed by **PW-6 Dr.Sudhir Batra** and which also finds reflection in the disability certificate **Ex.P95**.

Likewise, the discharge summary of Maroof has been proved as **Ex.P130**. Even though, doctor has not been examined, but however, from this discharge summary, it is evident that the discharge diagnosis has been

given as '**# Femur with # Fibula with ® Foot drop [I M nailing done] with exploded ® Testis**'. The resume of history has given as 'Alleged H/o RSA near V.P.O Kairana, Pain and deformity ® LL with Large laceration over genitalia with ® exploded testis'. The clinical examination on admission is mentioned as '**G.C.-Unstable, Pulse 88/min, feeble, B.P.100/60 mm Hg, L/E: ® L.L. Deformity ¯ tenderness. Exploded testis**'. Even the treatment given as '**Debridement and repair of scrotal injury, stainmin min implanting, debridement, reduction of # SOF**'. Even, the said appellant, at first instance, remained admitted from 16.05.2011 to 23.05.2011. However, there was re-admission from 04.06.2011 to 19.06.2011 in DR. Prem Hospital. The discharge diagnosis is mentioned as '**® Leg Hematoma ¯ Infection (Drainage and incision done**'. The resume of history is given as '**Readmission FUC, H/o # ® Leg compound ¯ superadded infection, Readmitted ¯ c/o Painful swelling ¯ bony deformity : ® Leg**'. The clinical examination is mentioned as '**Conscious, Pulse-90/min, B.P. 130/80 mm Hg, Temp-99°F, Chest- B/L clear, other S/E No abnormality detected**'. The treatment given is '**Incision & Drainage of hematoma**'.

Likewise, discharge summary of Fahima is Ex.P163. Therein, it is stated about her admission in the hospital from **16.05.2011 to 21.06.2011**. The discharge diagnosis is given as '**Pt ¯ # SOF ®**'. The resume of history is mentioned as '**Pt. Alleged to be RSA, on 16/5/11**'. The details of clinical examination on admission and treatment given is also mentioned. Even the respective bills of the expenditure incurred on the treatment have been duly proved.

Thus, from the aforesaid documents, coming on record, the kind of injuries, as such, stands amply established, which can be taken into account.

The Motor Vehicle Act is benevolent piece of legislation and its provisions make it clear that the compensation should be justly determined.

A person is not only to be compensated for the injury suffered due to the accident but also for the loss suffered on account of the injury and his inability to lead the life, he led, prior to the life altering event. A three judges' bench in ***Jagdish Vs. Mohan and others, 2018 (4) SCC 571***, made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

“...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law.”

The Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his life, on account of his physical disability. The Courts should be mindful of the fact that though, the physical disability may be on

the lesser count but the functional disability, on account of injury sustained, can always be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the apt observations made by the Supreme Court in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*, which are herein reproduced:-

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced shows 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

*11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). **We may however note that** in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.”*

The test for determining the effect of permanent disability, on future earning capacity involves the following 3 steps, as was laid down in ***Raj Kumar's case (supra)*** and reiterated in ***Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796***, as herein given:-

“13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions, so that he continues to earn or can continue to earn his livelihood.”

At this juncture, also it is apt to make reference to the observations made in ***Pappu Deo Yadav vs. Naresh Kumar and others, (2020) SCC Online 752***, which are herein given:-

“13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court reassessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of

one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity.”

“20. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some ‘proportionate’ principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case.”

Thus, in this backdrop, considering the avocation, so followed by the appellants-claimants and looking into the kind of injuries, so

sustained by them, in the accident in question, the compensation has to be worked upon.

However, findings of learned Tribunal, vis-a-vis, loss of income, as so worked upon is erroneous. The loss of income has been worked upon, while considering the number of days, the appellants remained admitted in the hospital. In case of appellant Nadeem, it was held to be **8 days**, for appellant Maroof, considering his admission twice in the hospital, it was for **24 days** and qua appellant Fahima, it was worked upon as **37 days**. However, loss of income, simply on the score of days for which the appellants remained admitted, as such, cannot be worked upon. As already observed aforesaid, income of appellants Nadeem and Maroof, to be Rs.4,500/- per month, has been appropriately considered by learned Tribunal. However, looking at the kind of injuries of the appellants, as so observed aforesaid, it is not only for the days of admission, there was loss of income, but definitely, for much longer period, they must have remained off work, on account of constrained movement, in view of the injuries sustained by them.

Considering the kind of injuries sustained by the appellants and, their remaining away from the work, more particularly, considering their indulgence in agricultural pursuit, appellants Nadeem and Maroof, the loss of income has to be worked upon at least for a period of two and three months, respectively. Thus, for appellant Nadeem, the loss of income is worked upon as Rs.4,500x2 months=Rs.9,000/- and for appellant Maroof, it is Rs.4,500x3months=Rs.13,500/-.

So far as, appellant Fahima is concerned, though, it has been concluded that her indulgence in the agricultural pursuit, as such, does not stand established, but however, her value of services, has been worked upon, while considering her to be housemaker. It is pertinent to mention that Fahima should be contributing a lot towards household affairs. In our Indian society, even if a woman does not step out of the house to earn livelihood, but even then, there are numerous household duties, which she has to look after. She renders multifarious duties towards her husband and children. Considering the same, the value of services has been taken to be Rs.3,000/- per month, which is appropriate one. Considering the injuries, so sustained by Fahima, as already detailed aforesaid and looking at the duration of period, for which she remained admitted in the hospital, definitely, she also must have remained off from her matrimonial duties, for at least six months. As such, the loss of income, comes to be Rs.3,000x6 months=Rs.18,000/-.

Besides the aforesaid, so far as appellants Nadeem and Maroof are concerned, they were indulging in agricultural work. They had sustained injuries on the major limbs of the body and looking at the same, the functional disability, considering the disability of the whole body, is worked upon as 9% and 20% respectively. Thus, taking into consideration the indulgence of both the appellants Nadeem and Maroof, in agricultural pursuit and also considering the extent of disability and non-quantifiable implications, the loss, as such, is assessed as 30% of Rs.4,500/- per month, in the case of appellant Nadeem and qua appellant Maroof, it is assessed as

40% of Rs.4,500/- per month.

From the evidence, it stands established that appellant Nadeem was 18 years old, at the time of accident and appellant Maroof was 24 years old. Keeping in view their age, the suitable multiplier to be applied is '18' as held in *Smt.Sarla Verma vs. Delhi Transport Corporation and anr.*, **2009(3) RCR (Civil) 77**.

In the case of appellant Nadeem, by multiplying the loss of income of Rs.4,500/- with disability of 30% and dividing the same by 100, as per standard multiplier process, the loss is assessed as $\text{Rs.4,500} \times 30 / 100 = \text{Rs.1,350/-}$ per month. So, the annual loss of income, on account of admission in hospital and disability, comes to be $\text{Rs.1,350} \times 12 = \text{Rs.16,200}$ and by applying the suitable multiplier of '18', it comes to be $\text{Rs.16,200} \times 18 = \text{Rs.2,91,600/-}$.

On the basis of medical bills, so proved, compensation so granted by learned Tribunal to the extent of Rs.51,000/- is appropriate one. Besides the same, taking into consideration the kind of injuries suffered by appellant-claimant Nadeem as well as considering the impact thereof, on his future, the compensation, on the count of 'pain and suffering', so awarded by learned Tribunal, to the extent of **Rs.15,000/-** is now enhanced to **Rs.50,000/-**. Even, as per discharge summary of aforesaid appellant, rich diet has been advised by the doctor and considering the same, on the count of 'special diet' also, the amount, so awarded by learned Tribunal, is enhanced from **Rs.10,000/-** to **Rs.25,000/-**. The transportation charges to the extent of Rs.10,000/- as awarded by learned Tribunal are appropriate.

Accordingly, appellant-claimant Nadeem, is held entitled for compensation as under:-

1.	Loss of income	Rs.2,91,600/-
2.	Loss of income for two months as herein before	Rs.9,000/-
3.	Medical expenses	Rs.51,000/-
4.	Pain & Suffering	Rs.50,000/-
5.	Better diet	Rs.25,000/-
6.	Transportation charges	Rs.10,000/-
	Total	Rs.4,36,600/-

Likewise, in the case of appellant Nadeem, by multiplying the loss of income of **Rs.4,500/-** with disability of **40%** and dividing the same by 100, as per standard multiplier process, the loss is assessed as **Rs.4,500x40/100=Rs.1,800/-**. So, the annual loss of income, on account of admission in hospital and disability, comes to be **Rs.1,800x12= Rs.21,600/-** and by applying the suitable multiplier of '18', it comes to be **Rs.21,600x18=Rs.3,88,800/-**.

On the basis of medical bills, so proved, compensation so granted by learned Tribunal to the extent of **Rs.90,600/-** is appropriate one. Besides the same, taking into consideration the kind of injuries suffered by appellant-claimant Maroof as well as considering the impact thereof, on his future, the compensation, on the count of 'pain and suffering', so awarded by learned Tribunal, to the extent of **Rs.20,000/-** is now enhanced to **Rs.50,000/-**. Even, as per discharge summary of aforesaid appellant, rich diet has been advised by the doctor and considering the same, on the count of 'special diet' also, the amount, so awarded by learned Tribunal, is

enhanced from **Rs.10,000/-** to **Rs.25,000/-**. The transportation charges to the extent of **Rs.10,000/-** as awarded by learned Tribunal are appropriate.

Accordingly, appellant-claimant Maroof, is held entitled for compensation as under:-

1.	Loss of income	Rs.3,88,800/-
2.	Loss of income for three months as herein before	Rs.13,500/-
3.	Medical expenses	Rs.90,600/-
4.	Pain & Suffering	Rs.50,000/-
5.	Better diet	Rs.25,000/-
6.	Transportation charges	Rs.10,000/-
	Total	Rs.5,77,900/-

Now, coming to the case of appellant-Fahima. Even though, the disability, as such, has not been proved, but definitely, considering the extent of injuries, so sustained by her, it is evident that she must not have been able to look after her household affairs and attend to her matrimonial duties, as earlier done by her, prior to her accident, at least for **six months**. Thus, the loss of income, on account of admission in hospital and for further six months, comes to be **Rs.3,000x6= Rs.18,000/-**.

On the basis of medical bills, so proved, compensation so granted by learned Tribunal to the extent of **Rs.3,46,000/-** is appropriate one. Besides the same, taking into consideration the kind of injuries suffered by appellant-claimant Fahima as well as considering the impact thereof, on his future, the compensation, on the count of 'pain and suffering', so awarded by learned Tribunal, to the extent of **Rs.25,000/-** is now enhanced to **Rs.70,000/-**. Even, as per discharge summary of aforesaid

appellant, rich diet has been advised by the doctor and considering the same, on the count of 'special diet' also, the amount, so awarded by learned Tribunal, is enhanced from **Rs.15,000/-** to **Rs.40,000/-**. The transportation charges to the extent of **Rs.10,000/-** as awarded by learned Tribunal are appropriate.

Accordingly, appellant-claimant Fahima, is held entitled for compensation as under:-

1.	Loss of income	Rs.18,000/-
2.	Medical expenses	Rs.3,46,000/-
3.	Pain & Suffering	Rs.70,000/-
4.	Better diet	Rs.40,000/-
5.	Transportation charges	Rs.10,000/-
	Total	Rs.4,84,000/-

With the above observations, all the three appeals stand allowed. The impugned Award dated 10.09.2013 stands modified, to the extent, as indicated aforesaid. The interest component shall remain same, vis-a-vis, the date of filing of the present appeal, till realization of the enhanced amount, if so paid, within a period of two months, failing which, respondents, shall be liable to pay penal interest @ 9%. Apart from this modification regarding enhancement of compensation, the remaining terms of the impugned Award, shall remain same.

April 19, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes