



FAO-1181-2007 (O&M)

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

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Date of Decision: October 04, 2024

Hardip Singh

.....Appellant

Vs.

Tara Chand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Gopal Mittal, Advocate
for the appellant

Mr. Chanderdeep, Advocate
for respondent No.2.

Ms. Simran, Advocate for
Mr. Pardeep Goyal, Advocate
for respondent No.3.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 01.12.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') vide which the claim petition filed by the appellant/claimant for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 22.9.1999, the appellant/claimant accompanied by his friend-Harnek Singh was coming from Kullu to Mohali by Maruti Car No.CH-01V-1265. The car was being driven by claimant himself and his friend was sitting by his side.

When they reached near village Gara at Kanchi Maur at about 9.30 p.m., a

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truck bearing registration No. HP-11-3311 being driven by respondent No.1 in a rash and negligent manner hit the above car being driven on its correct side of the road at a moderate speed. As a result thereof appellant-claimant sustained multiple injuries on his person.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the claimant sustained injuries in a road side accident which took place on 22.9.1999 in the area of Kot Kohloor, District Bilaspur (HP) on account of rash or negligent driving of truck No. HP-11-3311 by respondent No.1, owned by respondent No.2 and insured by respondent No.3 as alleged? OPP.

2. If issue No.1 is proved whether the claimant is entitled to any amount as compensation, if so, to what amount and from whom? OPP.

3. Whether the driver of the offending vehicle was without valid and effective driving licence at time of accident, if so to what effect? OPR3

4. Whether the petition is not maintainable being in violation of terms and conditions of insurance policy? OPR 3.

5. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimant/appellant filed the present appeal for grant of compensation.



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SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the claimant-appellant contends that the claim petition of the appellant was dismissed only on the ground rash and negligence driving on the part of the driver is not proved. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellant/claimant.

7. *Per contra*, Ld. Counsel for the respondents argues on the lines of the award and contends that the claimant was under the influence of liquor and that has been observed by the Ld. Tribunal. And further that he was on the wrong side of the road. He further contends that the award has rightly been dismissed by the Ld. Tribunal. Therefore, they pray for dismissal of appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. Relevant portion of the award passed by the Ld. Tribunal is reproduced as under:-

ISSUE NO. 1

“As emanating from the pleadings of the parties the factum of accident is more or less admitted between the parties. What is left to be decided is as to who was responsible for causing the accident.

13. The claimant and respondent No.1 could be the best witness to depose about the manner in which the accident had occurred as claimant was allegedly driving his car and respondent No.1 was driving above truck, which were involved in this accident. According to the claimant the accident had occurred on account of rash and negligent driving of the above truck by respondent No.1 whereas respondents claimed that claimant himself was responsible for causing this accident as he was driving the car in a reckless manner under the effect of liquor intoxication.



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14. After scanning the evidence led by the parties in support of their above rival claims what emerges on file is that there is virtually no satisfactory evidence led by the claimant on file to substantiate his claim that the accident had occurred on account of rash and negligent driving of above truck by respondent No.1. Claimant himself no doubt appeared as his own witness as PW2 and deposed on affidavit (Ex.P1) that accident was caused by respondent No.1 Tara Chand by driving the above truck. He has nowhere mentioned as to how respondent No.1 was negligent. He has not stated that the truck was being driven by respondent No.1 at high speed or it was being driven on wrong side of the road. In para No.23 of the petition he had mentioned that the truck was being driven in negligent manner as respondent No.1 was driving it in a zig zag manner. This he has not stated in his statement. Thus this plea raised in the petition cannot be taken to have been substantiated by any substantive evidence on file.

15. On the other hand, respondent No.1 Tara Chand having appeared as his own witness as RW1 categorically deposed that accident had occurred on account of rash and negligent driving of the car by claimant himself as he was driving the alleged car at a very high speed under the influence of liquor. He further deposed that he having seen the car being driven by the claimant coming from opposite direction on a down ward slope at a very high speed slowed down the speed of his truck which was already very slow. In the meantime the car struck against the front of the truck. He had reported the matter to the police station wherein he had specifically mentioned that the driver of the car was drunk and he was under the influence of liquor. It was also mentioned that he was driving the at a very high speed and in a rash and negligent manner which had resulted into causing of the accident.

16. Nothing could be extracted in the probing cross-examination of respondent No.1 conducted by claimant. He denied the suggestion that he had got false criminal case registered against the claimant



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in connivance with the police. He also denied suggestion that he was driving the truck in a rash negligent manner. He also rejected the suggestion that the car being driven by the claimant was at slow speed and on correct side of the road. In such a situation testimony of this respondent No.1 has remained un-impeached and un-shaken. The same inspires confidence in all respects particularly when the claimant has nowhere stated that he was driving the car on correct left hand side of the road and the truck was being driven on wrong side of the road. The car was coming down on a sloppy road whereas truck was ascending the slope. In such a situation it was incumbent upon the claimant to drive the car at controllable speed and cautiously so as to give side to the ascending vehicles. When the claimant was driving the car at a high speed he must have not been able to negotiate with the slope and that resulted into alleged occurrence. In that way claimant was solely responsible for causing this accident.

17. Here it would be worth while to refer to the version narrated in the F.I.R. (Ex.R1/1) which was registered with regard to this accident immediately after the accident at the instance of respondent No.1. Therein also it was specifically alleged that accident has occurred in the fashion observed by me here in above. This F.I.R. provide full corroboration to the ocular testimony of respondent No.1.

18. There is no other evidence on file led by the claimant or the respondent to prove the factum of accident.

19. As a result of my foregoing discussion it is hereby concluded that the above accident had occurred on account of rash and negligent driving of the car by claimant himself. He had sustained injuries on his person in this accident caused by him as reflected in treatment slips (Ex.C1 to Ex.C6). This issue is thus decided against the claimant.

10. A perusal of the award shows that the claimant himself appeared

as PW-1 and stated the factum of accident.

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11. Harnek Singh was examined as PW-2 who stated in the affidavit that on 22.02.1999, he accompanied the claimant-Hardeep Singh and was occupying front seat with the claimant-Hardeep Singh when they were coming from Kullu to Mohali in a Maruti car bearing registration No.CH-01-V-1265. He further stated that the claimant-Hardeep Singh was driving the car at a moderate speed and respondent No.1 was driving his truck bearing registration No. HP-11-3311 in a very rash, negligent and zig zag manner. Therefore, despite the best efforts made by the claimant-Hardeep Singh, the driver of the said truck, struck the truck against the front right side of the car. He further stated that the accident took place due to rash and negligent driving of respondent No.1 while driving truck No. HP-11-3311.

12. Ld. Tribunal held that since Harnek Singh (PW-2) was not subjected to cross examination by the respondent, therefore, his testimony cannot be read in evidence against the respondents. This, reasoning given by Ld. Tribunal is not acceptable to this Court, since the respondent themselves did not cross examine Harnek Singh (PW-2).

13. Ld. Tribunal further observed that factum of accident is admitted by both the parties.

14. Ld. Tribunal on the one hand observed that no doubt claimant himself appeared as witness and deposed on affidavit (Ex.P1) that accident was caused due to rash and negligent driving of offending truck and on the other hand, the Ld. Tribunal has stated that he has nowhere mentioned that as to how respondent No.1 was negligent and dismissed the claim petition on this ground as well, which is again not acceptable to this Court since the affidavit of



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Harnek Singh who was examined as PW-2 categorically explains the negligence on the part of respondent No.1 i.e. driver of the offending truck.

15. The salary/earning of the claimant and the expenditure incurred in hospital, admission etc. are part of the record, therefore, this Court would decide the compensation accordingly.

16. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 01.12.2006 passed by Ld. Tribunal, Chandigarh stands vitiated by a complete absence of application of judicial mind.

17. In view of the above, the present appeal is allowed and appellant-claimant is entitled to compensation.

SETTLED LAW ON COMPENSATION

18. Hon'ble Supreme Court has settled the law regarding grant of compensation with respect to the disability. The Apex Court in the case of **Raj Kumar Vs. Ajay Kumar and Another (2011) 1 Supreme Court Cases 343**, has held as under:-

General principles relating to compensation in injury cases

5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full



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life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467).

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.

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19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.


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(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earnings is explained below with reference to the following

Illustration 'A' : *The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:*

a) Annual income before the accident : Rs. 36,000/-.

b) Loss of future earning per annum

(15% of the prior annual income) : Rs. 5400/-.

c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-



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Illustration 'B' : The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows :

- a) Annual income prior to the accident : Rs. 36,000/- .
- b) Loss of future earning per annum
(75% of the prior annual income) : Rs. 27000/-.
- c) Multiplier applicable with reference to age : 17
- d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-

Illustration 'C' : The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows :

- a) Minimum annual income he would
have got if had been employed as an
Engineer : Rs. 60,000/-
- b) Loss of future earning per annum
(70% of the expected annual income) : Rs. 42000/-
- c) Multiplier applicable (25 years) : 18
- d) Loss of future earnings : (42000 x 18) : Rs. 7,56,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

19. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680] has clarified the



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law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

“ Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

20. Hon’ble Supreme Court in the case of **Erudhaya Priya Vs. State Express Tran. Corpn. Ltd.** 2020 ACJ 2159, has held as under:-

“ 7. There are three aspects which are required to be examined by us:

(a) the application of multiplier of '17' instead of '18';

The aforesaid increase of multiplier is sought on the basis of age of the appellant as 23 years relying on the judgment in National Insurance Company Limited v. Pranay Sethi and Others, 2017 ACJ 2700 (SC). In para 46 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in the table in the case of Sarla Verma (Smt)



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and Others v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC) . In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability.

The aforesaid position is not really disputed by learned counsel for the respondent State Corporation and, thus, we come to the conclusion that the multiplier to be applied in the case of the appellant has to be '18' and not '17'.

(b) Loss of earning capacity of the appellant with permanent disability of 31.1%

In respect of the aforesaid, the appellant has claimed compensation on what is stated to be the settled principle set out in Jagdish v. Mohan & Others, 2018 ACJ 1011 (SC) and Sandeep Khanuja v. Atul Dande & Another, 2017 ACJ 979 (SC). We extract below the principle set out in the Jagdish (supra) in para 8:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;*
- (ii) Loss of income including future income;*
- (iii) The inability of the victim to lead a normal life together with its amenities;*
- (iv) Medical expenses including those that the victim may be required to undertake in future; and*
- (v) Loss of expectation of life."*

[emphasis supplied]

The aforesaid principle has also been emphasized in an earlier judgment, i.e. the Sandeep Khanuja case (supra) opining that the multiplier method was logically sound and legally well



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established to quantify the loss of income as a result of death or permanent disability suffered in an accident.

In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries had been set out as under:

"Nature of injury:

- (i) compound fracture shaft left humerus*
- (ii) fracture both bones left forearm*
- (iii) compound fracture both bones right forearm*
- (iv) fracture 3rd, 4th & 5th metacarpals right hand*
- (v) subtrochanteric fracture right femur*
- (vi) fracture shaft femur*
- (vii) fracture both bones left leg*

We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 13 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case (supra), more specifically para 61(iii), considering the age of the appellant, would be 50% of the actual salary in the present case.



(c) The third and the last aspect is the interest rate claimed as 12%

In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the Jagdish’s case (supra). On this aspect, once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court.

CONCLUSION

8. The result of the aforesaid is that relying on the settled principles, the calculation of compensation by the appellant, as set out in para 5 of the synopsis, would have to be adopted as follows:

<i>Heads</i>	<i>Awarded</i>
<i>Loss of earning power (Rs.14,648 x 12 x 31.1/100</i>	<i>Rs. 9,81,978/-</i>
<i>Future prospects (50 per cent addition)</i>	<i>Rs.4,90,989/-</i>
<i>Medical expenses including transport charges, nourishment, etc.</i>	<i>Rs.18,46,864/-</i>
<i>Loss of matrimonial prospects</i>	<i>Rs.5,00,000/-</i>
<i>Loss of comfort, loss of amenities and mental agony</i>	<i>Rs.1,50,000/-</i>
<i>Pain and suffering</i>	<i>Rs.2,00,000/-</i>
<i>Total</i>	<i>Rs.41,69,831/-</i>

The appellant would, thus, be entitled to the compensation of Rs. 41,69,831/- as claimed along with simple interest at the rate



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of 9% per annum from the date of application till the date of payment.

RELIEF

21. In view of the law laid down by the Hon’ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 01.12.2006 is set aside. The appellant-claimant is entitled to grant of compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Medical expenses	Rs.25,000/-
2	Attendant Charges	Rs.25,000/-
3	Special diet	Rs.10,000/-
4	Pain and Sufferings	Rs.40,000/-
5	Transportation charges	Rs.50,000/-
	Total Compensation	Rs.1,50,000/-

22. So far as the interest part is concerned, as held by Hon’ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the amount from the date of filing of claim petition till the date of its realization.

23. The Insurance Company is directed to deposit the amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the amount of compensation alongwith interest in the account of the claimant/appellant. The



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claimant/appellant is directed to furnish his bank account details to the Tribunal.

- 24. Disposed off accordingly.
- 25. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

October 04, 2024
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes / No