



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-2004 of 2007(O&M)

Date of Decision: November 07, 2024

Radhey Shyam Mehla

.....Appellant

Vs.

State of Haryana and ors

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Punchhi, Advocate
for the appellant

Mr. Ayuvan Singh, AAG, Haryana

Mr. D.R. Bansal, Advocate with Mr. Rahul Bansal, Advocate
for respondent No. 3-Insurance Co.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 19.01.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal'), for enhancement of compensation granted to the appellant.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 06.03.2004, Krishan Chand-driver and Ved Parkash conductor left Sirsa for Delhi in the bus bearing registration No. HR-57-0923. There were about 14-15 passengers in the ill fated bus including Gurdeep Singh and Shingara Singh. When the bus reached near the temple in the area of village Dhangar, District Fatehabad, in the meantime, a bus bearing registration No. HR-57-0904 came from the opposite side being driven by Surender Singh rashly and negligently and struck against the ill fated bus. Consequently, the driver of both the bus died on the spot. Six or seven passengers of both the buses suffered injuries. The injured were shifted to General Hospital,



Fatehabad. F.I.R No. 102 dated 06.03.2004 under Sections 279/337/304-A IPC was registered at P.S. Fatehabad against the driver of the offending bus.

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

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

“1. Whether the accident in question took place due to rash and negligent driving of driver of Bus of Haryana Roadways Depot, Sirsa bearing registration No.HR-57-0923 thereby causing death of Krishan Chand, Mahender Jain and injuries to Radhey Sham, as alleged? OPP

2. Whether the claimants are entitled for compensation, if so, how much and from whom ? OPP

3. Whether the present petitions are not maintainable in the present form? OPR

4. Whether the petitioners have got no cause of action to file the present petition? OPR

5. Whether the driver of bus of Haryana Raodways bearing registration No. HR-57-0923 was not holding a valid and effective driving license at the time of the alleged accident if so to what effect? OPR3

6. Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.1,16,000/- to the claimant/appellant. The relevant portion of the award reads as under:-



“17. Out of the passengers of buses in question only Radhey Sham petitioner has appeared in the witness box as PW-4. He has filed his affidavit Ex. PW-4/A wherein in para No.3 he has pleaded that on 6.3.2004 he boarded the offending bus from Agroha Mor at 4-40 A.M. for coming to Sirsa. The driver of the offending bus was utmost rash and negligent. At about 5 or 5-15 A.M. the bus reached near Canal Bridge near a temple in the area of Dhangar. The ill fated bus came from the side of Sirsa. The driver of the offending bus dashed the offending bus against the ill fated buys and caused the accident in question. Thus, these averments of the affidavit of PW-4 go to show that he has deposed against the driver of the offending bus but his version being not supported by any other evidence cannot be admitted to be correct straightway. Therefore, in order to find out the truth in the version of PW-4 his cross-examination is also to be considered. In his cross-examination conducted by respondents No.1 and 2 he denied the correctness of the suggestion that drivers of both the buses were at fault and that the accident in question took place ribunadue to the failure of the breaks of both the buses involved in the accident. Because the witness has denied the correctness of the version of respondents No.1 and 2, therefore, it can be held that the respondents have not been able to get admission of eye witness on this point. As I have stated that the respondents No.1 and 2 have not adduce any other evidence on this point, therefore, its stands proved on the file that the accident in question was not the



result of the failure of the breaks of the buses involved in the accident.

18. In Para no.24 of the petitions mentioned at S.No. 1 above the petitioners have pleaded that Surender Kumar driver of the offending bus was driving the offending bus rashly and negligently and in violation of the traffic rules. There was a turn at the place of accident. The driver of the offending bus could not properly gave turn to the bus. Resultantly, the offending bus struck in the ill fated bus from the driver side and the accident in question took place. These averments of para no.4 have though not been admitted by the respondents No.1 and 2 but at the same time these averments in respect of the curve (turn) in the road at the place of accident are not specifically denied by the respondents. Therefore, the fact remains that the respondents No.1 and 2 have admitted the fact that there is a curve on the road at the place of accident. If this fact is considered in view of the facts and circumstances of the case then it would go to show that the drivers of both the buses were rash and negligent. They knew fully well that there is a curve in the road but even then they did not maintain their proper side on the road while crossing the curve and this is why the accident in question took place.

19. The driver's side of both the buses struck against each other. This fact again goes to show that the drivers of both the buses were rash and negligent and equally responsible for causing this accident.. They should have maintained proper distance while crossing the buses. Had they been vigilant and careful and had



observed the traffic rules they could avoid the accident but they did not do so. Therefore, I have no hesitation to hold that the drivers of both the buses were equally responsible for causing the accident in question.”

6. Hence the appellant filed the present appeal seeking enhancement of the compensation to the claimant-appellant.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

7. Learned counsel for the appellant contends that the compensation awarded to the appellant, is on the lower side and deserves to be enhanced, as per latest law.

8. *Per contra*, learned counsel for the respondent-Insurance Company argues on the lines of the award and contends that the compensation granted by the Tribunal is not on the lower side and the present appeal seeking enhancement of the compensation, is liable to be dismissed. He further contends that the recovery rights be granted to the Insurance Company, as one of the passenger who appeared as PW4 (Radhey Shyam) made a statement that the driver of the offending vehicle was utmost rash and negligent. The driver of the offending bus dashed the offending bus against the ill fated bus and caused the accident in question.

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

10. A perusal of the record shows that the claimant/appellant is 88 % permanent disable. However, it is not in dispute that the appellant was already disabled to the extent of 70% at the time of accident. It further reveals from the record that at the time of the accident, the appellant was 32 years old and was working in State Bank of Patiala as a regular employee. As a result of this accident, he is totally disabled now and his future has been ruined.



11. The learned Tribunal while granting the compensation has not taken into consideration the future of the appellant, consequent to the accident. The learned Tribunal failed to grant the compensation on account of the loss of income to the appellant. Further the learned Tribunal has erred in law in not awarding sufficient amount under the head pain and suffering, attendant charges etc.

12. Further, the argument of learned counsel for the Insurance company that the recovery rights be granted to the Insurance Company is rejected, as on perusal of the record, it has been found that the Insurance Company failed to prove on record with regard to invalidity of the driving licence of both the drivers of the offending vehicles.

13. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of **V. Mekala vs. M. Malathi and anr, 2014(11) SCC 178** wherein in a motor accident, the victim was a student and bones of her both legs fractured. Hon'ble the Supreme Court assessed her notional monthly income at Rs.10,000/- and awarded her 50% future prospects. She was awarded Rs.3 lacs under the head Loss of enjoyment of life and marriage prospects. She was awarded Rs. 2 lacs under the head pain and suffering and Rs. 2 lacs under the head loss of amenity and attendant charges. The relevant extract of the judgment is reproduced as under:-

“17. The fact that the appellant was a brilliant student at the time of the accident should also be taken into consideration while awarding compensation to her. Therefore, taking Rs.6,000/- as monthly notional income by the Tribunal for the purpose of awarding compensation under this head is too meager an amount. The learned counsel appearing for the respondent No.2 contended that the appellant can still finish her education and find employment and therefore, there is no necessity to enhance the amount of compensation under the head of



'loss of income' and 'future prospects'. It is pertinent to reiterate here that the claimant/ appellant has undergone and undergoing substantial pain and suffering due to the accident which has rendered both her legs dysfunctional. This has reduced the scope of her future prospects including her marriage substantially. Moreover, a tortfeasor is not entitled to dictate the terms of the claimants-appellants career as has been held by the Karnataka High Court in the case of [K. Narsimha Murthy v. The Manager, Oriental Insurance Company Ltd and Anr. ILR 2004 KARNATAKA 2471](#), the relevant paragraph of which reads as under:

*“41. Further, it needs to be emphasized that it is not the right of the tortfeasor or a person who has taken over the liability of the tortfeasor in terms of and under the Act to dictate that the injured person should do some other work, manual or otherwise, it does not matter, may be with pain and discomfort, in order to minimize his or its liability. Such insistence is untenable in law and if such is the case, it would violate basic human rights of the injured person. In this case, the appellant is reduced to such a state that he is unable to do any work, manual or otherwise, without subjecting himself to pain and suffering, agony and discomfort. In an accident, if a man is disabled for a work which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes has lost all earning capacity he possessed before and he is required to be compensated on the basis of total loss. In reaching this conclusion we may derive support from the judgments in *Daniels v. Sir Robert Mc Alpine and Sons Limited* and *Blair v. FJC Lilley (Marine) Limited*. Secondly, the physical*



incapacity to earn income sustained by the appellant is not temporary, but permanent and complete as per Exhibit P. 43. Thirdly, it cannot be said that since the appellant has sustained only 54% permanent physical disability in respect of the whole body as per P.W. 3, the Court should take into account functional disability also at 54% only while assessing the loss of earning capacity. Such hypothesis does not stand to reason nor can it be accepted as valid in terms of law. An injured person is compensated for the loss which he incurs as a result of physical injury and not for physical injury itself. In other words, compensation is given only for what is lost due to accident in terms of an equivalent in money insofar as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, but only values totality of the harm which the loss has entailed the loss of amenities of life and infliction of pain and suffering: the loss of the good things of life, joys of life and the positive infliction of pain and distress.”

18. Further, it has been held in the case of [Reshma Kumari](#) (supra) that certain relevant factors should be taken into consideration while awarding compensation under the head of future prospect of income. The relevant paragraph read as under:

“27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have



chances of an immediate pay revision, whereas in another the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.”

19. Therefore, in the light of the principles *laid down in* the aforesaid case, it would be just and proper for this Court, and keeping in mind her past results we take Rs.10,000/- as her monthly notional income for computation of just and reasonable compensation under the head of loss of income. Further, the High Court has failed to take into consideration the future prospects of income based on the principles *laid down by* this Court in catena of cases referred to supra. Therefore, the appellant is justified in seeking for re-enhancement under this head as well and we hold that the claimant- appellant is entitled to 50% increase under this head as per the principle *laid down by* this Court in the case of *Santosh Devi* (supra). The relevant paragraph reads as under:

“13. In *Sarla Verma's* case (supra), another two Judge Bench considered various factors relevant for determining the compensation payable in cases involving motor accidents, noticed apparent divergence in the views expressed by this Court in different cases, referred to large number of precedents including the judgments in *U.P. SRTC v. Trilok Chandra* (1996) 4 SCC 362, *Nance v. British Columbia Electric Railway Company Ltd.* 1951 AC 601, *Davies v. Powell Duffryn Associated Collieries Ltd.* 1942 AC 601 and made an attempt to limit the exercise of discretion



compensation by laying down straightjacket formula under different headings, some of which are enumerated below:

(i) Addition to income for future prospects In Susamma Thomas this Court increased the income by nearly 100%, in Sarla Dixit the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years.

Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.

Therefore, taking both the aspects into account, the total amount of compensation under this head is calculated as Rs.22,68,000/- [(Rs.10,000/-x 70/100 + 10,000 x 70/100 x 50/100) x 12 x 18]



20. The compensation under the head pain & suffering and mental agony was awarded by the High Court after recording concurrent finding with the award passed by the Tribunal. However, the courts below have not recorded the nature of the permanent disablement sustained by the appellant, while awarding Rs.1,00,000/- under this head which is too meager an amount and is contrary to the judgment of R.D. Hattangadi and Govind Yadav cases (supra).

The relevant paragraphs of [Govind Yadav](#) case read as under:

“25. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the tribunals and the courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the tribunals and the courts should make a broad guess for the purpose of fixing the amount of compensation.

26. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs 1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg.” Therefore, under this head the amount awarded should be enhanced to Rs.2,00,000/- as the Doctor-PW2 has opined that at the time of walking with support of crutches, the claimant-appellant will be suffering pain permanently. Therefore, under

this head it has to be enhanced from Rs.1,00,000/- to Rs.2,00,000/-.



21. *The loss of amenity and attendant charges awarded by the courts below at Rs.1,00,000/- is also too meager an amount as the appellant has permanently lost her amenity of both the legs. For the purpose of walking, squatting, running and also studying throughout her life and particularly, at the advanced age, she will be requiring the attendant for giving assistance to attend the nature's call and also at the time of sitting or moving around. Therefore, the compensation at this head is required to be enhanced from Rs.1,00,000/- to Rs.2,00,000/- based upon the principle laid down by this court in Govind Yadav case (supra), the relevant paragraph of which reads as under:*

“27. The compensation awarded by the Tribunal for the loss of amenities was also meagre. It can only be a matter of imagination as to how the appellant will have to live for the rest of his life with one artificial leg. The appellant can be expected to live for at least 50 years. During this period he will not be able to live like a normal human being and will not be able to enjoy life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs 1,50,000 for the loss of amenities and enjoyment of life.”

22. *The amount of compensation awarded under the head of ‘Loss of enjoyment of life and marriage prospects’ at Rs.2,00,000/- is totally inadequate since her marriage prospect has substantially reduced and on account of permanent disablement she will be deprived of enjoyment of life. Therefore, it would be just and proper to enhance the compensation from Rs.2,00,000/- to Rs.3,00,000/-. In so far as, purchase of crutches periodically, it would be just and proper to award a sum of Rs.50,000/-.”*



14. In view of the principles set forth in the **V. Mekala's (supra)** and considering his past results, it is just and appropriate for this Court to fix his notional monthly income at Rs.13,015/-. As per salary certificate (Ex. PW4/A), the monthly income of the appellant was Rs.15498/- per month and after deducting tax of Rs.29,793/- per annum, his net income would come to Rs.13,015/- per month.

SETTLED LAW ON COMPENSATION

15. 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 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.

(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/-*

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)].

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

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

CONCLUSION

18. In view of the law laid down by the Hon’ble Supreme Court in the above referred to judgments, the present appeals are allowed. The award dated 19.01.2007 is modified accordingly. The appellant-claimant is entitled to enhanced compensation as per the calculations made here-under:-

<i>HEAD</i>	<i>COMPENSATION AMOUNT</i>
Income	Rs.13,015 per month
Future Prospect 50%	Rs.6507 (13015 X 50%)
Annual Income	Rs.2,34,264/- (19522X12)
Loss on account of 18% disability	Rs.42167 (234264X18%)
Multiplier of 16	42167 X 16=6,74,672/-
Pain and suffering	Rs.50,000/-
Attendant Charges	Rs.40,000/-
Transportation Charges	Rs.35,000/-
Loss of amenities of life	Rs.80,000/-
Special Diet	Rs.20,000/-
Total compensation awarded:-	Rs.8,99,672/-
Amount awarded by Tribunal	Rs.1,16,000/-
Enhanced amount of compensation	Rs.7,83,672/-

19. 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 Nandu State Transport Corporation** (2022) 5



Supreme Court Cases 107, the appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

20. The Insurance Company is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish the bank account details to the Tribunal.

21. Further Insurance Company is directed to disburse the current schedule fees to Mr. D.R. Bansal, Advocate, within a period of ten days from the date of receipt of certified copy of this order.

22. Disposed off accordingly.

23. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

November 07, 2024
G Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes