IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

225 **FAO-2415-2007 (O&M)**
Date of Decision: November 07, 2024

Vivek **......Appellan**t

Vs.

Dharambir and others **......Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Rakesh Nehra, Sr. Advocate with
Ms.Rupinder Hooda, Advocate and
Mr.O.S. Potlia, Advocate for the appellants

Ms. Shamsher Kaur, Advocate
for respondent No.3-Insurance Company

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 08.01.2007 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Jhajjar (for short, 'the Tribunal') for enhancement of compensation, granted to the claimant/appellant to the tune of Rs.1,43,000/- alongwith interest at the rate of 7.5% per annum, on account of injuries sustained by the appellant/claimant in a Motor Vehicular Accident, occurred on 17.11.2003.

2. As sole issue for determination in the present appeal is confined to quantum of compensation awarded by the learned Tribunal, a detailed narration of the facts of the case is not reproduced and is skipped herein for the sake of brevity.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

3. The learned counsel for the claimant-appellant contends that the amount assessed by the learned Tribunal is on the lower side. He has placed reliance upon the judgment passed by Hon'ble the Apex Court in "***Sidram Vs. The Divisional Manager, Untied India Insurance Co. Ltd. And another,", (2022 8 SCR 403).*** He further contends:-

i) That the multiplier of 18 should be applied instead of 16.

ii) That future prospects should be 50%.

iii) That 1/3rd deductions should be made towards personal expenses.

iv) That the amount awarded for pain and suffering, transportation, special diet and attendant charges is also on lower side and no amount was granted for marriage prospects and loss of amenities. Therefore, he prays that the present appeal be allowed and compensation should be enhanced as per latest law.

4. *Per contra*, learned counsel for the respondent, however, vehemently argues on the lines of the award and contends that the amount of compensation as assessed by the learned Tribunal has rightly been granted.

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

6. A perusal of the award shows that the injured was a bright student of 16 year of age and the Ld. Tribunal has erred in taking his notional income as Rs.15000/- p.a. The injured being a bright student of 10th standard and a player of hockey and swimming, he must have bright future and his notional income should be much more than a highly skilled worker on attaining the age of majority. Since the claim petition was filed under Section 163-A of the Act

and there is statutory bar that the income of the injured/deceased should not be more than Rs.40,000/- p.a. In view of the same, the income of the injured being a bright student is taken to be Rs.3300/- per month.

7. Since the present claim petition is filed under Section 163-A of the Act and the judgment "***Sidram Vs. The Divisional Manager*** (supra) relied upon by the Ld. counsel for the appellant/claimant, deals with Section 166 of the Act, hence, the present claim petition shall be decided by this Court according to the II Schedule of the Act and not as per the judgment relied upon by the Ld. counsel for the appellant.

ii) Further no amount was granted for marriage prospectus and loss of amenities of life.

iii) Moreover, the amount awarded for pain and suffering, transportation, special diet and attendant charges is also on lower side.

8. A perusal of the award shows that no amount was granted by the Ld. Tribunal for the medical expenses incurred by the claimant on his treatment. The Ld. Tribunal records that the claimant has produced certificate Ex.P-10 showing estimated expenses on his treatment to be Rs.3,50,000/-. Documents Ex.P-11 to P-13 are showing that he has got treatment for his head injury but he has not produced any bill showing the real expenses incurred by him. Since the claimant has failed to produce any medical bills on record but on the account of permanent disability to the extent of 80% (Ex.P-6), the claimant must have incurred a hefty amount on his treatment. Therefore, this Court deems appropriate to grant a sum of Rs.2,00,000/- towards medical expenses to the claimant.

SETTLED LAW ON COMPENSATION

9. Hon'ble Apex Court in **Kurvan Ansari Alias Kurvan Ali vs Shyam Kishore Murmu, [2022 (1) SCC 317]** held as under :-

> *"**12**. In the judgment in the case of Puttamma & Ors.1, this Court has observed that the Central Government was bestowed with the duties to amend Schedule-II in view of Section 163-A(3) of the Motor Vehicles Act 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule-II keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs.1,00,000/- (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) for the non- earning persons of more than 5 (five) years old.*
>
> ***13**. In the case of R.K. Malik & Anr.2 also, this Court has observed that the notional income fixed under Section 163-A of the Motor Vehicles Act, 1988 as Rs.15,000/- per annum should be enhanced and increased as the same continued to exist without any amendment since 14.11.1994. In the case of Kishan Gopal & Anr.3 where the deceased was a ten years old child, this Court has fixed his notional income at Rs.30,000/- per annum.*
>
> ***14**. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non- earning members is not just and reasonable.*
>
> ***15**. In view of the judgments in the cases in Puttamma & Ors.1, R.K. Malik & Anr.2 and Kishan Gopal & Anr.3, we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in the case of Rajendra Singh & Ors.4 relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company.*
>
> ***16**. In view of the above, we deem it appropriate to take notional income of the deceased at Rs.25,000/- (Rupees twenty five thousand only) per annum. Accordingly, when the notional income is multiplied with applicable multiplier '15', as prescribed in Schedule-II for the claims under Section 163-A of the Motor Vehicles Act 1988, it comes to Rs.3,75,000/- (Rs.25,000/- x Multiplier 15) towards loss of dependency. The appellants are also entitled to a sum of Rs.40,000/- each towards filial consortium and Rs.15,000/- towards funeral expenses. Thus, the appellants are entitled to the following amounts towards compensation:*
>
> *(a) Loss of Dependency : Rs. 3,75,000-00*

(b) Filial Consortium : Rs. 80,000-00 (Rs.40,000/- x 2)

(c) Funeral Expenses : Rs. 15,000-00

Total : Rs. 4,70,000-00"

10. 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.

xxx xxx xxx xxx

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)].

11. 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."*

12. 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:

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

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.

RELIEF

13. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed and the award dated 08.01.2007 is modified accordingly. The appellant-claimant is entitled to the enhanced compensation as per the calculations made here-under:-

Sr. No.	**Heads**	**Compensation Awarded**
1.	Monthly Income	Rs.3300/-
2.	Annual Income	Rs.39,600/- (3300x12)
3.	Loss of future earning 80%	Rs.31,680/-
4.	Multiplier 16	Rs.5,06,880/- (31680X16)
5.	Medical expenses	Rs.2,00,000/-

6.	Pain and suffering	Rs.2,00,000/-
7.	Transportation charges	Rs.25,000/-
8.	Marriage prospects	Rs.2,00,000/-
9.	Attendant Charges	Rs.1,50,000/-
10.	Loss of amenities	Rs.1,00,000/-
11.	Special diet	Rs.30,000/-
12.	**Total Compensation**	Rs.14,11,880/-
13.	**Amount Awarded by the Tribunal**	Rs.1,43,000/-
14.	**Enhanced amount**	**Rs.12,68,880/-**

14. 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 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.

15. The respondents No.3 is directed to deposit the enhanced amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish his bank account details to the Tribunal.

16. However, respondent No.3-Insurance Company is directed to deposit the compensation in the first instance with the liberty to recover the same from respondents No.1 and 2.

17. The Insurance Company is hereby directed to disburse the current scheduled fees to Ms. Shamsher Kaur, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.

18. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 07, 2024
sonia arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes /No