IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-2728-2007 (O&M)
Date of Decision: 05.11.2024

Manoj Kumar ......Appellant

Vs.

Jai Parkash and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Seenu Ravish, Advocate for
Mr. Vivek Khatri, Advocate,
for the appellant.

Mr. Gopal Mittal, Advocate
for respondent No.3-Insurance Company.

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SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 03.08.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, ‘MV Act’) by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal'), whereby claim petition filed by the appellant/claimant, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 03.09.2004, the appellant/claimant, alongwith one Jagdish, was going on a motorcycle towards the fields. The appellant/claimant was riding the motorcycle. When they reached near the path leading to the fields, a jeep bearing registration No.HR-20-C-0630 being driven by respondent No.1 at a high speed and in a

rash and negligent manner, came from the opposite direction and struck against the motorcycle. As a result thereof, the appellant/claimant fell down and sustained grievous injuries. Due to which, his left leg got fractured and the motorcycle got badly damaged. Thereafter, the appellant/claimant was taken to the Jain Orthopedic Hospital, Barwala Road, Hisar, by Jagdish, where he remained admitted upto 09.09.2004.

3. Upon notice of the claim petition, the respondents appeared and filed their separate replies denying the factum of accident/compensation.

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

> *"1) Whether the accident took place due to rash and negligent driving of Jeep No.HR-20-C-0630 by respondent No.1 Jai Parkash? OPP*
> *2) Whether the petitioner is entitled to any compensation on account of his injuries, if so, how much and from whom? OPP*
> *3) Whether the Insurance Company is not liable to make the payment of compensation, if awarded, or not? OPR*
> *4) Relief."*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence, the present appeal.

<u>SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES</u>

6. Learned counsel for the appellant/claimant contends that the learned Tribunal has dismissed the claim petition only on the ground that there is a delay of one month in registration of FIR.

7. *Per contra*, learned counsel for respondent No.3-Insurance Company, however, vehemently argues on the lines of the award dated 03.08.2006 and submits that the claim petition has rightly been dismissed by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.

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

9. The relevant portion of the award reads as under:-

> *10. I have called for the file pertaining to the trial and I find that Jagdish PW had been cited as prosecution witness in that case. Jagdish has not been examined in this case. No reason has come on record as to why he was not examined. There is a delay in lodging the FIR. It has been held in a number of authorities that mere registration of the case is not enough and it has also been held that if the case ends in conviction or acquittal, it is not sufficient to hold negligence and the claimant has to independently prove negligence of the driver. The accident took place in the kacha path, which leads to the fields. The claimant was not wearing a helmet. He did not even know that he was required to wear a helmet. The accident took place on 3.9.2004. The claimant was discharged on 9.9.2004. The FIR was lodged on 3.10.2004. The explanation given by the claimant was that respondent no.1 had come to him in the hospital for a settlement. If that was the case, the claimant could have examined some person who could have vouched in his favour, who was the person who brought him for settlement. There is no name. The fact that the claimant did not reveal to the medical officer that it was a case of accident also raises doubts. Had the claimant mentioned about the accident to the hospital authorities they would have sent a ruqa to the police.*

In the absence of the eye-witness, non-sending of the ruqa, non-reporting the accident to the Medical Officers and delay in lodging the FIR go to show that the accident did not take place in the manner suggested or with the vehicle stated to be involved. Respondent No.2. has merely toed the line of the claimant. There does not appear to be any truth in the claimant's version. It is found that the claimant has failed to prove that the accident occurred in the matter stated by him or nor it is proved that the accident was caused by respondent no.1. The issue is answered against the claimant.

ANALYSIS OF RECORD

10. A perusal of the record shows that the factum of accident is proved by respondents No.1 and 2, since, it has been stated in their written statement that the accident in question took place due to rash and negligent driving of the appellant/claimant and there is no fault of respondent No.1 (driver).

11. A perusal of the record further shows that:-

(i) Vijay Kumar, Addl. Ahlmad to the Court of Sh. Ashwani Mehta, JMIC, Hisar, was examined as PW-1, who brought the criminal case file titled as 'State Vs. Jai Parkash' in FIR No.240 dated 03.10.2004 under Sections 279/338/427 of the IPC registered at Police Station Adampur. He proved the FIR and charge-sheet, which are exhibited as Ex.P1 and Ex.P2, respectively.

(ii) Dr. Ramesh Jain, 'Jain Orthopedic Hospital', Barwala Road, Hisar, was examined as PW-2, who stated that on

03.09.2004, Manoj (appellant/claimant) was admitted in his hospital, with the diagnosis of fracture both bone of the leg compound nature. He was given treatment by close nailing of the fracture and was discharged from the hospital on 09.09.2004. Doctor proved the hospital record i.e. X-ray receipts as Ex.P19 and Ex.P20, consultation fee as Ex.P21 to Ex.P24, the bill of the nail which was used for the operation as Ex.P25, the bill of the brace, which was used to support the operated area as Ex.P26 and all other bills which were counter-signed by him after verification and even the X-ray receipts were proved by him.

(iii) Manoj Kumar (appellant/claimant) was examined as PW-3, who stated the factum of accident and there was no discrepancy in his statement.

(iv) Dr. R.S.Dalal, S.M.O, General Hospital, Hisar, was examined as PW-4, who proved the disability of the appellant/claimant to the extent of 6% limb and 2% of whole body and disability certificate as Ex.P27.

(v) Jai Parkash (respondent No.1) was examined as RW-1, who admitted that he was facing a criminal trial regarding the occurrence of accident in the present case.

12. Learned Tribunal has observed while deciding the claim petition that if the claimant was admitted in the hospital then there should have been recording of report that it was an accident case, which was required to be

recorded by the attending doctor and thereafter, the *ruqa* was to be sent to the police. This reasoning given by the learned Tribunal is not acceptable to this Court since for the lack of responsibility on the part of doctors, the appellant/claimant should not be suffered. The procedural lapse on the part of the medical officer should not be attributed to the appellant/claimant. Learned Tribunal has further observed that there is a delay in lodging of the FIR. The only reasoning given by the learned Tribunal in dismissing the claim petition is that the FIR was delayed and the *ruqa* was not sent to the police by the hospital authorities, is unreasonable and not acceptable in the eyes of law as well as by this Court. This Court has dealt with the same issue in **FAO-409-2007** titled as **'Mahesh Kumar Vs. Dharmender Kumar and others'** and the relevant portion of the same is reproduced as under:-

> *"So far as the delay of 22 days in lodging the FIR is concerned, Hon'ble Supreme Court has settled the law in the case of* ***Ravi Vs. Badrinarayan and others, 2011(4) SCC 693,*** *wherein it has been held that delay in lodging of FIR should not be treated as fatal for motor accident claim proceedings, if the claimant is able to demonstrate satisfactorily and with cogent reasons for such delay. The relevant para is reproduced as under:-*
>
> > *"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under*

such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."

13. In view of the above, delay in lodging the FIR is proved not to be fatal to the case of the appellant. Accordingly, Issue No.1 is decided in favour of the appellant/claimant.

14. Issue No.2 has already been decided by the learned Tribunal.

15. Issue No.3 is answered against the respondent-Insurance Company.

16. With respect to determination of compensation, the record contains evidence of hospital admission, the claimant/s earning and expenses incurred for medical treatment and hospitalization. Consequently, this Court shall adjudicate the compensation in accordance with the documented evidence on record.

17. A perusal of the award shows that the injured was stated to be an agriculturist and a private student of B.A. 3rd year and his income was stated to be Rs.5,000/- per month, but no evidence was brought on record to prove the same; hence, under the prevailing facts of the case, the monthly income of the injured is to be assessed as Rs.3,000/- per month at par with the minimum wages prescribed for skilled worker prevailing at the time of accident in the State of Haryana. Further perusal of the record shows that the injured was 28 years old at the time of accident and he had suffered permanent disability in the accident to the extent of 8% as per the permanent disability certificate (Ex.P27). The injured on account of the permanent disability suffered by him in the accident is also entitled to the compensation under the conventional heads. Further, while calculating the future earning

of the injured, multiplier of 17 should be applied. Therefore, the award requires indulgence of this Court.

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 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)].

19. 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."*

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) 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.

CONCLUSION

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 03.08.2006 is hereby set aside. The appellant/claimant is entitled to compensation as per the calculations made here-under:-

Sr. No.	***Heads***	***Compensation Awarded***
1	Income	Rs.3000/-
2	Loss of future prospects (40%)	Rs.1200/- (40% of Rs.3000)
3	Annual Income	Rs.50400 (4200 x 12)
4	Loss of earning due to disability (8%)	Rs.4,032/-
5	Multiplier	17
6	Loss of future earning per annum	Rs.68,544/- (Rs.4032 x 17)
7	Medical Expenses	Rs.20,174/-
8	Pain and sufferings	Rs.50,000/-
9	Special Diet	Rs.10,000/-
10	Transportation Charges	Rs.7,000/-
11	Attendant Charges	Rs.15,000/-
12	Loss of Amenities of life	Rs.50,000/-
13	Medical Expenses for future treatment	Rs.20,000/-
	Total Compensation	**Rs.2,25,718/-**

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 Nandu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the appellant-claimant is granted the interest @ 9% per annum on the amount of compensation from the date of filing of claim petition till the date of its realization.

23. The Insurance Company-respondent No.3 is directed to deposit the 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 amount of compensation along with interest in the account of the appellant/claimant. The appellant/claimant is directed to furnish his bank account details to the learned Tribunal.

24. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Gopal Mittal, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

25. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

05.11.2024
Virrendra

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