



FAO-2811-2007 (O&M)

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

FAO-2811-2007 (O&M)

Date of Decision: 18.11.2024

Sukhwinder Singh

.....Appellant

Vs.

Sushil Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Jitender S. Chahal, Advocate,
for the appellant.

Mr. Sandeep Suri, Advocate,
for respondent No.2-Insurance Company.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred for setting aside of the award dated 21.03.2006 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'MV Act') by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, 'the Tribunal'), whereby claim petition filed by the claimant/appellant was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 14.11.2004, claimant/appellant and Harjeet Singh were travelling from Village Mohammadpur to Barara on motorcycle bearing registration No.HR02F-7081, which was being driven by Harjeet Singh, while claimant/appellant was pillion rider. When they reached near Bansal Palace in Barara at around



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9:00 A.M., a car bearing registration No.HR-51-C-2424, being driven by respondent No.1-Sushil Kumar, which was coming from the Barara side in a rash and negligent manner, struck against the motorcycle. As a result thereof, both the riders fell down and sustained multiple injuries. Thereafter, both the victims were initially rushed to M.M.Hospital, Mullana for treatment and lateron, after giving medical aid, the Medical Officer referred them to Kohli Hospital for further treatment. In this regard, an FIR No.197 dated 17.11.2004 under Sections 279, 337, 338 of the Indian Penal Code, 1860, was registered at Police Station Barara, against owner-cum-driver of the offending vehicle i.e. respondent No.1.

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

4. Claimant/appellant did not file rejoinder to the written reply.

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

“1) Whether the accident resulting in injuries to Harjeet Singh and Sukhvinder Singh took place because of the rash and negligence of the vehicle No.HR51-C-2424 driven by Sushil Kumar, respondent No.1? OPP

2) If issue no.1 is proved then to what amount of compensation the injured/petitioners are entitled to and from whom? OPP.

3) Whether respondent no.1 has violated the terms and conditions of the policy, if so its effect? OPR.

4) Relief.”



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

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

7. Learned counsel for the claimant/appellant contends that the learned Tribunal dismissed his claim petition on the ground that the same is not maintainable under Section 163-A of the MV Act, whereas in the same award pertaining to the same accident, the claim petition of one Harjeet Singh was allowed under Section 166 of the MV Act. He prays that though, inadvertently, he filed the claim petition under Section 163-A of the MV Act, but the present appeal may be treated under Section 166 of the MV Act.

8. *Per contra*, learned counsel for respondent No.2-Insurance Company, however, vehemently argues on the lines of the award dated 21.03.2006 and submits that the award has rightly been dismissed qua the appellant/claimant by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.

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

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

28. Sukhvinder Singh, the other injured filed the petition under section 163A of the Motor Vehicle Act. I also recorded the finding qua this while deciding issue no.1. This petition of Sukhvinder Singh is not tenable. The abovesaid provisions of the Act can only be invoked and compensation be given in case of death or permanent disability of the victim due to accident arising out of the use of motor vehicle and also without proving as to with whose rash and negligence the accident took place? In the case in hand Sukhvinder Singh has not



suffered any disability permanent or temporary. He suffered fracture shaft femur right leg and right eye. This is disclosed by Dr. Rajneesh Mehta PW4. Taking the help of his statement, Shri Dayal Singh, Adv. learned counsel for the petitioner contended that the fracture amounts to severe injuries and the case of the petition falls within the ambit of section 163A of the Act. He be awarded the compensation.

29. I am afraid that this contention of the learned counsel for the petitioner is not at all tenable and deserves to be rejected. Petitioner suffered fracture shaft femur right leg and from this only, it cannot be inferred that he suffered permanent disability, particularly when no evidence whatsoever, was produced to prove it. If he suffered any disability then the report of the experts was the best evidence to prove it. No such report was produced. Thus, in the absence of any cogent evidence and proof, it cannot be made out that petitioner suffered any permanent disability due to the accident in question and being so, the petition under section 163A of the Act ibid is not tenable and is hereby dismissed.”

11. A perusal of the record shows that the claim petition was filed by the claimant/appellant under Section 163-A of the MV Act, but the learned Tribunal has decided Issue No.1 regarding the accident took place due to the rash and negligent driving of offending vehicle bearing registration No.HR51-C-2424 in favour of the claimant/appellant as well as his co-victim Harjeet Singh.

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

(i) Sukhvinder Singh (appellant herein) was examined as PW-2, who stated the factum of accident and further stated that after the accident, he was taken to Kohli Nurshing Home, Yamuna Nagar and got admitted there. He got fracture in his



right leg and injuries on his head and face. He remained admitted in the Kohli Nurshing Home for 20 days.

(ii) Dr. Rajnish Mehta, Medical Officer, was examined as PW-4. He stated that Sukhvinder Singh and Harjeet Singh were admitted in his nurshing home with injuries alleged to have been received in a road side accident on 14.11.2004. They both remained admitted in his hospital till 30.11.2004. Sukhvinder Singh (appellant) was having injury on the right eye and fracture shaft femer right leg. His interlocking nailing was done. The nailing was removed from his leg on 01.10.2005 and at that time, he remained admitted in the hospital till 05.10.2005. There is no discrepancy in his cross-examination.

(iii) Sahab Singh, Shopkeeper, was examined as PW-3, who proved the medical bills Ex.P1 to Ex.P3.

(iv) Subhash Chand, Proprietor of M/s Dhanda Medical Store, was examined as PW-5, who proved the medical bills, Ex.P6 to Ex.P9 and then Ex.P10 to P11.

13. A perusal of the record further shows that the learned Tribunal, in the same award pertaining to the same accident, has entertained the claim petition filed by another co-victim Harjeet Singh and awarded compensation under Section 166 of the MV Act. Therefore, the award requires indulgence of this Court.

14. In view of the above, the present claim petition is converted to Section 166 from Section 163-A of the MV Act.



15. With respect to determination of compensation, the record contains evidence of hospital admission, expenses incurred on medical treatment and hospitalization. Consequently, this Court shall adjudicate in accordance with documentary evidence on the record. A perusal of the record shows that the appellant/claimant was 12 years old at the time of accident and since the accident occurred on 14.11.2004, he remained admitted in the hospital from 14.11.2004 to 30.11.2004. He suffered grievous injuries on the right eye and fracture shaft femur right leg. His interlocking nailing was done. The nailing was removed from his leg on 01.10.2005 and at that time, he remained admitted in the hospital uptill 05.10.2005. Therefore, due to injuries, he suffered pain and suffering. A perusal of the record further shows that medical bills of Rs.34,587/- have been placed on record by the appellant/claimant. Therefore, a lumpsum amount of Rs.36,000/- is to be granted to him under this head. The appellant/claimant being 12 years old at the time of accident, his parents incurred expenses for special diet. Therefore, in view of the above, the claimant is held entitled to compensation, as per settled law.

SETTLED LAW ON COMPENSATION

16. 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 : (5400×17) : 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 : (27000×17) : 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 : (42000×18) : 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)].



17. 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.”

18. 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.

RELIEF

19. 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 21.03.2006 is hereby set aside qua claimant/appellant-Sukhvinder

Singh. The appellant/claimant is entitled to compensation as per the calculations made here-under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Medical Expenses	Rs.36,000/-
2	Attendant Charges	Rs.20,000/-
3	Pain and Suffering	Rs.40,000/-
4	Special Diet	Rs.35,000/-
5	Transportation	Rs.20,000/-
6	Loss of amenities of life	Rs.40,000/-
	Total Compensation	Rs.1,91,000/-

20. 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.

21. The Insurance Company-respondent No.2 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 claimant/appellant. The claimant/appellant is directed to furnish his bank account details to the Tribunal.

22. Respondent No.2-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Sandeep Suri, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.

23. Disposed of accordingly.
24. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)

JUDGE

18.11.2024

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No