



FAO-2092-2006 (O&M)

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

204

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Date of Decision: November 05, 2024

Joginder @ Lilu Ram

.....Appellant

Vs.

Kuldeep and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Anil Ghanghas, and Mr. Sahib Singh, Advocate
for the appellant-claimant

Mr. Harjinder Singh, Advocate for respondent No.3.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 01.02.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal') vide which the claim petition filed by the appellant/claimant for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 5.10.2001 at about 11.00 A.M., the appellant/injured alongwith Vijay son of Ram Singh was going to Rohtak from Bhiwani on Maruti Car. When they reached about 3 kms towards Bamla from village Ninan, then a Martial Jeep bearing no. HR-16B-3008 (hereinafter referred to as 'offending vehicle') came from Rohtak side at a very high speed being driven by driver-Kuldeep (respondent No.1) and struck

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against the car of the appellant. Resultantly, the main front glass of the appellant's car was broken and he sustained injuries on his face and eyes. While Vijay Singh was taking care of the appellant, the driver of the offending vehicle fled away with his vehicle. Appellant was taken to PGIMS Rohtak. Information was given to the police but no one came to record their statements. The appellant was then referred to Dr. Rajender Parshad Centre for Ophthalmic Sciences A.I.I.M.S. New Delhi. Later on, the appellant inquired about the police case regarding this accident and he found that no action was taken against the respondent No.1 by the police. He moved an application to S.S.P. Bhiwani, upon which, police assured that the accident was caused due to rash and negligent driving solely by respondent No.1.

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

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

- 1. Whether the accident had taken place due to rash and negligent driving of Marshal Jeep bearing no. HR-16B/3008 by respondent no.1 as a result of which petitioner sustained injuries? OPP.*
- 2. Whether the petitioner is entitled to claim compensation, if so, from whom and how much? OPP.*
- 3. Whether respondent no.1 was having no valid driving licence on the date of the accident? OPR No.3*
- 4. Relief.*

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

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the claimant-appellant contends that the claim petition of the appellant was dismissed only on the ground that no FIR was lodged and there was no photograph of the vehicle involved in the accident. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellant/claimant.

7. *Per contra*, Id. Counsel for respondent-Insurance Company argues on the lines of the award and contends that the award has rightly been dismissed by the Ld. Tribunal. He prays for dismissal of appeal.

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

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

ISSUE NO. 1

“9. The onus to prove this issue was on the petitioner. Petitioner, while appearing as PW2, reiterated the version given in his petition. He testified that on 5.10.2001 at about 11.00P.M., he alongwith Vijay son of Sh. Ram Singh resident of Bhagat Singh Marg, Vidhya Nagar, Bhiwani were going in a Maruti Car, 1000 which was driven by him. When they reached three kilometres towards Bamla from Ninan then a Marshal jeep bearing no. HR-16B/3008 driven by respondent no.1 came from Rohtak side and while crossing the gar of the petitioner, it dashed against the petitioner's car. The main front glass of the petitioner's car was

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cracked and he sustained injuries on his face and eyes. The offending vehicle stopped at a distance and respondent no.1 was identified by Vijay Singh. He further deposed that he remained under treatment for quite long time in order to save his eye sight, which has been lost due to accident. In month of January, 2003, he inquired about the police case regarding this accident and came to know that no action had been taken against respondent no.1 thereafter he moved application to SSP, Bhiwani on 11.1.2003 through registered AD. The copy of daily diary report no. 11 dated 6.10.2001 of police post Kharak Kalan was produced as Ex. P1.

10. The deposition of PW2 Vijay Kumar is also to the similar effect. The photocopy of the application moved to SSP, Bhiwani was produced as Ex. P2.

11. On the other hand, no oral evidence was led by the respondents.

12. Learned counsel for the petitioner contended that from the deposition of the petitioner coupled with the fact that respondent no.1 have not stepped into the witness box to controvert the stand of the petitioner, it is established that accident took place on account of rash and negligent driving of respondent no.1. He further argued that mere non-registration of the FIR would not affect the case of the petitioner as the petitioner had moved application to higher authority.

13. On the other hand, it was contended by learned counsel for respondents no.1 and 2 that petitioner failed to prove its case. It was argued that application Ex.P2 was filed after more than 15 months of the occurrence. It was further contended that as per daily diary report Ex. P1 petitioner did not intend to initiate action against any body and by his own admission petitioner did not want to get any case registered.

14. Learned counsel for respondent no.3 contended that mere admission of respondents No.1 and 2 regarding this accident



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would not mean that accident has been proved. He further argued that it shows that there was collusion between the petitioner and the respondents no.1 and 2.

*15. I have duly considered the rival contentions of the parties. In the initial version given by the petitioner recorded in daily diary report Ex. P1, it was mentioned that petitioner did not intend to take action against any body. The petitioner was discharged from hospital on 10.10.2001. He remained as outdoor patient for some time and thereafter hospitalized in Delhi from 29.11.2001. to 10.12.2001. As per the record on file there is no treatment record after 21.1.2002. The petitioner did not approach police authorities for taking action against the respondents till the year 2003. PW3 Vijay Singh was stated to be companion of the petitioner on the day of incident but he also did not report the matter to the police attributing negligence of respondent no.1. The reasons given by the petitioner for moving application Ex. P2 convincing at all. Furthermore, he did not pursue the complaint and had also not initiated any proceeding in the court by way of filing criminal complaint against respondent no.1. Mere admission of respondent no.1 regarding this accident would not be a ground to believe the version of the petitioner. Rather the admission of respondents no.1 and 2 about the accident indicates that they are in collusion with the petitioner. No photographs of the damaged car have been produced. No medico legal report of the petitioner was prepared. All these circumstances cumulatively point out that petitioner had involved the vehicle of respondent no.2 to claim compensation. Since the petitioner himself did not make statement against any body immediately after the occurrence so he could not put up a new case to claim compensation later on. He cannot turn around to say and allege negligence to maintain a civil suit Reliance in this regard can be placed upon **SURINDERJETT SINGH VERSUS KULDIP RAI THAPAR AND OTHERS, 1982, Punjab***

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Law Reporter, 711 where in as per facts injured made statement of the police immediately after accident imputing no negligence of the driver. Later on he filed case for compensation. It was held by our own Hon'ble High Court that he cannot plead a new case and was bound by his statement. In view of the daily diary report Ex. Pl where in petitioner had not imputed negligence to any body, it is held that petitioner has failed to prove that respondent no.1 was negligent in driving the offending vehicle. Petitioner has even failed to prove involvement of offending vehicle. Hence issue No.1 is decide accordingly against petitioner and in favour of the respondents.

10. A perusal of the record shows that Dr. Advin, MO, General Hospital, Bhiwani was examined as PW-1, who stated that he was member of Medical Examination Board and on 23.03.2005, they conducted the medical examination of patient Jogender @ Lilu Ram. He proved that permanent disability of 75 % of the eyes was there. In his cross examination, there is no discrepancy, which could dent to the case of the appellant.

11. Ex. PW-2/1 is the affidavit of claimant, wherein, he has stated this factum of accident. His veracity could not be impeached. Disability certificate which is proved by Dr. Advin, shows his disability to be 75 %.

12. A perusal of the record shows that the claimant made a written complaint against respondent No.1 to SSP Bhiwani dated 11.01.2003. The OPD card dated 05.10.2001 is also on record. The whole medical record proves the disability sustained by the claimant in the accident.

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13. Further one certificate dated 13.04.2002 showing 100 % disability of claimant/appellant i.e. “ *visually handicap by 100 %* by Dr. Rajendra Prashad Centre for Ophthalmic Sciences, New Delhi,” is also placed on record.
14. A perusal of the record further shows that the application was moved by the appellant to the police authority, whereby, the factum of accident is also proved.
15. A perusal of the record shows that the Ld. Tribunal failed to appreciate the factum of accident and the evidence of medical record and dismissed the claim petition only on the ground that no FIR was lodged by the claimant.
16. In view of the above, the reasoning given by the Ld. Tribunal while dismissing the claim petition, is not acceptable to this Court and the Award is liable to be set aside.
17. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 01.02.2006 passed by Ld. Tribunal, Bhiwani stands vitiated by a complete absence of application of judicial mind.
18. 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 the record.
19. A perusal of the award shows that the claimant was stated to be agriculturist and his income was alleged as Rs.7000/- p.m. However, considering his young age of 22 years at the time of accident, this Court assess

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his income as Rs.2310/- p.m. in accordance with the minimum wages prescribed for skilled worker in the State of Haryana.

20. Further, the disability certificate issued by AIIMS Delhi dated 13.04.2002, was placed on record and according to this certificate, the claimant's disability was assessed as 100% as visually handicapped. Therefore, the disability of the injured is taken to be to the extent of 100%.

21. A perusal of the award further shows that the claimant remained hospitalized for prolonged period i.e. from 10.10.2001 to 10.12.2001. Considering his prolonged hospitalization, this Court is of the view that the claimant must have suffered pain and suffering regarding the injuries suffered by him in the accident. Further, record reveals that medical bills of Rs.19,000/- are placed on record, therefore, the claimant is entitled to grant of compensation regarding the medical expenses also. Therefore, the claimant is held entitled to grant of compensation in accordance with the settled law.

SETTLED LAW ON COMPENSATION

22. 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,



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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



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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*



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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



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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)].

23. 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



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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.”

24. 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

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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

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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:



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<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

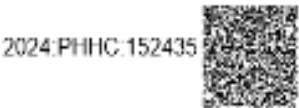
25. In view of the law laid down by the Hon’ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 01.02.2006 is set aside. The appellant-claimant is entitled to grant of compensation as per the calculations made here-under:-

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Sr. No.	Heads	Compensation Awarded
1	Income	Rs.2310/-
2	Loss of future prospects 40 %	Rs.924/- (40% of 2310)
3	Annual Income	Rs.38,808/-(3234X12)
4	Loss of future earning per annum (100% disability)	Rs.38,808/-
5	Multiplier (18)	Rs.6,98,544 (38,808x18)
6	Pain and Sufferings	Rs.5,00,000/-
7	Special diet	Rs.50,000/-
8	Medical expenses	Rs.19,000/-
9	Transportation charges	Rs.1,00,000/-
10	Attendant Charges	Rs.5,00,000/-
11.	Loss of amenities	Rs.2,00,000/-
11	Loss of Marriage prospects	Rs.3,00,000/-
	Total Compensation	Rs.23,67,544/-/

26. 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 amount from the date of filing of claim petition till the date of its realization.

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



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

- 28. Disposed off accordingly.
- 29. The Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Harjinder Singh, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.
- 30. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

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Whether speaking/reasoned:	Speaking
Whether reportable	Yes