



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

201

FAO-2803-2006 (O&M)

Date of Decision: September 06, 2024

Miss Puja and others

.....Appellants

Vs.

Jaipal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maneet Kaushik , Advocate
for Ashit Malik Advocate for the appellants.

Mr. Pardeep Goyal, Advocate and Ms.Simran Advocate
for respondent No.2-Ins. Co.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 19.04.2006 passed by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal') vide which the claim petition filed by the claimants-appellants under Section 166 of the Motor Vehicles Act, 1988 on account of death of Barma Ram in road accident, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 19.07.1998 at about 9.30 p.m. deceased Barma Ram was taking his Rehri to the house from Hansi Road to Shiv Colony, Karnal and when he reached near railway over bridge, in the meantime, a truck bearing registration No. HR-45-2170 came from behind and struck against the Rehri of the deceased and due to this impact, the deceased sustained multiple, serious and grievous injuries on various parts of his body and succumbed to the



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 resulting into the death of Barma Ram alias Braham Parkash took with truck No. HR-45-2170 as alleged? OPP

2. If issue No.1 is proved, whether the claimants are entitled to compensation and if so to what amount and from whom? OPP

3. Whether the alleged vehicle was being driven in contravention of terms and conditions of the insurance policy? OPR-2

4. Relief.

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

SUBMISSIONS OF THE COUNSELS

6. The learned counsel for the claimants-appellants contends that the owner of the offending vehicle admitted the fact of accident while stating that the deceased died due to his own negligence and the Tribunal did not take this statement into consideration. The Ld. Tribunal did not take into consideration the medical record, wherein, it has been written "hit by a truck" against the column of cause of injury. He further contends that PW-2 Mahipal is the eye-witness who specifically stated that truck hit against the Rehri as a result of which the deceased died. Driver of the offending vehicle was challan by the police and he did not



contest the same. Therefore, he submits that the present appeal be allowed and the award dated 19.04.2006 dismissing of the claim petition filed by the appellants be set aside. He has relied upon the judgment passed by Hon'ble the Supreme Court in case titled as "**Anita Sharma and others Vs. The New India Assurance Co. Ltd. And another**" 2021(1)SCC(CRL)475, wherein it was held that strict principles of evidence and standards of proof like a criminal trial are inapplicable in MACT claim cases. Standard of proof in such like matters is one of preponderance of probabilities rather than beyond reasonable doubt. Further in case titled as "**Ashalata Suryakant Patil and others Vs. New India Assurance Company Ltd. and another**" 2023(2)TAC725, wherein it was held that initially the details of vehicle was not mentioned in the FIR and it was during the course of the investigation the vehicle had been identified and charge-sheet had been filed, it was held that claimant had discharged their initial burden of proof.

7. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues on the lines of the Award and contends that there is no infirmity in the award and the learned Tribunal has rightly dismissed the claim petition.

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

9. The relevant portion of the Award is reproduced as under:-

"Issue no.1:

In order to prove rash and negligent driving on the part of driver of the offending truck No.HR-45/2170, owned by respondent no.1 himself and insured by respondent no.2, the claimants have produced Mahipal as PW2, who has tendered his affidavit Ex.P2, wherein, he has solemnly affirmed and declared that on 19.7.1998, he



alongwith Satpal, Subhash etc. was present near Tea Stall of Railway

Over bridge, Kaithal road, Karnal at about 9 p.m., a truck bearing registration no.HR-45/2170 came from Karnal side, which was being driver by driver Rattan Singh allegedly in a rash and negligent manner and without observing the traffic rules and struck against the toy clay Rehri and scooter bearing no. DEH-6846, as a result of which, the owner of the said Rehi received multiple injuries and the occupants of the scooter also received injuries. He has deposed that he and other persons immediately rushed to the place of occurrence and found injured Brahm Parkash bleeding profusely and then he was shifted to civil hospital Karnal and thereafter, he was referred to PGI Chandigarh where he died on 20.7.1998.

To substantiate further, the claimants have produced the certified copy of the final report under section 173 Cr.P.C. as Ex.P3, medical rukka Ex.P4, photo copy of site plan mark-P5, copy of application for post mortem examination mark-E.

8. However, on the other hand, the Insurance Company has produced Sh. Vikas Chaudhary Advocate as RW1, who was appointed as investigator by the insurance company respondent no.2. Respondent no.2 has also produced copy of statements of Satpal as mark-R2 and Mahipal as mark-R3.

9. From the testimony of Sh. Vikas Chaudhary, Advocate who appeared as RW1, it emerged that he was appointed as investigator in this case by the insurance company and during investigation, he found that the truck in question has been involved after one month of the alleged occurrence in collusion with respondent no.1 and in fact, no



accident took place with the truck in question. He has also deposed that during his investigation, he found that deceased Brahm Parkash died due to struck against the scooter and later on the truck in question has been involved in collusion with the police authorities. He also found that all the three scooterists were under the influence of liquor and scooterists and the deceased belonged to the same locality and to avoid the responsibility of the scooterists, the truck in question has been falsely involved, only to grab the false compensation from the insurance company. He has testified his report as Ex.R1, which bears his signatures. He has also deposed that during investigation, claimant Sarni Devi met him at Shiv Colony, Karnal.

10. However, after going through the evidence and circumstances of the case, it emerges that on 19.7.1998, deceased Braham Parkash, at about 9 p.m. met with an accident near the Railway over-bridge Kaithal Road, Karnal and the deceased was taken to civil hospital Karnal, from where, he was referred to PGI Chandigarh, where he succumbed to the accidental injuries.

From the report under section 173 Cr.P.C. Ex.R3, it emerges that on 19.7.1998, the police of police station city Karnal received a medical rukka regarding the admission of injured Braham Parkash in the hospital, on the basis of which, Head Constable Prem Singh alongwith other police officials reached the general hospital Kaithal, but by that time, injured Brahm Parkash deceased had been referred to PGI Chandigarh by the doctor, and no other relative of Braham Parkash was available in the hospital. Therefore, on 20.7.1998, Head Constable Prem Singh went in search of the relatives of deceased



Braham Parkash in Shiv Colony, Karnal and when he reached near Petrol-pump, then he came to know that another injured person was admitted in Navjiwan Hospital. Thereafter, the police party reached in the said hospital and enquired from Sh. Naresh Kumar, who disclosed that Raj Kumar alias Raju son of Rambir resident of Shiv Colony Karnal was admitted in his hospital and he handed over the medical rukka to the police and then after obtaining necessary permission from the doctor, he recorded the statement of injured Raj Kumar alias Raju, who reported that on 19.7.1998, he and his friends Satpal and Rakesh Kumar were going on the scooter no.DEH 6846 at about 9 p.m to Shiv Colony from Railway over bridge and when they reached in front of Govt. Press, then a person Braham Parkash alongwith Toy-clay Rehri was going and in the meantime, a truck came from behind and struck against the said toy-clay Rehri, as a result of which, said Rehri turned turtle and Braham Parkash became unconscious on account of injuries suffered by him in the afore stated accident and thereafter, their scooter struck against the said Rehi, which also turned turtle, as a result of which, they also received injuries.He has also reported that he was admitted to Navjiwan Hospital Karnal and Braham Parkash was admitted in civil hospital, Karnal.

11. It is pertinent to mention here that in the report under section 173 Cr.P.C., Raj Kumar alias Raju has categorically stated that on account of darkness, he could not note the registration number of the offending truck. He has also reported that the driver of the offending truck was also unknown. It is also pertinent to mention here that in the report under section 173 Cr.P.C. Ex.P3, it has been mentioned that



during investigation, one Mohabat Singh son of Suhawa resident of Jyoti Nagar Karnal reported to the police that the said accident had taken place with truck no. HR45/2170, which was being driver by Rattan Singh son of Ramdhari resident of village Kalehri and thereafter, the final report under section 173 Cr. P.C. has been forwarded by the police against Rattan Singh.

Therefore, after going through the circumstances of the case and in view of the report under section 173 Cr.P.C., it is evident that initially neither the registration number of the offending truck nor the name of the driver, who was allegedly driving the offending truck in a rash and negligent manner was disclosed to the police by Raj Kumar alias Raju, who is author of the FIR.

12. However, during investigation of the case, the investigating agency has recorded the statement of Satpal son of Dula Ram, photocopy of the which has been placed on file as Ex.R2 by Insurance Company in order to show that in fact, the accident had taken place between scooterists, which was being driver by Braham Parkash deceased. From the statement of Satpal M mark R2 under section 161 Cr.P.C., the entire version given by Raj Kumar alias Raju in the FIR is similar, but said Sat[pal has gone to the extent in deposing that Raj Kumar alias Raju and Satish Kumar and Rakesh Kumar were under the influence of liquor and he had expressed that they had caused the accident with Rehi of deceased Braham Parkash. Said Satpal is closely related to Braham Parkash, who has taken in injured condition in civil hospital Karnal. The insurance company has also produced photo copy of statement of Mahipal as mark R3, who had also reached



the place of occurrence after hearing the noise of the accident and is brother-in-law of deceased Braham Parkash. His statement under section 161 Cr.P.C. is also on the same line as given by Satpal. He also took injured Braham Parkash in the hospital and has also deposed that scooterists were under the influence of liquor, but the investigating agency after the expiry of approximately three weeks, recorded the statement of Mohabat Singh son of Suhawa Singh resident of Jyoti Nagar Karnal on 12.8.1998, who has disclosed the number of the alleged offending truck was HR 45-2170 as well as driver of the said alleged offending truck as Rattan Singh son of Ramdhari, on the basis of which final report under section 173 Cr.P.C was prepared by the investigating agency against Rattan Singh While involving the truck no.HR-45/2170 as offending vehicle, but said Mohabat Singh, who is the most important witness as he has disclosed the registration number of the offending vehicle as well as name of the driver, who was allegedly driving the said alleged offending vehicle, has not been produced by the claimants to prove the involvement of offending vehicle no. HR-45/2170, which was allegedly being driver by Rattan Singh in a rash and negligent manner, so much so, said Rattan Singh, who was allegedly driving the alleged offending vehicle no.HR- 45/2170 has not been impleaded even as respondent, so as to enable the Claim Tribunal to arrive at a conclusion as to whether the alleged offending truck was being driver by alleged driver Rattan Singh in a rash and negligent manner and there is no whisper in the claim petition regarding the driving of truck no.HR 45-2170 by Rattan Singh alleged driver, rather it has been pleaded that the claim petition



was being filed under section 163-A of the Act and as such, the question of negligence was not pleaded, but it seems that the same plea has only been taken to avoid the implication of alleged driver Rattan Singh and in order to avoid the onus to prove negligence on his part.

It is pertinent to mention here that the claimants have claimed the compensation to the tune of Rs.20,00,000/- as claimed in para no.20 of the claim petition and Rs. 10,00,000/- as claimed in the relief clause while assessing the monthly income of the deceased to the tune of Rs. 10,000/- i.e. Rs. 1,20,000/- per annum and as such, in view of the second schedule of Motor Vehicles Act, the claim petition more than the income of Rs.40,000/- per annum and in view of the settled provisions of law is not covered under section 163-A of the Act. Despite this, report under section 173 Cr.P.C. Ex.P1 and recording of FIR no.676 under section 279, 337, 304-A I.P.C. leads to an inference that as per the version of the author of FIR Raj Kumar, there was the question of negligence on the part of driver of the alleged offending truck no.HR- 45/2170 and as such, in the present circumstances of the case, it has to be held that the claim petition under section 163-A of the Act is not maintainable, rather the claim petition is maintainable under section 166 of the Act, in which, the question of negligence is paramount consideration.

In the instant case, in order to prove rash and negligent driving on the part of driver, whose name has not been mentioned in the claim petition and he has not been sued as driver of the offending vehicle the claimants have simply sued the owner of the alleged offending vehicle



as respondent no.1 and insurance company of the alleged offending vehicle as respondent no.2 and in the affidavit Ex.P2 of Mahipal, it has been solemnly affirmed and declared that the offending truck was being driver by Rattan Singh in a rash and negligent manner without observing the traffic rules, but said Mahipal son of Ram Niwas has given his statement on 21.7.1998 under section 161 Cr.P.C., photo copy of which is mark R-3 and in the said statement, which was recorded by the investigating agency, just after two days of the occurrence, there is no mention of registration number of the offending vehicle or name of driver and it seems that thereafter, then the truck no.HR-45/2170 has been procured by the claimants in collusion with the police and final report under section 173 Cr.P.C. has been forwarded involving the truck no.HR-45/2170 as offending vehicle, then the claimants have procured the affidavit of Mahipal as Ex.P2 involving rash and negligent driving on the part of Rattan Singh, who was allegedly driving the said offending truck and said Mahipal is brother in-law of deceased Braham Parkash and as such, in order to help the claimants, said Mahipal has given the affidavit Ex.P2.

13. It is pertinent to mention here that as per prosecution version, the number of the offending vehicle was disclosed by one Mohabat Singh, but said Mohabat Singh has not been produced by the claimants as a witness. Said Mohabat Singh was the vital witness, because it is who, who has allegedly disclosed the registration number of the offending vehicle as well as name of the alleged driver, who was



driving the alleged vehicle, to the investigating agency and as such, non-production of vital witness goes against the claimants.

14. The argument on behalf of the claimants that in view of Girdhari Lal versus Radhey Sham and ors. 1993 PLR-109, there is prima-facie case against the driver of the offending vehicle and in view Virat Sama versus Mohan Lal and others, 1994 (2) CCC-22 the contents of FIR cannot be taken as gospel truth as the FIR has been lodged in a haste, is of no help in the present circumstances of the case. No doubt, recording of FIR against the driver of offending vehicle is a prima-facie case, but the claim Tribunal has got its duty to arrive at a right conclusion after appraising the evidence produced before it and if the evidence does not inspire confidence, then lodging of FIR itself is of no consequence. A duty has been castes, upon the claimants to prove involvement of the alleged offending vehicle in the accident and driving of the same by the driver in a rash and negligent manner, but in the instant case, the claimants have failed to discharge the onus which was heavy upon them in order to prove the involvement of the alleged offending vehicle in the afore stated accident.

15. The authority National Insurance Co. Ltd. versus Roshni Devi and others 2002 ACJ-1752 relied upon by the counsel for the claimants is of no help in the present circumstances of the case, because before getting the Award of compensation, the involvement of the vehicle in the accident is a primary requirement, but in the instant case, the claimants have failed to prove the involvement of the vehicle no.HR-45/2170 in the afore stated accident. Similarly, the authority National Insurance Company Versus Tula Ram and others, 2003 (2)



RCR-18, Bimla Devi and others Vs. Punjab State and others, 20001

(1) RCR-13. Oriental Insurance Co. Ltd., versus Chintharbhai Sibabhai and another 2003 ACJ-839, Lalloo Ram Vs. Ram Babu Kamariya and ors. 2005 ACJ-1755, and Manjit Kaur and others Vs. State of Punjab and others, 1996 ACJ-859 are of no help as they are not attracted in the present circumstances of the case.

16. On the contrary, in view of the testimony of RW1, Sh. Vikas Chaudhary, who has submitted his report as Ex.R1, it emerges that the afore stated truck no.HR-45/2170 was not involved in the afore stated accident as even after two days, Satpal son of Dula Ram has not disclosed the number of the offending vehicle in his statement under section 161 Cr.P.C. as mark-R2 and similarly Mahi Pal has not disclosed the registration number of the offending vehicle in his statement mark R-3 and Mohabat Singh, on whose statement the registration number and driver of the offending vehicle has not been produced by the claimants in the Court. So, it has to be held that either the accident had taken place with the said scooterists Raj Kumar or some unknown vehicle has caused the accident with Rehri of deceased Braham Parkash and later on in collusion with the police and in collusion with Mohabat Singh, who has not been produced in the witness box and FIR has been lodged against Rattan Singh whose name has not been mentioned in the claim petition by projecting truck no.HR45-2170 as offending vehicle in collusion with respondent no. 1, owner of the said truck. It is again pertinent to mention here that the claim petition has been filed at Kaithal in order to avoid any complication despite the fact that the accident took place within the



jurisdiction of police station city, Karnal and the claimant Sarni widow of deceased Braham Parkash was residing at Shiv Colony, Karnal as is evident from the testimony of RW1 Vikas Chaudhari.

17. Therefore, in view of the above discussion and evidence on record, and in view of authorities Smt. Chand Kaur versus Mohinder Singh, 2001 (2) RCR-417 and Vishav Bandhu versus Rajian and others 1996 ACJ-733, it has to be held that the claimants have miserably failed to prove involvement of the vehicle no. HR45/2170 in the afore stated accident as well as driving of alleged offending vehicle by alleged driver in a rash and negligent manner. Therefore, since the vehicle no.HR- 45/2170 is not involved in the afore stated accident and as such, the responsibility of the afore stated accident cannot be fastened upon the driver of vehicle no. HR 45/2170. Therefore, this issue is hereby decided against the claimants.

Issues no.2 & 3

18. As the vehicle no.HR45/2170 has not been found to have been involved in the afore stated accident and as such, these issues have become redundant and require no findings.

Relief:

In view of the above discussion and findings, the present claim petition is hereby dismissed with costs.”

10. A perusal of the record shows that the Ld. Tribunal failed to appreciate the whole record and dismissed the claim petition on technical ground. The factum of accident is admitted which is further supported by the medical record and the statement of PW-2 who is the eye witness of occurrence. Further, the factum of accident is proved in FIR. The para 8 and 9 of the reply on merits filed by



respondent No.1 shows that it has been stated that the deceased had died due to his own negligence and there is no fault on the part of the driver of the truck in question which further proves the factum of accident.

11. The affidavit Ex.P2 is the statement of eye witness-Mahipal wherein the whole incident of accident has been stated and which reads as under:-

“ 1. That on 19.07.1998, the deponent along with Satpal, Subhash etc. were present near Tea Stall of over Railway Bridge, Kaithal Road, Karnal, at about 9 PM, a truck bearing Regn. No. HR-45/2170 came from Karnal city side, which was being driven by its driver i. e. Rattan Singh in a rash and negligent manner without observing the traffic rules and hit against one Rehri, which was loaded with clay Toys and scooter bearing No. DEH-6846. Due to the impact of this accident, the owner of said Rehri received multiple, serious injuries in this accident

2. That the occupants of the abovesaid scooter also received injuries in this accident. The deponent and other persons immediately rushed to the place of accident and found the injured Barma @ Braham Parkash s/o Gopal Dass, who was bleeding profously. He was shifted to Civil Hospital, Karnal but his condition was serious so he was referred to PGI, Chandigarh where he died on 20/7/98,

3. That the accident occurred arising out of use of Truck bearing Regn. No. HR-45/2170. ”

12. The affidavit of Sarni @ Sarvani wife of late Sh. Barma @ Braham Parkash shows that the deceased Barma @ Braham Parkash died in motor vehicle accident. He was working as ‘Raj Mistri’ and used to manufacture clay toys and was earning Rs.40,000/- per annum. It is further stated in the affidavit that a sum of Rs.30,000/- was spent on his last rites. As per the medical record, the cause of death is head injury.



13. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 19.04.2006 passed by Ld. Tribunal, Kaithal stands vitiated by a complete absence of judicial application of mind.

14. Since Issue No.2 i.e. *“If issue No.1 is proved, whether the claimants are entitled to compensation and if so to what amount and from whom? OPP”* was not decided by the Ld. Tribunal, therefore, this Court decides as follows:-

i) A perusal of the record reveals that the deceased-Barma Ram @ Brahma Prakash was working as a ‘Raj Mistri’ and used to manufacture clay toys and his income was asserted to be Rs.40,000/- per annum. However, under the prevailing facts of the present case, his income is to be assessed as Rs. 1200/- per month in accordance with the minimum wages prescribed for unskilled worker in the State of Haryana.

SETTLED LAW ON COMPENSATION

15. Hon’ble Supreme Court has settled the law regarding grant of compensation with respect to the disability. The Apex Court in the case of **Raj Kumar Vs. Ajay Kumar and Another (2011) 1 Supreme Court Cases 343**, has held as under:-

General principles relating to compensation in injury cases

5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation



or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467).

6. *The heads under which compensation is awarded in personal injury cases are the following :*

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).



In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

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19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the



nature of profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earnings is explained below with reference to the following

Illustration 'A' : *The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:*

- a) Annual income before the accident : Rs. 36,000/-.*
- b) Loss of future earning per annum
(15% of the prior annual income) : Rs. 5400/-.*
- c) Multiplier applicable with reference to age : 17*
- d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-*

Illustration 'B' : *The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows :*

- a) Annual income prior to the accident : Rs. 36,000/- .*
- b) Loss of future earning per annum
(75% of the prior annual income) : Rs. 27000/-.*



c) Multiplier applicable with reference to age : 17

d) Loss of future earnings : (27000×17) : 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)].

16. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

(A) Deduction of personal and living expenses to determine multiplicand;

(B) Selection of multiplier depending on age of deceased;

(C) Age of deceased on basis for applying multiplier;



(D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;

(E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

“ Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

17. Hon’ble Supreme Court in the case of **Erudhaya Priya Vs. State Express Tran. Corpn. Ltd. 2020 ACJ 2159**, has held as under:-

“ 7. There are three aspects which are required to be examined by us:

(a) the application of multiplier of '17' instead of '18';

The aforesaid increase of multiplier is sought on the basis of age of the appellant as 23 years relying on the judgment in National Insurance Company Limited v. Pranay Sethi and Others, 2017 ACJ 2700 (SC). In para 46 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in



the table in the case of Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC) . In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability.

The aforesaid position is not really disputed by learned counsel for the respondent State Corporation and, thus, we come to the conclusion that the multiplier to be applied in the case of the appellant has to be '18' and not '17'.

(b) Loss of earning capacity of the appellant with permanent disability of 31.1%

In respect of the aforesaid, the appellant has claimed compensation on what is stated to be the settled principle set out in Jagdish v. Mohan & Others, 2018 ACJ 1011 (SC) and Sandeep Khanuja v. Atul Dande & Another, 2017 ACJ 979 (SC). We extract below the principle set out in the Jagdish (supra) in para 8:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;*
- (ii) Loss of income including future income;*
- (iii) The inability of the victim to lead a normal life together with its amenities;*
- (iv) Medical expenses including those that the victim may be required to undertake in future; and*
- (v) Loss of expectation of life."*

*[emphasis supplied]*

The aforesaid principle has also been emphasized in an earlier judgment, i.e. the Sandeep Khanuja case (supra) opining that the multiplier method was logically sound and legally well established to quantify the loss of income as a result of death or permanent disability suffered in an accident.

In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries had been set out as under:

"Nature of injury:

- (i) compound fracture shaft left humerus*
- (ii) fracture both bones left forearm*
- (iii) compound fracture both bones right forearm*
- (iv) fracture 3rd, 4th & 5th metacarpals right hand*
- (v) subtrochanteric fracture right femur*
- (vi) fracture shaft femur*
- (vii) fracture both bones left leg*

We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 13 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on



advancement in life and career are also to be taken into consideration.

We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case (supra), more specifically para 61(iii), considering the age of the appellant, would be 50% of the actual salary in the present case.

(c) The third and the last aspect is the interest rate claimed as 12%

In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the Jagdish’s case (supra). On this aspect, once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court.

CONCLUSION

8. The result of the aforesaid is that relying on the settled principles, the calculation of compensation by the appellant, as set out in para 5 of the synopsis, would have to be adopted as follows:

<i>Heads</i>	<i>Awarded</i>
<i>Loss of earning power (Rs.14,648 x 12 x 31.1/100</i>	<i>Rs. 9,81,978/-</i>



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.

18. 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 19.04.2006 is hereby set aside. The appellants-claimants are entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.1200/-
2	Future prospects @ 40%	Rs.480/- (40% of Rs.1200/-)
3	Deduction towards personal expenditure	Rs.420/- (1/4th of Rs. 1680./-)
4.	Total Income	Rs.1260/-
4	Multiplier	17
5	Annual Dependency	Rs.2,57,040/- (1260 X 12 X 17)
6	Loss of Estate	Rs.18,000/-
7	Funeral Expenses	Rs.18,000/-
8	Loss of Consortium Parental : Rs. 48,000/- x 2 Spousal : Rs. 48,000/-x 1	Rs.2,40,000/-

	Filial : Rs. 48,000/- x 2	
	Total Compensation	Rs.5,33,040/-

19. So far as the interest part is concerned, as held by Hon’ble Supreme Court in Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma 2019 ACJ 3176 and R.Valli and Others VS. Tamil Nandu State Transport Corporation (2022) 5 Supreme Court Cases 107, the amount so calculated shall carry an interest @9% per annum from the date of filing of the claim petition, till the date of realization.
20. The Insurance Company is directed to deposit the awarded amount alongwith interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is directed to disburse the same to the appellants-claimants in their bank account. The appellant-claimant is directed to furnish his bank account details to the Tribunal.
21. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

September 06, 2024
sonia arora

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