



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

203

FAO-3021-2006 (O&M)

Date of Decision: September 03, 2024

Kewal Krishan

.....Appellant

Vs.

Krishan and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pankaj Middha, Advocate
for the appellant.

Mr. Lalit Garg, Advocate
for respondent No.3-Ins. Co.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 25.11.2005 passed in the claim petition filed under Sections 166 and 140 of the Motor Vehicles Act, 1989 by the learned Motor Accident Claims Tribunal, Panipat (for short, 'the Tribunal') for enhancement of compensation granted to the claimant/appellant, who has sustained injuries in the accident.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 02.08.2004, the claimant boarded in Jeep No. HR 10E 4472 driven by respondent No.1 (hereinafter referred as offending vehicle) for going to his shop in village Bandh. When the offending vehicle reached ahead of School in the area of village Mehrana, respondent No.1 drove the offending vehicle at a very high speed rashly and negligently and went on wrong side after overtaking a tractor which was in front of the jeep. In the

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meantime, one Ballero Jeep No.34A 6048 (hereinafter referred as Jeep) came from Gohana side driven by the driver thereof in proper side at normal speed. The offending vehicle driven by respondent No.1 hit the jeep directly from front side due to which, the claimant suffered multiple and grievous injuries including fracture of right arm and elbow.

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

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

1. Whether the accident in question took place due to rash and negligent driving of Jeep No. HR-10E-4472 by the respondent No. 1 ? OPP
2. Whether the petitioner is entitled to compensation if so, how much and from whom ? OPP
3. Whether the respondent: No.1 was not holding a valid and effective driving licence at the of time of accident as alleged OPR
4. Whether the respondents No.1 & 2 violated the terms and conditions of insurance policy to carrying of passengers for hier as alleged ? OPR3
- 4A. Whether the petition is bad for misjoinder and non-joinder of parties ? OPR3
5. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.32,897/-

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alongwith interest @ 6% per annum. Hence the claimant/appellant filed the present appeal for enhancement of compensation awarded by the Tribunal.

SUBMISSIONS OF THE COUNSELS

6. The learned counsel for the claimant-appellant contends that the compensation awarded by the learned Tribunal is on the lower side.

i. Further, that injured was admitted in the hospital from 02.08.2004 to 05.08.2004 and compensation granted for pain and suffering, special diet, attendant charges, loss of future prospects was on lower side.

ii. The monthly income as assessed by the Tribunal amounting to Rs.2500/- was on lower side.

iii. He further contends that an amount of Rs.7500/- towards loss of earning is very meager.

Therefore, he prays that the present appeal be allowed and compensation should be enhanced as per latest law.

7. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted.

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

9. A perusal of the award indicates that the Tribunal has assessed the income of the deceased at Rs.2500/- per month. However, appellant has stated in his affidavit that he was earning an amount of Rs.6000/- per month before the accident. Therefore, fixing of income of Rs.3,500/- per month of the injured is just and reasonable. Further, perusal of the record reveals that the amount of Rs.15,397/- awarded to the claimant towards medical treatment and compensation



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granted for pain and suffering, special diet, attendant charges, loss of future prospects is on lower side, therefore, the same requires indulgence of this Court.

SETTLED LAW ON COMPENSATION

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

General principles relating to compensation in injury cases

5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467).



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

Pecuniary damages (Special Damages)

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

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

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

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

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

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

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

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

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

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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,*



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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 :*



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- a) Minimum annual income he would have got if had been employed as an Engineer : Rs. 60,000/-
- b) Loss of future earning per annum (70% of the expected annual income) : Rs. 42000/-
- c) Multiplier applicable (25 years) : 18
- d) Loss of future earnings : (42000 x 18) : Rs. 7,56,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

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

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

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

“ Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively.

The principle of revisiting the said heads is an acceptable



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principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

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

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

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

The aforesaid increase of multiplier is sought on the basis of age of the appellant as 23 years relying on the judgment in National Insurance Company Limited v. Pranay Sethi and Others, 2017 ACJ 2700 (SC). In para 46 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in the table in the case of Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC) . In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability.

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

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



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

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

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

[emphasis supplied]

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

In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8



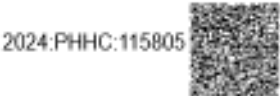
occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries had been set out as under:

"Nature of injury:

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

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

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



para 61(iii), considering the age of the appellant, would be 50% of the actual salary in the present case.

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

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

CONCLUSION

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

<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.

13. As per award passed by Ld. Tribunal dated 25.11.2005, the Ld. Tribunal decided the claim petition in favour of the claimant and against respondents No.1 and 2 i.e. driver and owner of the vehicle respectively. Respondents No.1 and 2 were held jointly and severally liable to pay the compensation. Respondent No.3-Insurance Company was directed to pay the compensation in the first instant and liberty was granted to respondent No.3 to recover the same from respondents No.1 and 2.
14. In view of the above, the present appeal is allowed and award dated 25.11.2005 is modified. Accordingly, as per the settled principles of law as laid down by Hon’ble Supreme Court as mentioned above, the appellant - claimant is held entitled to the compensation amount as calculated below:

Sr. No.	Heads	Compensation Awarded
1	Income	Rs.3500/-
2	Loss of future earning	Rs.17,500/- (3500 x 5)
3	Medical	Rs.60,000/-
4	Attendant Charges	Rs.10,000/-
8	Pain and Sufferings	Rs.25,000/-
9	Special diet	Rs.10,000/-
10	Loss of Amenities of life	Rs.15,000/-
	Total Compensation	Rs.1,37,500/-
	Amount Awarded by the Tribunal	Rs. 32,897/-
	Enhanced amount	Rs.1,04,603/-

15. So far as the interest part is concerned, as held by Hon’ble Supreme



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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.

16. Respondent No.3-Insurance Company is directed to deposit the enhanced amount along with 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 appellant-claimant in his bank account. The appellant-claimant is directed to furnish his bank account details to the Tribunal.

17. However, respondent No.3-Insurance Company is entitled to recover the enhanced amount of compensation from respondent No. 1 and 2 i.e. driver and owner of the offending vehicle as per award dated 25.11.2005.

18. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 03, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes