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

**FAO-3334-2006 (O&M)**
**Date of Decision: November 19, 2024**

Rakesh Kumar ......Appellant

**Vs.**

Mohan Singh and others ......Respondents

**CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Vipul Sharma, Advocate for
Mr. Ashwani Arora, Advocate, for the appellant.

Mr. Neeraj Khanna, Advocate for
Mr. Paul S. Saini, Advocate
for respondent No. 3-Insurance Co.

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**SUDEEPTI SHARMA J.**

1. The present appeal has been preferred against the award dated 09.05.2006 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal') for enhancement of compensation, granted to the claimant/appellant.

**FACTS NOT IN DISPUTE**

2. The brief facts of the case are that on the intervening night of 31.12.2002 and 1.01.2003, the claimant/appellant was going from Rock Garden to Sector 26, Chandigarh in TATA Sumo bearing registration No. HR-37-A-2862 being driven by respondent No. 1 in a rash and negligent manner. When it reached

the lake turning, the vehicle went out of control of respondent No.1 and turned turtle. As a result, the claimant/appellant sustained multiple grievous injuries. He was taken to the hospital. His left arm was amputated. He suffered fracture on his left foot also.

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

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

> 1) Whether the claimant-Rakesh Kumar sustained injuries in a motor vehicle accident which took place on the interevening night of 31.12.2002 and 1.1.2003, in the area of lake turning Chandigarh on account of use of TATA 407 vehicle bearing registration No. HR-37-A-2862, by respondent No. 1? OPP
>
> 2) Whether the claimant is entitled to be compensated for the treatment, injuries and sustainability, if any, sustained by Rakesh Kumar? If so to what extent by whom? OPP
>
> 3) Whether respondent No. 1 and 2 have spent about Rs.35,000/- on the treatment of Rakesh Kumar. If so its effect? OPR
>
> 4) Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.5,60,000/- alongwith interest @ 7.5% per annum. Hence the claimant/appellant filed the present appeal for enhancement of compensation awarded by the Tribunal on account of injuries suffered by him.

**SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES**

6. The learned counsel for the claimant-appellant contends that the compensation assessed by the learned Tribunal is on the lower side, as the appellant was 21 years of age at the time of accident. He was employed as driver and was earning a sum of Rs.3300/- per month. He received serious injuries i.e amputation of left arm and fracture of left foot. His permanent disability was assessed to the extent of 90% in relation to his whole body. The multiplier applied by the Tribunal is on the lower side. Further nothing has been awarded under the head of pain and sufferings, attendant charges, marriage prospects. The amount awarded for medical bills is also on the lower side. 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. He, therefore, prays for dismissal of the appeal.

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

9. A perusal of the record shows that the claimant/appellant is 90 % permanent disabled and the disability is in relation to his whole body, as per the Disability Certificate (Annexure PC/12) issued by PGI MIR Chandigarh. The disability certificate was duly proved by Dr Rakesh Kumar. It further reveals from the record that at the time of the accident, the appellant was 21 years old and being a driver, he was earning Rs.3300/- per month. Thus, his monthly income has rightly been assessed by the learned Tribunal as semi-skilled worker.

10. The learned Tribunal while granting the compensation has not taken into consideration the future of the appellant, consequent to the accident and the claimant is entitled to future prospect as well. The learned Tribunal failed to grant

the compensation on account of mental loss to the appellant with respect to his education, job and marriage. Further the learned Tribunal did not take into consideration the total dependence of the claimant upon his parents, for which the attendant is required for whole of his life. Therefore, the award requires indulgence of this Court.

11. With regard to grant of future prospects in a claim petition filed under Section 163-A of the Motor Vehicles Act, 1988, reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case ***Mohd. Sabeer @ Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation, 2023 (1) R.C.R (Civil) 349*** wherein Hon'ble the Supreme Court has held as under:-

> *"18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place."*

12. With regard to the amputation of left arm of the appellant due to which cost of prosthetic limb and its maintenance, the appellant is required to be compensated, keeping in view the seriousness of the injuries suffered by him in the accident. This issue has already been dealt in ***Mohd. Sabeer @ Shabir Hussain's case (supra).***

**SETTLED LAW ON COMPENSATION**

13. 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.*

*xxx xxx xxx xxx*

***19. We may now summarise the principles discussed above :***

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

*(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent*

*disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*

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

*(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.*

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

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

*a) Annual income before the accident : Rs. 36,000/-.*

*b) Loss of future earning per annum*
*(15% of the prior annual income) : Rs. 5400/-.*

*c) Multiplier applicable with reference to age : 17* *d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-*

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

*a) Annual income prior to the accident : Rs. 36,000/- .*

*b) Loss of future earning per annum*
*(75% of the prior annual income) : Rs. 27000/-.*

*c) Multiplier applicable with reference to age : 17*

*d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-*

***Illustration 'C'*** *: The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows :*

*a) Minimum annual income he would have got if had been employed as an Engineer : Rs. 60,000/-*

*b) Loss of future earning per annum (70% of the expected annual income) : Rs. 42000/-*

*c) Multiplier applicable (25 years) : 18*

*d) Loss of future earnings : (42000 x 18) : Rs. 7,56,000/-*

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

14. 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."*

15. 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.*

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

| ***Heads*** | ***Awarded*** |
|---|---|
| *Loss of earning power (Rs.14,648 x 12 x 31.1/100* | *Rs. 9,81,978/-* |
| *Future prospects (50 per cent addition)* | *Rs.4,90,989/-* |
| *Medical expenses including transport charges, nourishment, etc.* | *Rs.18,46,864/-* |
| *Loss of matrimonial prospects* | *Rs.5,00,000/-* |
| *Loss of comfort, loss of amenities and mental agony* | *Rs.1,50,000/-* |
| *Pain and suffering* | *Rs.2,00,000/-* |
| *Total* | *Rs.41,69,831/-* |

*The appellant would, thus, be entitled to the compensation of Rs. 41,69,831/- as claimed along with simple interest at the rate of 9% per annum from the date of application till the date of payment.*

***CONCLUSION***

16. In view of the above referred judgments, the present appeal is **allowed** and award dated 9.05.2006 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:

| ***HEAD*** | ***COMPENSATION AMOUNT*** |
|---|---|
| Income | **Rs.3300 per month** |
| Annual Income | **Rs.3300X12=39,600/-** |
| Future Prospect 40% | **Rs.39600+ Rs.15840= Rs.55440/-** |
| Loss on account of 90% disability | **Rs.49,896 (55440x90%)** |
| Multiplier of 17 | **49896 X17=8,48,232/-** |
| Cost of artificial limb and its maintenance | **Rs.8,00,000/-** |
| Pain and suffering | **Rs.1,00,000/-** |
| Attendant Charges | **Rs.50,000/-** |
| Marriage Prospects | **Rs.2,00,000/-** |
| Transport Charges | **Rs.25,000/-** |
| Loss of amenities | **Rs.50,000/-** |
| Special Diet | **Rs.50,000/-** |
| **Total compensation awarded:-** | **Rs.21,23,232/-** |
| **Amount awarded by Tribunal** | **Rs.5,60,000/-** |
| **Enhanced amount of compensation** | **Rs.15,63,232/- (21,23,232-5,60,000)** |

17. 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.

18. 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.

19. Further Insurance Company is directed to disburse the current schedule fees to Mr. Neeraj Khanna, Advocate appearing for Mr. Paul S. Saini, Advocate, within a period of ten days from the date of receipt of certified copy of this order.

20. Disposed of accordingly.

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

**(SUDEEPTI SHARMA)**
**JUDGE**

**November 19, 2024**
G Arora

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