



FAO-3371-2006 (O&M)

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

FAO-3371-2006 (O&M)

Date of Decision: November 27, 2024

Narender

.....Appellant

Vs.

Krishan Singh and others

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ishan Aggarwal, Advocate for
Mr. Sudhir Aggarwal, Advocate
for the appellant.

Mr. Ravinder Arora, Advocate
for the respondent-Insurance Co.

SUDEEPTI SHARMA J.

1. This is an old matter pertaining to the year 2006 but no one has put in appearance on behalf of the Insurance Company.
2. Previously vide order dated 18.07.2024 in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the event, any of their empanelled counsel fails to appear, the Court would request the counsel empanelled with the Insurance Companies, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.
3. On the asking of the Court, Mr. Ravinder Arora, Advocate accepts notice on behalf of the respondent-Insurance Company.

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4. Learned counsel for the appellant has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent- Insurance Company.

5. In view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, the Insurance Company is directed to disburse the current scheduled fees to Mr. Ravinder Arora, Advocate, the counsel engaged by this Court in the present case.

FAO No. 3371-2006

6. The present appeal has been preferred against the award dated 18.04.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal') for enhancement of compensation granted to the claimant to the tune of Rs.30,000/- along with interest @ 7.5% per annum, on account of injuries suffered by the appellant in a Motor Vehicular Accident, occurred on 25.11.2002.

7. As sole issue for determination in the present appeal is confined to quantum of compensation awarded by the learned Tribunal, a detailed narration of the facts of the case are not reproduced for the sake of brevity.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

8. The learned counsel for the claimant-appellant contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced.

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

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10. 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.

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

12. A perusal of the award indicates that the appellant suffered injuries on his head, right hand and both legs and abrasions. The appellant remained admitted in Sushrata Trauma Centre, Delhi on 25.11.2002 and was discharged on 08.01.2003. MLR, CT Scan were conducted and MLR Ex P4 was also duly proved by PW5 Kanta Yadav, who brought the record of the hospital. PW5 Dr. M.R. Singh, Sr. Resident Neuro Surgery, stated that the patient i.e appellant remained admitted from 25.11.2002 to 8.01.2003, who was having head injury, fracture of lateral condyle right tibia. There was hemorrhagic contusion in left parietal region. The patient suffered neurological deficit due to head injury and his mental faculties impaired. PW3 Dr. Subhash Sindhu while appearing in witness box proved the permanent disability of the appellant to the extent of 5%, as per disability certificate Ex P3. Further medical bills were duly proved. The appellant was a young boy of 25 years at the time of accident. The amount awarded to the appellant under the conventional head is liable to be enhanced, as per latest law.

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

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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;



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(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).

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(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*



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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)].

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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.”



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RELIEF

15. In view of the above, the present appeal is allowed and award dated 18.04.2006 is modified. Accordingly, as per the settled principles of law as laid down by Hon’ble Supreme Court as mentioned above, the appellant No. 1-claimant is held entitled to the compensation amount as calculated below:-

HEAD	COMPENSATION AMOUNT
Income	Rs.2300 per month
Annual Income	Rs.2300X12=27600/-
Future Prospect 40%	Rs.27600+ Rs.11040= Rs.38640/-
Loss on account of 5% disability	Rs.1932 (38640X5%)
Multiplier of 18	1932 X18=34,776/-
Medical Expenses	Rs.5000/-
Pain and suffering	Rs.50,000/-
Attendant Charges	Rs.30,000/-
Marriage Prospects	Rs.1,00,000/-
Transport Charges	Rs.20,000/-
Loss of amenities	Rs.50,000/-
Special Diet	Rs.20,000/-
Total compensation awarded:-	Rs.3,09,776/-
Deduction:- Amount awarded by Tribunal	Rs.30,000/-
Enhanced amount of compensation	Rs.2,76,776/- (309776-30000)

16. 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%

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per annum from the date of filing of the claim petition, till the date of realization.

17. 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.

18. Further Insurance Company is directed to disburse the current schedule fees to Mr. Ravinder Arora, Advocate, within a period of ten days from the date of receipt of certified copy of this order.

19. Before parting with the judgment, this Court extends its appreciation to Mr. Ravinder Arora, Advocate, for his able assistance to the Court in the present matter.

20. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 27, 2024

G Arora

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