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

210 **FAO-3476-2006 (O&M)**
Date of Decision: November 28, 2024

Subhash Chand **......Appellant**

Vs.

Partap @ Chinni and another **......Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. B.K. Bagri, Advocate for the appellant

Mr. Kawalpreet Singh Virk, Advocate
for respondent No.2-Insurance Company

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 04.10.2005 passed in the claim petition filed under Section 163A/166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Rewari (for short, 'the Tribunal') for enhancement of compensation, granted to the claimant/appellant to the tune of Rs.4500/-, on account of injuries sustained by the appellant in a Motor Vehicular Accident, occurred on 04.11.2002.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 4.11.2002, the appellant-Subhash Chand boarded a bus bearing registration No.RJ- 32P-0141 from Gurgaon for Banipur Chowk, Bawal. When the bus reached at Dharuhera, there was heavy rush in the bus as some ladies passengers had boarded the bus; that conductor of the bus told the appellant and other passengers to go on the roof of the bus as he wanted to accommodate

ladies passengers in the bus. On his request, appellant and 45 passengers went to the roof of the bus. When the bus reached at Banipur Chowk, the driver of the bus i.e. respondent no.1 applied the brakes suddenly and steered the bus in a rash and negligent manner. As a result of which, the appellant lost his control and fell down on the road and sustained multiple injuries on his mouth, head and other vital parts of the body. The appellant alleged that the accident was caused by respondent No.1 by his rash and negligent driving, regarding which FIR No.143 dated 4.11.2002, under Sections 279, 337 IPC, was registered at Police Station Kasola against respondent No.1.

3. Upon notice of the claim petition, the respondents appeared and filed wirtten reply denying the factum of accident/compensation.

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

> *1. Whether the injuries on the person of petitioner Subhash Chand son of Sona Ram were caused in a road side accident which took place on 4.11.2002 due to rash and negligent driving of bus bearing No.RJ-32P/141 being driven by respondent no.1, as alleged? OPP*
>
> *2. If aforesaid issue is proved, to what amount the petitioner is entitled to? OPP*
>
> *3. If issues no.1 and 2 are proved, from whom the petitioner is entitled to the compensation amount? OPP*
>
> *4. Whether respondent no.1 was not having a valid and effective driving licence at the time of accident, if so to what effect? OPR*

5.Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.4500/-. Hence, the appellant/claimant filed the present appeal for enhancement of compensation awarded by the learned Tribunal.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellant/claimant contends that the amount awarded by the learned Tribunal is on the lower side. He further contends that the learned Tribunal has erred in granting a meager amount of Rs.4500/- as compensation to the appellant/claimant for injuries, he sustained due to the accident. He further contends that Tribunal has granted only Rs.500/- for medical bills and Rs.1500/- has been granted for pain and suffering, and Rs.1000/- for special diet, that is on lower side. He further contends that Tribunal has not granted any amount towards special diet, transportation charges, etc. Therefore, he prays that the present appeal be allowed.

7. Per contra, learned counsel for respondent No.2-Insurance Company, at the very outset, contends that the present appeal is not maintainable under Section 173 of the Motor Vehicles Act, 1988, as no appeal shall lie from an award of the Tribunal if the amount awarded is less than Rs.10,000/-. He further contends that in the instant case, the amount awarded by the Learned Tribunal is Rs.4,500/-, thereby precluding the right to appeal.

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

9. So far as the contention of resopndent-Insurance company regarding the maintainability of present appeal is concerned, this Court in FAO

No.5270 of 2006 has already dealt with the same question and had held as under:-

> *13. It is a well-settled principle that procedural lapses or errors committed by legal counsel, such as invoking an incorrect remedy, should not operate to the detriment of a claimant's substantive right to seek enhanced compensation, particularly under a beneficial statute like the Motor Vehicles Act. The Hon'ble Supreme Court has consistently underscored that the strict adherence to procedural technicalities, including the rigid application of the Rules of Evidence and the Civil Procedure Code, is inapplicable to proceedings under the Motor Vehicles Act. The primary objective of this remedial legislation is to ensure prompt and equitable justice to claimants.*
>
> *14. This court further observes that under Section 107 and Order XLI Rule 33 of the Code of Civil Procedure, 1908, it possesses inherent powers to ensure the ends of justice is met by treating the appeal as a revision.*
>
> *15. Such an exercise of discretion is firmly rooted in judicial precedents and resonates with the legislative intent behind the enactment of the Motor Vehicles Act, which seeks to prioritize substantive justice over procedural formalities. By doing so, this court not only adheres to the principles of equity and fairness but also reinforces the legislative purpose of expediting relief to the victims of motor accidents.*
>
> *16. In light of the foregoing considerations, this court finds it just and proper to invoke its inherent powers to convert the present appeal into a revision petition. By exercising this discretion, the court reaffirms its commitment to delivering justice in a manner that is both expeditious and fair, thereby safeguarding the claimant's rights and preventing undue delay or denial of relief."*

10. Therefore, in line with the precedent set in FAO No.5270 of 2006 titled as ***Kamlesh @ Sonia Vs. Bhola Singh and others***, this Court converts the present appeal into the Civil Revision.

11. A perusal of the award further shows that Ld. Tribunal has erred in grating a meager amount of compensation to the claimant. A perusal of the award further shows that the claimant has suffered simple and grievous injuries as shown in MLR. Relevant portion of the same is reproduced as under:-

> *"MLR Ex.PW3/A can be taken into consideration. It is attested true copy signed by Medical Officer, CHC, Bawal. This MLR shows that the claimant Subhash Chand was admitted in CHC Bawal on 4.11.2002 with seven injuries on his person. Out of the seven injuries, four were lacerated wound. Injury no.1 was on the right side afore-head. Injury no.2 was on the forehead in the centre above the nose. Injury no.3 lacerated wound above left eye-brow and injury no.4 was lacerated wound on the upper lip right side. Injury no.5 was showed two tooth incisor were missing with bleeding was present and there was a laceration on the upper lip corresponding in the tooth. Injury no.6, lower 3 tooth of front were missing with bleeding was present. Injury no.7 was abrasion right shoulder. All the injuries were kept under observation. There is no x-ray report tendered and proved on record by the claimant to show that he had suffered any grievous injury."*

12. A perusal of the award further shows that the amount of compensation granted for pain and suffering, special diet and transportation charges is also on lower side. Therefore, the award requires interference of this Court.

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.

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:

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.

RELIEF

16. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments and the facts and circumstances of the present case, this appeal is now converted to a revision petition and the same is allowed and the award dated 04.10.2005 is modified accordingly. The appellant-claimant is entitled to the enhanced compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Pain and Sufferings	Rs.50,000/-
2	Special diet	Rs.20,000/-
3	Medical expenses	Rs.500/-
4	Transportation charges	Rs.20,000/-
5	Attendant Charges	Rs.20,000/-

6	Loss of Amenities of life	Rs.70,000/-
7	**Total Compensation**	**Rs.1,85,000/-**
8	**Amount Awarded by the Tribunal**	Rs.4500/-
9	**Enhanced amount**	**Rs.1,80,500/- (1,85,000-4500)**
10	**Contributory negligence on the part of the claimant - 25%**	**Rs.45,153/- (25% of 1,80,500/-)**
11	**Amount payable**	**Rs.1,35,375/-**

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 Nadu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

18. The respondent Insurance Company is directed to deposit the enhanced amount of compensation alongwith interest with the Tribunal within a period of two months from the date of receipt of copy of judgment. Since the present case involves contributory negligence and the Ld. Tribunal vide its award dated 04.10.2005 has fixed the liability as 25% of appellant and 75% of respondents. The Tribunal is further directed to disburse the enhanced amount of compensation subject to cut of proportionate negligence i.e 75% of respondents alongwith interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish his bank account details to the Tribunal.

19. However, respondent-Insurance Company is directed to deposit the enhanced compensation in the first instance with the liberty to recover the same from respondent No.1 (owner and driver).

20. The Insurance Company is hereby directed to disburse the current scheduled fees to Mr.Kawaldeep Singh Virk, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

21. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 28, 2024
sonia arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes /No