



FAO-4343-2006 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-4343-2006 (O&M)

Date of Decision: September 20, 2024

Sarti and others

.....Appellant(s)

Vs.

Jaibir and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ajit Sihag, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for 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. Suvir Dewan, Advocate accepts notice on behalf of respondent No.3-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 No.3-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. Suvir Dewan, Advocate, the counsel engaged by this Court in the present case.

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6. The present appeal has been preferred against the award dated 08.02.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal') for enhancement of compensation granted to the appellants, who are the family members of the deceased-Krishan Kumar.

FACTS NOT IN DISPUTE

7. The brief facts of the case are that on 09.12.1992, Krishan Kumar (since deceased) alongwith Om Parkash son of Ganeshi Ram, resident of Village Jamapur and Ram Kishan son of Risala, resident of village Seeper was going from village Data to village Jamapur after loading bundles of Bajra crops in his camel cart. At about 11:00 P.M, when they reached outside the village Hasampur, in the meanwhile, a four wheeler bearing registration No. HR-16-3864 came from behind being driven by its driver in a rash and negligent manner by respondent No. 1 at a high speed, struck into the camel cart. As a result, the claimant (now deceased) and the camel received serious injuries and bundles of bajra crop were also scattered there. The camel fell down at the spot. The claimant was shifted to General Hospital, Hansi in a Maruti car by above said Om Parkash and Ram Kishan from where he (claimant) was further shifted to Janta Hospital, Barwala. The back bone of claimant (since deceased) was fractured and he also received injuries on the

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right ear and other parts of the body. The camel of the claimant also died on 02.01.1993, due to the injuries suffered by it

8. Upon notice of the claim petition, respondent No. 1 and legal representatives of respondent No. 2 appeared and filed their joint written statement and stated that a false case was got registered against respondent No. 1. It was denied that the accident took place due to rash and negligent driving of respondent No. 1

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

- 1) Whether the accident in question was a result of rash and negligent driving of four wheeler No. HR-16-3864 by respondent No. 1? OPP
- 2) Whether the claimants are entitled to compensation? If so, to what amount ? OPP
- 3) Whether the petition is based on collusion in between petitioners and respondent Nos. 1 and 2, if so to what effect? OPR-4
- 4) Whether the driver was not having a valid and effective driving licence, if so to what effect? OPR 3
- 5) Whether the petition is time barred? OPR 3
- 6) Relief

10. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.10,000/- alongwith interest @ 6% per annum on account of the injuries suffered by Kirshan Kumar (now deceased) and also on account of death of the camel. Hence the

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claimants/appellants (legal heirs of Krishan Kumar) filed the present appeal for enhancement of compensation awarded by the Tribunal.

SUBMISSIONS OF THE PARTIES

11. The learned counsel for the claimant-appellant contends that the amount assessed by the learned Tribunal is on the lower side. He further contends that the amount awarded towards pain and suffering, special diet, medical expenses, transportation charges etc is on the lower side. He further submits that this is a case where Krishan Kumar (now deceased) remained admitted in the hospital for 25 days and he lost his camel died due to the injuries suffered in the accident. Therefore, he prays that the present appeal be allowed and compensation should be enhanced as per latest law.

12. Per contra, learned counsel for the respondent, 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.

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

14. A perusal of the record shows that the injured (since deceased) remained in the hospital for 25 days for injuries suffered by him in the road accident. The amount awarded towards pain and suffering, special diet, medical expenses, transportation charges etc is on the lower side. Therefore, the awards requires interference by this Court.

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).*



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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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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.”



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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>
<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.

CONCLUSION

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 08.02.2006 is modified accordingly. The appellants-claimants are entitled to enhanced compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Medical	Rs.2000/-
2	Attendant Charges	Rs.30,000/-
3	Pain and Suffering	Rs.70,000/-
4	Special Diet	Rs.70,000/-
5.	Loss of amenities	Rs.30,000/-
6.	Transportation Charges	Rs.30,000/-
7.	Loss of Camel (she)	Rs.20,000/-
	Total Compensation	Rs.2,52,000/-
	Amount Awarded by the Tribunal	Rs.10,000
	Enhanced amount	Rs.2,42,000/-

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 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.

20. The Insurance Company is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the accounts of all the claimants/appellants as per ratio settled in the award dated 03.05.2005. The claimants/appellants are directed to furnish the bank account details to the Tribunal.

21. Before parting with the judgment, this Court extends its appreciation to Mr. Suvir Dewan, Advocate, for his able assistance to the Court in the present matter.



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- 22. Disposed off accordingly.
- 23. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

September 20, 2024
G Arora

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