



FAO-4506-2006 (O&M)

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

FAO-4506-2006 (O&M)

Date of Decision: October 21 2024

Fauj Khan and others

.....Appellants

Vs.

Juber and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Jasuja, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate for Mr. R.N. Singal, Advocate
for respondent-Insurance Co.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 19.07.2006 passed in the claim petition filed under Section 140 and 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 appellants/claimants.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 09.05.2005, appellants/claimants were going to village Fatehpur Taga from their village Dhandholi Khurd (Agaon) on a three wheeler bearing No. HR-55C-0479. The three wheeler was being driven by Abid at a moderate speed on correct left side of the road. At about 10 A.M., when they reached 4 or 5 kilal ahead of Islamia Madrarsa in the area of village Rangala Rajpur, in the meantime, a dumper bearing No. HR-55B-0733 came from

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struck against the above three wheeler in which the appellants/claimants were going. The three wheeler turned turtle and was damaged badly due to the accident caused by respondent No. 2 after coming to the wrong side of the road. The appellants/claimants sustained serious multiple injuries. Appellant No. 1 -Fauji Khan sustained fractured of T11, 12, L1 and 5th-6th ribs and appellant Nos. 2 and 3 also sustained injuries.

3. Upon notice of the claim petition, respondents appeared and contested the claim petition.

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

1. Whether the petitioners received injuries as a result of rash and negligent driving of the vehicle in question by respondent No. 2, as alleged? OPP

2. Whether three wheeler belongs to Abdul Waheb and vehicle was damaged in the accident, as a result of rash and negligent driving of the vehicle in question by respondent No. 2 ? OPP

3. Whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP

4. Whether respondent No. 2 was not duly licensed driver if so to what effect? OPR

5. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal allowed the claim petition of the petitioners/appellants and granted the compensation to the tune of Rs.3,20,000/- to appellant No. 1-Fauji Khan @ Fauju, Rs.2500/- to Chao Khan-appellant No. 2 and Rs.3500/- to Ismail-appellant No. 3 along with interest @ 7.5% per-annum.

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6. Now, the claimants-injured/appellants have filed the present appeal seeking enhancement of compensation on account of the injuries suffered by them in the accident.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

7. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side.

(i) That it was proved on record that appellant No. 1 suffered permanent disability to the extent of 85% on account of traumatic para palgia due to fracture of T11, 12 L1 of spinal cord and ribs No. 5th and 6th. The appellant No. 1 has been rendered bed ridden of entire life.

(ii) That the disability of appellant No. 1 was proved by Dr Subhash Sindhu while appearing as PW6 in the witness box.

(iii) Further it was also proved on record that after the accident, the appellant remained admitted in hospital w.e.f 10.05.2005 to 27.05.2005, 16.08.2005 to 22.08.2005 and again from 11.11.2005 to 14.11.2005. The appellant No. 1 incurred Rs.1,30,000/- on his treatment. However, the compensation granted for pain and suffering, special diet, attendant charges, loss of income to the appellant is on the lower side and deserves to be enhanced.

(iv) That appellant No. 2 is an agriculturist labourer and used to earn Rs.30,000/- per month. He received injuries on his face and jaw. He spent Rs.40,000/- on his treatment. He suffered physical and mental pain also.

(v) That appellant No. 3 is an agriculturist labourer and used to earn Rs.3,000/- per month. He received injuries on his head. He spent Rs.40,000/- on his treatment. He suffered physical and mental pain.

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

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9. 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.

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

SETTLED LAW ON COMPENSATION

11. 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

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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*

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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*



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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)].

12. 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

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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.”

13. 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

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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>



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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.

14. In view of the above, the present appeal is allowed and award dated 19.07.2006 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:-

Income	Rs.3000 per month
Annual Income	Rs.3000X12=36,000/-
Future Prospect 40%	Rs.36000+ Rs.14400= Rs.50,400/-
Loss on account of 85% disability	Rs.42840/-
Multiplier of 16	42840 X15=6,42,600/-
Medical Expenses	Rs.25,000/-
Pain and suffering	Rs.2,00,000/-
Attendant Charges	Rs.2,00,000/-
Transport Charges	Rs.20,000/-
Loss of amenities	Rs.50,000/-
Special Diet	Rs.1,00,000/-
Total compensation awarded:-	Rs.12,37,600/-
Amount awarded by Tribunal	Rs.3,20,000/-
Enhanced amount of compensation	Rs.9,17,600 (12,37,000/- 3,20,000) (rounded off to Rs.9,18,000/-)

15. Further appellant Nos. 2 and 3 who also suffered injuries, are also held entitled to compensation of Rs.25,000/- and Rs.35,000/- respectively (i.e over and above the amount awarded by the Tribunal).



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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% 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 appellants-claimants in their bank accounts. The appellants-claimants are directed to furnish their bank account details to the Tribunal.

18. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

October 21, 2024

G Arora

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