



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-4843-2006 (O&M)

Date of Decision: November 18, 2024

RadhaAppellant
Vs.
Narinder Pal Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Dushyant Godar, Advocate for
Mr. Vivek Suri, Advocate, for the appellant.

Mr. Rahul Aggarwal, Advocate for
Mr. Rahul Sharma, Advocate, for respondent-Insurance Co.

SUDEEPTI SHARMA J.

C.M. No. 1443—CII-2018

The present application seeking early hearing of the main appeal is allowed and the matter is taken on board today itself for disposal.

FAO No. 4843-2006

1. The present appeal has been preferred against the award dated 17.07.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal') dismissed the claim petition of the appellant.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 31.10.2001, the claimant/appellant was going to Akashdeep Boutique in Model Town, Patiala for attending her duties from Kartar Colony. She boarded bus bearing registration No. PB-11-Q-8837, being driven by respondent No. 2. However, when the bus reached Akashdeep Boutique, the driver stopped the bus and when the claimant/appellant was getting down from the front door, one foot of the claimant was on the ground

and other foot was on the stairs of the bus, the bus driver moved the bus. As a
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result of which, the claimant/appellant fell down and sustained multiple injuries with the rear tyre of the bus. The claimant/appellant was taken to Preet Nursing Home by the owner/driver of the bus from where she was shifted to Kler Orthopaedic Centre. Her left arm was operated there. The claimant/appellant suffered 15% permanent disability.

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 received injuries in a motor vehicular accident, which took place on 31.10.2001 on account of rash and negligent driving of Bus No. PB-11-Q-8837, driven by Sukhwinder Singh? OPP
- 2) If issue No. 1 is proved, whether the claimant is entitled to seek compensation? if so, to what extent and from which of the respondent? OPP
- 3) Whether the driver of Bus No. PB-11-Q-8837, was not holding valid driving licence at the time of accident? OPR.
- 4) Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition of the claimant. Hence the claimant/appellant filed the present appeal for grant of compensation on account of injuries suffered by her in the motor vehicle accident.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the claimant-appellant contends that the claim petition filed by the claimant has wrongly been dismissed by the learned Tribunal



on the ground that husband of the claimant has compromised the matter with the respondents.

7. Per contra, learned counsel for respondent-Insurance Company, however, vehemently argues that the claim petition filed by the appellant has rightly been dismissed, as her husband has compromised the matter with the respondents and she got full compensation through her husband. Therefore, he 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 indicates that the claimant/appellant in her claim petition has levelled allegations against her husband that her husband is a drug addict and has compromised the matter with the respondent without her consent. A perusal of the record further shows that the learned Tribunal has dismissed the claim petition on the ground that the claimant/appellant has not impleaded her husband as a party, who had compromised the matter with the respondents.

10. Reference can now be made to statement of Dr. Inderjit Singh, who while appearing as PW1, stated that on 16.04.2002, the Board of Doctors examined Radha and found that it is an old case of injury on left elbow joint and left arm and she is permanently physically handicapped and disabled to the extent of 15%. The original Disability Certificate is proved on record as Ex P1.

11. Further Constable Jaswinder appeared as PW2 in the witness box, who brought the summoned record of DDR No. 11 dated 01.11.2001. Copy of the DDR is Ex P-2.

12. Dr. Harpal Singh Kler, Orthopaedics Surgeon appeared as PW3 and stated that Radha was admitted in their hospital on 31.10.2001 and discharged on



1.11.2001. The patient had open wound on left arm and fracture distal end left humerus. There is a possibility that this injury could be caused in a motor vehicular accident. The patient was referred to Rajindra Hospital and the discharge slip is Ex C3 and the reference slip is Ex C4.

13. Dr. Gurpartap Singh, Professor & Head Department of Plastic Surgery, Rajindra Hospital appeared in a witness box as PW4 and stated that Radha was admitted on 3.12.2001 vide CR No. 27497, as a case of skin loss right arm. She was investigated and operated upon on 8.12.2001 and discharged on 24.12.2001. The original bed head ticket is Ex C8.

14. The claimant/appellant was examined as PW5 and tendered into evidence her affidavit as Ex C9. She also tendered the original medical bills Ex C10 to C62, original postal receipts Ex C63 and C64 and photocopy of application to SSP Patiala along with affidavit Mark A and Mark B.

15. Sohan Lal, Senior Assistant, office of DTO, Patiala appeared as RW1 and stated that he brought the summoned record pertaining to driving Licence No. 39214 in the name of Sukhwinder Singh, Sanaur District Patiala and proved the same to be genuine.

16. A perusal of the above shows that the factum of accident has been duly proved but the Tribunal has totally ignored the evidence on record and only on the ground that the claimant has not impleaded her husband as a party in the claim petition, who has compromised the matter with the respondents, wrongly dismissed the claim petition of the appellant, who has suffered 15% permanent disability.

17. A perusal of the record shows that the appellant who was 31 years of age, suffered permanent disability to the tune of 15% and the same was duly proved by Dr. Inderjit Singh, PW1 who proved on record the Disability Certificate Ex P1.



18. Now, under the prevailing facts of the present case, the income of the appellant is assessed as Rs.2200/- per month in accordance with the minimum wages prescribed for semi skilled worker in the State of Punjab at the prevalent time. Therefore, the award requires indulgence of this Court.

SETTLED LAW ON COMPENSATION

19. 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).*
- (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)].

20. 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.”

21. 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.

RELIEF

22. In view of the above, the present appeal is allowed and award dated 17.07.2006 is set aside. Accordingly, as per the settled principles of law as laid down by Hon’ble Supreme Court as mentioned above, the appellant is held entitled to the compensation amount as calculated below:-

Heads	Compensation awarded
Income	Rs.2200/-
Annual Income	Rs.26400 (2200X12)
Future Prospect @ 40%	Rs.10560 (26400X40%)
Loss on account of 15% disability	Rs.5544/- (36960X15%)
Multiplier of 16	Rs.88,704/- (5544X16)
Medical Expenses	Rs.15,835/-
Pain and suffering	Rs.50,000/-
Attendant Charges	Rs.25,000/-
Transport Charges	Rs.10,000/-
Loss of amenities	Rs.40,000/-
Special Diet	Rs.20,000/-
Total compensation awarded:-	Rs.2,49,539/-

23. 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.

24. Respondent No.4-Insurance Company is directed to deposit the awarded 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 her bank account. The appellant-claimant is directed to furnish her bank account details to the Tribunal.

25. Further Insurance Company is directed to disburse the current schedule fees to Mr. Rahul Aggarwal, Advocate appearing for Mr. Rahul Sharma, Advocate, within a period of ten days from the date of receipt of certified copy of this order.

26. Disposed of accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

November 18, 2024
Gaurav Arora

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