



FAO-522-2006 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

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Date of Decision: October 16, 2024

Som Pal

.....Appellant

Vs.

Suraj Bhan and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kapish Singla, advocate for
Mr. Ashit Malik, Advocate for the appellant

Mr. Abhishek Shukla, Advocate for
Mr. Akshay Jindal, Advocate for respondents No.2

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 19.10.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') vide which the claim petition filed by the appellant/claimant for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 10.4.2001, claimant-Som Pal was going on his cycle from village Ardana to his village Mundh. At about 8.45/9 PM, when the claimant reached at a distance of about 1 ¼ Kms. ahead of village Ardana, then a scooter bearing registration No. HR-40-3669 being driven by respondent No.1 in a rash and negligent and careless manner came from the opposite side and struck against the cycle of the claimant, as a result of which, claimant sustained multiple, serious and grievous injuries on the various vital parts of his body especially on head. Due to the head injury, the

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claimant remained unconscious from 10.4.2001 to 19.6.2001. On 19.6.2001, the police recorded his statement when he was conscious. The accident has taken place due to entire rash, negligent and carelessness driving on the part of respondent No.1.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

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

1. Whether the accident in question causing injuries to claimant Som Pal was the result of rash and negligent driving of scooter bearing registration No. HR-40-3669 by respondent No. 1 Suraj Bhan? OPP

2. If issue No. 1 is proved whether the claimant is entitled to compensation, if so, how much and from whom? OPP

3. Whether the claimant has not come to the court with clean hands? OPR

4. Whether the claimant has no locus standi to file and maintain the present petition? OPR

5. Whether this court has got no jurisdiction to try and entertain this petition ? OPR

6. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimant/appellant filed the present appeal for grant of compensation.



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SUBMISSIONS OF THE COUNSELS

6. The learned counsel for the claimant-appellant contends that the claim petition filed by the appellant/claimant was dismissed on the ground of delay of 2 ½ months in lodging the FIR. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellant/claimant.

7. *Per contra*, ld. Counsel for respondent No.2 contends that respondent No.2 stepped into the witness box as RW-3 and filed his affidavit Ex. R-8 and deposed that he sold his scooter to respondent No.1 on 06.11.2000 and that the *spurdaginama* of the scooter was got effected in his name by respondent No.1 by playing fraud and also pleaded that affidavit dated 04.07.2001 has also been obtained from him by playing fraud at the time of getting the scooter released on spurdari by respondent No.1.

8. Learned counsel for the respondents argues on the lines of the award and contends that the award has rightly been dismissed by the Ld. Trial Court. He further contends that the identity of the scooter is also disputed. He prays for dismissal of appeal.

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

10. Relevant portion of the award passed by the Ld. Tribunal is reproduced as under:-

“28. The present claim petition has been filed under Section 166 of the Motor Vehicle Act. The onus of proving negligence/mode of accident/ occurrence is always on the claimant To support this view, reference can be made to case Ram Karan and others Vs. Zile Singh and others II 2002 ACC 15. In the instant case, the real dispute between the parties is about the mode of occurrence. The claimant has alleged that he suffered injuries in the road side accident which took place on 10.4.2001 whereas the respondents

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are alleging that it is a case of assault and the claimant has suffered injuries somewhere else.

29. There are material contradictions in the medical record about the history of the injuries suffered by the claimant. Dr. Sameer Aggarwal with whom claimant was admitted for treatment has appeared as PWI. In his examination-in-chief this witness has stated that patient Som Pal was admitted on 11.4. 2001 in Karan Hospital under his care with history of alleged road side accident on 10.4.2001 at 7.30 PM. The claimants have also placed on the file photostat copy of case summary Mark-A wherein also a note has been given about the history of alleged road side accident on 10.4.2001 at 7.30 PM. But this document has not been proved in accordance with law. It is only a marked document in the cross examination, this witness has categorically admitted that he has mentioned the alleged history of assault. I have perused certificate Ex R1 wherein it is categorically mentioned that certified that patient Sompal who had sustained severe head injury was admitted under his care and was operated upon for the same. He has further categorically mentioned that the history of alleged assault was given and police was informed, the nature of the injuries was dangerous to life. Claimant Som Pal has remained admitted in the hospital of PWI w.e.f. 11.4.2001 to 25.5.2001 and the certificate Ex.RI has been given by him on the basis of record in his hospital on 27.6.2001. Thus, certificate Ex. RI is later in time. PWI Dr. Sameer Aggarwal has not been re-examined by the learned counsel for the claimant to contradict him with the case summary Mark-A where the alleged history of road side accident is mentioned, so certificate Ex.R1 furnished by Dr. Sameer Aggarwal has gone totally unchallenged.

30. The matter does not rest here. The respondents have examined RW4 ASI Raj Pal of police station Assandh. This witness is the investigating officer of the criminal case bearing FIR No. 281 dated 19.6.2001 under Sections 279,337,338 IPC P.S. Assandh. This case has been registered for this very accident on

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the statement of Som Pal on 29.6.2001 i.e. after a period of about two months and 19 days of the occurrence. In the cross-examination of respondent No 1, this witness has stated that the occurrence has taken place on 10.4.2001. The injured was unfit to make statement for a considerable long period and the complainant party alleged that it was a case of assault and case of assault should be registered but lateron Inspector verified the facts and this case was registered. He also said that he has seen ruqa Ex. R1 sent by Dr. Sameer Aggarwal and wherein also, it is mentioned that the case has history of alleged assault. However, he has further stated that (nobody) moved any application in writing nor made any statement that the injuries suffered by claimant were result of assault He further said that whole facts of the case were verified by Inspector Rohtash, SHO P.S. Assandh and it was found a case of accident. He has further stated in the cross examination by the learned counsel for the claimant that a photo copy of the ruqqa is available on the file wherein the injuries are mentioned accident however, he said that the original ruqa was not handed over to him by ASI Udey Singh who was transferred from police station Assandh and was dealing with the case prior to him. The claimants have not placed on the file any verification report of the facts made by Inspector Rohtash the then SHO P.S. Assandh to establish that it was not a case of assault and was a case of accident. The claimants have also not examined ASI Udey Singh who was earlier investigating the case But one fact is clear from the statement of PW4 ASI Rajpal, IO of the criminal case that the complainant party itself was alleging that it was a case of assault and a case for assault should be registered.

31. Dr. Sameer Aggarwal has also admitted in the cross examination that it is correct that possibility of these injuries cannot be ruled out if a person is hit on the head with a lathi blow. So, injury on the person of claimant can also not be ruled out by way of assault with a lathi The injuries on the person of the

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claimant are not of such a nature which could only be suffered in a road side accident.

32. The presence of eye witnesses namely PW3 Randhir Singh and PW4 Labh Singh also seems to be doubtful. No doubt, both these witnesses have consistently deposed that claimant Som Pal has suffered injuries in the road side accident which has been caused by respondent No. 1 Suraj Bhan by driving scooter No. HR40-3669 in a rash and negligent manner PW3 Randhir has admitted in the cross examination that PW5 Labh Singh is the son of Mausi of Som Pal. He further admitted that he knew Som Pal very well though he is not related to him. So, one of the eye witness namely PW5 Labh Singh is the close relation of the claimant and other eye witness Randhir Singh is well known person to him. They have also alleged that they carried injured to CHC Assandh. In the cross examination PW3 has admitted that he has told to the doctors of CHC Assandh to the effect that Som Pal had met with/vehicular accident He also admitted that Suraj Bhan was known to him since long He further admitted that Labh Singh remained with him for the whole night in the hospital and on the next day he informed relatives of Som Pal. If that would have been the position then PW3 Randhir Singh and Labh Singh P.We. might have seen the occurrence and they had told the same to the relative of Som Pal then there was absolutely no reasons that the complainant party would have been insisting for registration of case of assault

33. The claimant has also not produced any evidence on the file to show that Ranshir Singh and Labh Singh PWs, have carried him to CHC Assandh Copy of MLR of the claimant has not been produced in evidence which was a material document to show as to who had carried injured Som Pal to CHC Assandh. Non production of the copy of MLR raises an adverse inference against the claimant because the name of the person who had

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accompanied injured is always mentioned in the MLR. Thus the claimant had withheld material documentary evidence. Thus, these facts make the presence of PWs. Randhir Singh and Labh Singh extremely doubtful at the time of occurrence and it appears that they have been introduced later on as PW5 Labh Singh is closely related person to the claimant and PW3 Randhir Singh is well known to him.

34. There is delay of two months and 19 days in lodging FIR. PWI Dr. Sameer Aggarwal has stated that the claimant was discharged on 20.5.2001 at the time of discharge he was conscious but unable to speak. If that was so then how the claimant has lodged FIR with the police. It is not established as to when the claimant became fit to speak. In the alternative if the claimant was conscious on 20.5.2001 and he was discharged from the hospital then what was the reason for delay of further one month and nine days in lodging the FIR about this occurrence with the police. Moreover, as per the case of the claimant, the occurrence was witnessed by PW3 Randhir Singh and PW5 Labh Singh. They have also stated that they have identified respondent No. 1 and also noted the scooter number then what was the hitch in lodging FIR by there witnesses at the earliest point of time with the police about this occurrence particularly when PW 5 Labh Singh happens to be a close relation of the claimant and he is stated to have remained present through out night in the hospital. As per statement of RWI Raj Pal ASI first ruqa was received by the police from CHC Assandh on 10.4.2001 itself and it is common practice that on receiving ruqqa regarding cognizable offence, police immediately visits hospital to record statement of the victim or the witnesses. So, the police might have visited the hospital on the night of 10.4.2001 on receiving ruqa and if PW3 Randhir Singh and Labh Sindh would have seen the occurrence and would have been present in the hospital alongwith the injured then there was absolutely ne hitch in narrating the facts of the case to the police

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and getting the case registered. This fact also creates doubt regarding presence of PW3 Randhir Singh and PW5 Labh Singh at the time of occurrence and further the delay in lodging the FIR is fatal to the case of the claimants and it appears that the time has been gained to concoct the version.

35. The criminal case is alleged to have been registered on the statement of claimant SomPal himself which is evident from the certified copy of report under Section 173 Cr. PC. The claimant has not placed on the file copy of FIR to show as to whether claimant Som Pal has signed his statement or has put thumb impressions. From the perusal of report under Section 173 Cr.P.C it comes out that the claimant has mentioned registration number of the scooter as LML-3639, however, he has mentioned that the scooter was being driven by Suraj Bhan son of Baljit resident of Ardana to whom he was previously known. This case has been registered on 29.6.2001. The police has again recorded supplementary statement of claimant on 5.7.2001 in order to correct the registration number of the scooter. The supplementary statement has been recorded after the scooter in question was already taken into possession by the IO on 29.6.2001 vide recovery memo Ex R11. So, said supplementary statement carries no evidentiary value because the scooter in question was already taken into possession by the IO. The role of IO also does not seem to be fair and he has investigated the case in a casual manner. There are two recovery memos regarding possession of the cycle belonging to the claimant on record. First recovery memo is Ex. R2 dated 29.6.2001 and it is shown that the cycle in question has been produced by Ishwar Singh and was taken into possession by the IO on 29.6.2001 i.e. the date on which the case was registered. If claimant Som Pal was fit and conscious on 29.6.2001 then why the cycle in question was not handed over by him to the police and why it was handed over through his brother Ishwar. This fact is not explained. Secondly, this very cycle has been again taken into

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possession on 7.5.2001 vide recovery memo Ex. R3 and this time said cycle has been produced before the IO by Satish Kumar son of Rugha resident of village Mundh. Thus, the same cycle has been taken into possession by the IO twice firstly on 29.6.2001 i.e. the date on which the case was registered and secondly on 5.7.2001 the date on which supplementary statement of claimant is alleged to have been recorded PW4 ASI Rajpal IO of the case has not been able to explain as to how two recovery memos were prepared on different dated regarding the same article. He has simply stated that the recovery memo dated 7.5.2001 was again prepared due to inadvertent mistake. It shows that the criminal case has been investigated in a casual manner.

36. The present claim petition has been filed initially on 24.8.2001 under the signatures of the claimant himself. Issues in this case were framed for the first time on 19.3.2002 and the case of the claimant remained posted for evidence for 19.7.2002, 13.9 2002, 11 11.2002, 17.4.2003. On 17.4.2003 an application was filed for the amendment of the claim petition on the ground that claimant has become a person of unsound mind who himself is unable to prosecute the claim petition and he may be allowed to prosecute the claim petition through his guardian. After receiving this application, Sh. Kamal Kant, the then learned MACT referred the claimant to PGIMS Rohtak and as per certificate Ex. PI issued by PGIMS, Rohtak the claimant has suffered (permanent mental disability to the extent of 100% and the application of the claimant for amendment was allowed and the claim petition was allowed to be prosecuted through the guardian of claimant Som Pal. There is no evidence on the file as to at what point of time the claimant was in fit state of mind at the time of getting criminal case registered In the application dated 17.4.2003 for amendment of the plaint, it is simply mentioned that due to the injures sustained by the claimant, he has become of unsound mind and physically disable and is unable to pursue the claim petition diligently. If that is the



position, there is a grave doubt as to whether criminal case was got actually registered by the claimant himself or not and whether he was in fit state of mind at the time of getting criminal case registered.

37. Our Hon'ble High Court in case Ram Karan and others Vs. Zile Singh and others (s) has laid down that mere framing of charges in the criminal case is not suffice. The onus to prove the negligence is always on the complainant and he has to discharge it. So, mere this fact that respondent No. 1 is facing criminal trial for this very accident is not a ground to hold him negligent for causing this accident particularly keeping in view the doubtful nature of the occurrence.

38. As already discussed, presence of PW3 Randhir Singh and PW5 Labh Singh alleged eye witnesses of the occurrence is totally doubtful and their testimonies are not reliable and are liable to be ignored. If that is so then there is no evidence on the file to show that the present occurrence has taken place as a road side accident due to rash and negligent driving of scooter No. HR40-3669 by respondent No. 1. To support this view, reference can be made to case Chand Kaur & others Vs. Mohinder Singh & others II 2001 (ACC) 284.

39. The identity of the scooter involved in the accident is also doubtful because in the FIR the number of the scooter is mentioned as LML-3639 In the supplementary statement the number of the scooter was mentioned as HR40-3669. However, the petition was filed on 25.8.2001 ie. after recording of supplementary statement. In the original petition, there is cutting in the entire petition about the registration number of the scooter involved in the accident. In the array of respondents originally scooter number is written as 3639 and lateron it was corrected by type as 3669 There are also cuttings about the registration number

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of the scooter number in para No. 14, 15, 24 of the original petition dated 24.8.2001 There is no evidence on the record as to how the claimant came to know about the correct registration number of the scooter. Due to cutting in the claim petition, even supplementary statement dated 5.7.2001 becomes doubtful because if the claimant might have come to know about the correct registration number of the scooter on 5.7.2001 then why wrong scooter number was mentioned in the original petition which has been typed on 24.8.2001. So, these material cuttings in the petition makes the identity of the scooter doubtful which further makes the case of the claimant unreliable. To support this view, reference can be made to case Abdul Gani Vs. Tikam and another III (2002) ACC 220.

40. Cases relied upon by the learned counsel for the claimant are quite distinguishable on facts. In case Manoj Vs Samunder Singh and other(s) the driver of the jeep has admitted that there was accident while he was driving the jeep and the claimant sustained injuries. But in the instant case, respondent No 1 has categorically pleaded that he has bot caused any accident. He has even appeared as RWI and has filed his affidavit Ex. R1 wherein he has categorically stated that a false criminal case has been got registered against him after two months and 19 days and he was not driving scooter No. 3669 on the date of occurrence nor he has caused any accident. He has further stated that the claimant had suffered injuries in some dispute.

41. Case Richhpal Singh and others Vs Bhagat Ram (s) deals with the discrepancy in the registration number of the vehicle involved in the accident but in the instant case that is not the sole point. The complainant party itself has made the occurrence doubtful by alleging the same to be a case of assault at the first instance.

42. In case Harbans Lal Vs. Nazar Singh (s) also there was delay in lodging FIR. In that case also there was no dispute that the



deceased has died in a road side accident. Even the date of death was not disputed The claim petition was contested simply on the pleas that deceased Tarsem Singh and injured Iqbal Singh was drunkard at the time of accident.

43. Case Girdhari Lal Vs Radhey Sham (s) is also of no help to the claimant in view of the latest authority of our Hon'ble High Court titled as Ram Karan and others Vs. Zile Singh (s) wherein the Hon'ble High Court held that mere framing of charge will not suffice to prove the negligence. Case of Jaimal Singh Vs State of Rajasthan (s) is also quite distinguishable on fact. In that authority, the Hon'ble High Court has held that where the matter was reported to the police but the police did not think it proper to register a case against the driver of the bus, this fact by itself is not very relevant as to conclusively establish that there was no negligence. In case Vishav Bandhu Vs. Rajian and others (s) the testimonies of the eye witnesses were found trustworthy on the mode of the accident.

44. In view of my above discussion, I am of the considered opinion that the claimant has not been able to discharge the onus heavily lies upon him to establish that he has suffered injuries in the road side accident. As per the statement of RW4 ASI Raj Pal the complainant party has been insisting for registration of the case of assault. The nature of occurrence also becomes extremely doubtful from the certificate Ex R1 issued by PWI Dr. Sameer Aggarwal The presence of PW3 Randhir Singh and PW5 Labh Singh alleged witnesses of the occurrence is extremely doubtful and is not corroborates from any documentary evidence. The claimant has withheld the copy of MLR to prove the presence of eye witnesses with his after the accident in the hospital. The criminal case also appears to be causally investigated by the IO. There is unexplained delay of two months and 19 days in lodging the FIR with the police about this accident. The claimant has also not placed on the file any verification report of facts by Inspector

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Rohtash the then SHO, PS. Assandh vide which it was found that the present occurrence is not a case of assault rather it is a road side accident. There is also doubt about the identity of the scooter involved in the alleged road side accident. There is also no evidence on the file to established as to on what point of time the claimant become a person of unsound mind and why he has not stepped into witness box immediately after framing the issues. Thus, in view of the cumulative effect of all the aspects of the case discussed above, the claimant has failed to prove that he has suffered injuries in the road side accident alleged to have taken place on 10.4.2001 due to rash and negligent driving of respondent No. 1. It is proved that the claimant has not disclosed the true facts and has not come to the court with clean hands. Consequently, issue No. 1 is decided against the claimant and issue No.3 is decided in favour of the respondents”.

11. A perusal of the record shows that the factum of accident is not disputed. FIR No.281 dated 29.06.2001 under Sections 279, 337, 338 IPC was registered at Police Station Assandh against the driver of offending vehicle. This factum was proved by examination of Harbhajan (Ahlmad) of the Court of Sh. Devinder Singh, JMIC, Karnal, who had brought the record of criminal case. He deposed that charges under Sections 279/337/338 IPC were framed against respondent No.1 by Sh. Lal Chand, the then JMIC Karnal vide order dated 18.12.2001. He further proved the factum of accident by photostat copy of the slip mark -A of New Karan Surgical and Neuro Surgery Hospital, Karnal. He further proved ruqa dated 12.04.2001 sent to the police Mark-B. He further deposed that the spurdari of the scooter was given to Kewal Krishan (respondent No.2) who is owner-Suraj Bhan.

i) He further proved that the application for release of scooter was moved by Suraj Bhan on 4.7.2001. He further proves the report under Section

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173 Cr.P.C. Ex.PW-4/A, certified copy of site plan Ex.PW4/B. He further deposed that spurdari was furnished by Kewal Krishan son of Roshan Lal as registered owner and the surety bond was furnished by Suraj Bhan on 5.7.2001. There is no discrepancy in his cross-examination.

12. A perusal of the record further shows that respondent No.2-Kewal Krishan stepped into the witness box as RW-3. He deposed that he sold the scooter to respondent No.1 on 6.11.2000 and spurdari of scooter was got effected in his name by respondent No.1 by playing fraud and also pleaded that affidavit dated 4.7.2001 was also obtained from him by playing fraud at the time of getting the scooter released on spurdari.

13. I do not agree with the contention of respondent No.2 since the evidence on record shows that the scooter was released by him on spurdari and further even this contention of respondent No.2 is unbelievable that fraud was played upon him for releasing the scooter on spurdari since no criminal case is lodged by him against respondent No.1(driver). Further it is on record that the scooter was released by him on spurdari.

14. Further, the Ld. Tribunal failed to appreciate the factum of accident and the evidence of medical record. Dr. Sameer Aggarwal was examined as PW-1 who further proved the factum of accident and injuries to the appellant/claimant and his admission in the hospital.

15. Further the Ld. Tribunal has ignored the medical certificate which Ex.P1 whereby the claimant is 100 % disable person.

16. Further, the reasoning given by the Ld. Tribunal regarding delay of 2 ½ months in lodging of the FIR for dismissing of the claim petition is not acceptable to this Court in view of law laid down by Hon'ble the Supreme Court in ***Ravi Vs. Badrinarayan and others, 2011(4) SCC 69***, wherein it has

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been held that delay in lodging of FIR should not be treated as fatal for motor accident claim proceedings, if the claimant is able to demonstrate satisfactorily and with cogent reasons for such delay. The relevant para is reproduced as under:-

“20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.

21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed

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lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons.”

17. In view of above referred to judgment of Hon’ble the Apex Court, it is a settled law that even if there is delay in lodging of FIR, the claim cannot be rejected.

18. Further this Court in FAO No.3699 of 2006 titled as **Master Sajjan through his mother Vs. Jagmohan and others** held as under:-

*It is evident from the record that accident took place on 09.11.2003 and FIR was lodged on 18.11.2003. Disability certificate dated 10.11.2003 (Ex.P8) indicates permanent disability of 10%. All medical records also shows that the accident took place on 09.11.2003. Further FIR was lodged on 10.11.2003, which proves the factum of accident and the injuries. **Only because the FIR was delayed, is no ground to dismiss the claim petition as held by Hon’ble the Supreme Court in case of Ravi (supra).***

19. On the touchstone of hearinabove discussed findings and judicial precedent, the award dated 19.10.2005 passed by Ld. Tribunal, Karnal stands vitiated by a complete absence of judicial application of mind.

SETTLED LAW ON COMPENSATION

20. 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**



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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



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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)].

21. 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



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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.”

22. 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</i>	<i>Rs.4,90,989/-</i>

cent addition)	
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

23. 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 19.10.2005 is set aside. The appellant-claimant IS entitled to grant of compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Income	Rs.2000/-
2	Loss of future prospects 40%	Rs.800/- (40% of 2000)
3	Annual Income	Rs.33,600/- (2000+800 x12)
4	Loss of future earning per annum	Rs.33,600/- (33,600 x 100%)
5	Multiplier (17)	Rs.5,71,200/- (33600X17)
6	Pain and Sufferings	Rs.1,00,000/-



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7	Special diet	Rs.50,000/-
8	Medical expenses	Rs.48,599/-
9	Transportation charges	Rs.20,000/-
10	Attendant Charges	Rs.3,00,000/-
11.	Loss of amenities	Rs.1,00,000/-
11	Marriage prospects	Rs.2,00,000/-
	Total Compensation	Rs.13,89,799/-

24. 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 appellants-claimants are granted the interest @ 9% per annum on the amount from the date of filing of claim petition till the date of its realization.

25. The Insurance Company is directed to deposit the amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the amount of compensation alongwith interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish his bank account details to the Tribunal.

26. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

October 16, 2024
sonia arora

Whether speaking/reasoned: Speaking
Whether reportable Yes