IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

215 **FAO-1744-2007 (O&M)**
Date of Decision: 19.09.2024

Vikram Anand **…Appellant**

Versus

Ravinder Singh and another **……Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

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Present: Ms. Bhagyashri, Advocate for
Mr. Sachin Jain, Advocate
for the appellant.

Mr. Pardeep Goyal, Advocate and
Ms. Simran, Advocate
for the Insurance Company.

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SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 07.11.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal') vide which the claim petition filed by the appellant/claimant was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 29.06.2003, the claimant was going on his motor-cycle make Hero Honda from his house situated in Gobind Nagar, Ambala Cantt. towards Military Hospital, Ambala Cantt. When at about 10.30 A.M., the claimant reached near Gobind Nagar turn on the Ambala-

Jagadhari Road, Near Sabji rehri, a three-wheeler bearing registration No.HR-37 A-9366 (hereinafter referred to as 'offending vehicle') came from S.D. College side. The said three-wheeler was being driven by respondent No.1 in a rash and negligent manner and struck against the motor-cycle of the claimant. As a result of the accident, the claimant suffered multiple injuries including compound fracture of right leg, fracture of thumb section. The claimant was then taken to Dr. Nandra Hospital, Ambala Cantt. by his brother, where he was operated upon twice on his right leg and a rod was also affixed. According to the claimant, he is still under treatment and is rendered disabled. An F.I.R. No. 140 dated 29.6.2003 was registered at Police Station, Mahesh Nagar, Ambala Cantt. under sections 279 and 338 of the I.P.C.

i) It is averred that the claimant is that he was 30 years of age and was doing the business and was also an LIC agent. His annual income was Rs. 4,24,624.50 Ps.

3. Upon notice of the claim petition, respondents No.1 and 2 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 took place due to rash and negligent driving of his vehicle by respondent No.1? OPP*
>
> 2) *If issue No.1 is proved, whether claimant suffered injuries in the accident in question. If so, to what amount of compensation the claimant is entitled to? OPP*
>
> 3) *Whether the respondent No. 1 was not holding valid and effective driving license on the date of accident, if so, its effect? OPR-3*

4) 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.

SUBMISSIONS OF THE COUNSELS

6. The learned counsel for the claimant-appellant contends that the claim petition filed by the appellant/claimant was dismissed only on the ground that FIR was recorded 3 hours after the accident and further that registration number of the offending vehicle (three wheeler) was not mentioned in the FIR. Therefore, he prays that the present appeal be allowed.

7. *Per contra*, learned counsel for the respondent-Insurance Company, vehemently argues on the lines of the award and contends that the award has rightly been passed. Therefore, he prays for dismissal of the present appeal.

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

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

> *" To prove the rash and negligent driving of his three wheeler by respondent No. 1, the claimant appeared as PW 2. He stated that the three-wheeler in question had struck against his motor cycle by going to the wrong side of the road and at that time, respondent No.1 was driving his three-wheeler in a rash and negligent manner. He further stated about the injuries suffered by him in the accident in question. The copy of report under section 173 Cr.P.C is Mark 1. As*

per the same, respondent No. 1 is facing trial in the F.I.R in question. The copy of charge-sheet of respondent No.1 is Mark M, whereby, he was charge-sheeted for the commission of offence punished under sections 279 and 338 of the I.P.C. The copy of superdiginama is Mark N, whereby, respondent No.1 had taken the three-wheeler in question on superdari. The claimant also examined Rajan as PW3. He is the eye witness of the accident. He stated that he had seen the accident taking place which was caused due to rash and negligent driving of his three-wheeler by respondent No.1. In his cross- examination, he stated that the claimant is his brother-in-law. He further stated that he had seen the accident taking place while purchasing vegetables from the rehri. On the other hand, the respondent No.2-Insurance Company has produced copy of the F.I.R as Mark R1. A perusal of the same would show that the same was registered by the claimant on the date of accident at about 1.20 P.M. The name of the driver or the registration number of the offending three wheeler are not mentioned in the F.I.R. and it is only mentioned that some unknown person and un-known three wheeler had caused the accident.

10. After appreciating the above evidence and hearing the learned counsel for the parties at length, I am of the considered opinion that the involvement of the three-wheeler in the accident in question is not proved on the record. The alleged accident had taken place at 10.30 A.M on 29.6.2003.

The injured claimant was removed to the hospital immediately. According to the petition averments, the claimant was removed to the hospital by his brother. The statement of the claimant was recorded by the police at 1.20 P.M on 29.6.2003 itself and the claimant thereby stated that some unknown driver and unknown three-wheeler had caused the accident. It is also mentioned in the F.I.R Mark R1 that the claimant had also thereby stated that the offending three-wheeler had fled away after the accident. Thus, as far as the testimony of the claimant is concerned, he did not see the driver of the offending three-wheeler nor did he see the registration number of the three-wheeler. Therefore, the statement of the claimant in the the witness-box involving the three-wheeler in question is clearly clearly afterthought. As far as the testimony of Rajan (PW 3) concerned, he is the brother-in-law of the claimant. According to his testimony, he and brother of the claimant had removed the claimant to the Nandra Hospital, after the accident. Had this witness seen the registration number of the offending three- wheeler, then registration number the offending vehicle should have been mentioned in the F.I.R which was recorded three hours after the accident. This shows that this witness was introduced by the police subsequently and he did not see the accident taking place. Even the claimant does not plead in his claim-petition that he was removed to the hospital by PW 3 Rajan. As far as the report under section 173 Cr.P.C and charge-sheet of *respondent No.1 is concerned, the same are of no help to the claimant keeping in view the above facts especially the fact that in the F.I.R, it is mentioned that some un-known three-wheeler had caused the accident and fled away. The Investigating officer has not been examined to prove as to what was the evidence with him to implicate the three-wheeler in question in the accident in question. In my opinion, this is a fictitious claim-petition filed by the claimant just to claim the compensation from the Insurance Company by introducing the three-wheeler subsequently. The collusion between the claimant and respondent No. 1 is clear from the fact that respondent No. 1 did not himself appeared in the witness-box. 11. In view of the above, it is held that the claimant has failed to prove that the accident in question was caused by the three-wheeler in question or that the same was being driven by respondent No. 1."*

10. A perusal of the record shows that the claimant himself appeared as PW-2 who stated the factum of accident. The F.I.R. No. 140 dated 29.06.2003 was registered at Police Station, Mahesh Nagar, Ambala Cantt. under Sections 279 and 338 of the I.P.C.

i) A copy of the report under Section 173 Cr.P.C. is Mark 1, which shows that respondent No. 1 was facing trial in the F.I.R in question. A copy of charge-sheet of respondent No.1, which was placed on record as Mark M, whereby, he was charge-sheeted for the commission of offence punishable under

Sections 279 and 338 of the I.P.C. A copy of *superdiginama* is Mark N, whereby, respondent No.1 had taken the three-wheeler in question on superdari.

ii) A perusal of the award further shows that Rajan, who was examined as PW-3 is the eye witness of the accident who stated that he had seen the accident which was caused due to rash and negligent driving of the offending vehicle by respondent No.1.

iii) A perusal of the award further shows that the Ld. Tribunal has denied the claim on the ground that registration number of the offending vehicle was not mentioned in the FIR without appreciating Mark 'N' which is copy of *superdiginama* whereby respondent No.1 had taken the three wheeler on superdari and charge sheet of respondent No.1(Mark 'M') whereby he was charge-sheeted for the commission of offence punishable under Sections 279 and 338 of the I.P.C.

iv) Since the Ld. Tribunal did not appreciate the evidence as discussed above, which was very much on record, therefore, the award deserves to be set aside. Therefore in view of the above, the award dated 07.11.2006 is set aside.

v) Regarding compensation, Ld. Tribunal has discussed in para Nos. 13 to 15 of the Award which shows that the factum of income etc. has already been dealt with by the Ld. Tribunal.

<u>SETTLED LAW ON COMPENSATION</u>

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 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)].

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 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 occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries had been set out as under:

*"**Nature of injury**:*

(i) compound fracture shaft left humerus

(ii) fracture both bones left forearm

(iii) compound fracture both bones right forearm

(iv) fracture 3rd, 4th & 5th metacarpals right hand

(v) subtrochanteric fracture right femur

(vi) fracture shaft femur

(vii) fracture both bones left leg

We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 13 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case (supra), more specifically para 61(iii), considering the age of the appellant, would be 50% of the actual salary in the present case.

(c) The third and the last aspect is the interest rate claimed as 12%

In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the Jagdish's case (supra). On this aspect, once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court.

CONCLUSION

8. The result of the aforesaid is that relying on the settled principles, the calculation of compensation by the appellant, as set out in para 5 of the synopsis, would have to be adopted as follows:

Heads	***Awarded***
Loss of earning power (Rs.14,648 x 12 x 31.1/100	*Rs. 9,81,978/-*
Future prospects (50 per cent addition)	*Rs.4,90,989/-*
Medical expenses including transport charges, nourishment, etc.	*Rs.18,46,864/-*
Loss of matrimonial prospects	*Rs.5,00,000/-*
Loss of comfort, loss of amenities and mental agony	*Rs.1,50,000/-*
Pain and suffering	*Rs.2,00,000/-*
Total	*Rs.41,69,831/-*

The appellant would, thus, be entitled to the compensation of Rs. 41,69,831/- as claimed along with simple interest at the rate of 9% per annum from the date of application till the date of payment.

RELIEF

15. In view of the above referred judgments, the present appeal is **allowed** and award dated 07.11.2006 is set aside. Accordingly, as per the settled principles of law as laid down by Hon'ble Supreme Court as mentioned above, the appellant-claimant is held entitled to the compensation amount as calculated below:

Sr. No.	Heads	Compensation Awarded
1	Pain and sufferings	Rs.1,00,000/-
2	Medical	Rs.69,200/-(Rs.21,200+48,000/-)
3	Loss of income during treatment	Rs.90,000/-
4	Special diet	Rs.20,000/-
5	Attendant Charges	Rs.50,000/-
6	Transportation charges	Rs.10,000/-
	Total Compensation	**Rs.3,39,200/-**

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 Nadu 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 amount of compensation alongwith 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 his bank account. The appellant-claimant is directed to furnish his bank account details to the Tribunal.

18. Disposed off accordingly.

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

(SUDEEPTI SHARMA)
JUDGE

September 19, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes