

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3304-2010 (O&M)
Date of Decision: February 08, 2024

Manoj Kumar
...Appellant

VERSUS

Sanjeev Chetari and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sharad Kumar Yadav, Advocate
for the appellant.

Ms.Manvi Verma, Advocate for
Mr.Rajneesh Malhotra, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed the appellant-claimant, thereby, seeking enhancement of the compensation, as awarded by learned Motor Accident Claims Tribunal, on account of injuries sustained by him, in a motor vehicular accident and also, to challenge the finding of contributory negligence, on the part of the appellant-claimant, which was apportioned to the extent of 50%.

The facts germane, to be noticed, are as follows:-

That, on 23.05.2008, appellant-claimant Manoj Kumar, while on three-wheeler bearing registration No.HR-55-2084 was going from village Kanhai to Gurgaon and at about 6.00 p.m., when he reached near South City,

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Sector-31, Gurgaon, an Innova car bearing registration No.DL-4C-AE-4251, came from Sector 44 side, which was driven by respondent No.1-Sanjeev Chetari, at a high speed, in rash and negligent manner and struck against the three-wheeler of the appellant-claimant from front side, as a result whereof, he sustained injuries. FIR No.132 dated 24.05.2008 under Sections 279, 338 and 427 IPC, was registered as Police Station Sector-40, Gurgaon, regarding the said accident.

Be it noted that, it is only the appellant-claimant, who had filed the appeal, but however, neither the driver, nor the owner as well as insurer of the offending Innova have filed the appeal to challenge the liability to the extent of 50%, as fastened upon them.

To substantiate the factum and manner of accident, the claimant himself stepped into witness box as PW-24 and in his affidavit Ex.PA, he has deposed, in consonance with the pleaded case, thereby, imputing rashness and negligence, on the part of respondent No.1-Sanjeev Chetari, who was driving the offending vehicle, at the time of accident. He also stated that driver of the offending vehicle was driving the same at a high speed, without blowing any horn and without caring for the traffic rules and struck the same against the three-wheeler from the front side, as a result of which, he had sustained various injuries, the detail whereof, has also been given by him in the affidavit.

Furthermore, appellant-claimant examined PW-13 ASI Shish Ram, who, on the basis of the record, deposed about registration of the FIR in question, copy whereof has been proved as Ex.P66. Even, PW-14 Amrit, Criminal Ahlmad of the Court of ACJM, Gurgaon deposed on the basis of

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record brought by him, with regard to the criminal case pending against respondent No.1-Sanjeev Chetari. He also deposed that challan has been put against said Sanjeev Chetari, but however, the accused is absent. He further deposed about the date fixed in the case to secure the presence of accused through warrant of arrest.

Respondents No.1 and 2 (driver and owner), though, in their reply, at first instance, had denied about the accident, but thereafter, while on merits, had taken the plea that no accident was caused due to the rash and negligent driving of respondent No.1-Sanjeev Chetari and that the accident was the result of rash and negligent driving by the driver of three-wheeler bearing registration No.HR-55-2084. However, to so substantiate this plea of denial, on the part of respondent No.1, no evidence at all has come on record. Even, respondent No.1-Sanjeev Chetari, who was the best person to depose about the manner of accident and also to deny about the rashness and negligence imputed upon him, had remained away from the witness box.

No doubt, as observed by learned Tribunal, the claimant, while facing cross-examination, had stated voluntarily that it was a head-on collision, but however, this *ipso facto* do not establish the plea of contributory negligence, on the part of the appellant-claimant, as asserted by the insurance company. Whether the driver of the vehicle was negligent or not, there cannot be any straight jacket formula. Each case is to be adjudged having regard to the facts of the case and evidence on record.

It is pertinent to mention that learned Tribunal had relied upon two judgments, titled, *Bijoy Kumar Dugar vs. Bidyadhar Dutta and others*, 2006(2) PLR 329 (SC) and *Gurmeet Kaur and another vs. Mohinder Singh*

and others, 2006(1) PLR 684 (P&H), to agree with the submissions made by learned counsel for the insurance company about there to be contributory negligence. However, having regard to the facts of the case in hand and the evidence adduced, this Court concludes that the aforesaid judgments relied upon by learned Tribunal, would not render any assistance in support of the plea of contributory negligence, in the case in hand.

The facts of the cases under consideration in the aforesaid authorities, makes fine distinction, vis-a-vis, the case in hand, on the plea of contributory negligence, on the part of the claimant. In *Gurmeet's case (supra)*, there were facts of both the trucks involved in the accident, coming from opposite sides and they made head-on collision. In this context, the observations were made, which are herein reproduced:-

“5. This finding of the Tribunal is wholly erroneous as there is no evidence on record to suggest that the truck being driven by Narinder Singh was at fault. As both the trucks were coming in the opposite direction, therefore, the drivers of both the trucks would easily see each other and, therefore, it has to be held that the accident took place because of the contributory negligence of the drivers of both the trucks being driven by Narinder Singh and Mohinder Singh respectively. Where two fast moving heavy vehicles approach each other from opposite sides, then it is difficult to draw a line of distinction between which of the two vehicles is negligent and, therefore, in such cases it would be appropriate to hold that the accident took place because of the contributory negligence of both the vehicles. In the present case, it cannot be pin-pointed as the driver of which vehicle was clearly at fault. There is no adequate evidence led by both the sides to fix responsibility on any one particular driver and, therefore, the drivers of both the vehicles are hold equally liable.”

In *Bijoy's case (supra)*, there was assertion of head-on collision. In the light of the same, it was observed that the deceased, who was driver of the car, involved in the accident, had noticed the passenger bus coming from

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the opposite side and movement of the bus was not normal, as it was coming in a zigzag manner and thereafter, the Maruti car and the bus had head-on collision. In this context, it was observed that bus was being driven by the driver abnormally in a zigzag manner, as per the statement of the witness and as per prudent man, it was required on the part of deceased to have taken due care and precaution to avoid head-on collision, when he had already seen the bus from a long distance, coming from the opposite direction. It was head-on collision, in which, both the vehicles were damaged and unfortunately, Raj Kumar Dugar died on the spot and therefore, it was observed that had it been the knocking of one side of the car, the negligence or rashness could have been wholly fastened or attributable to the driver of the bus, but when the vehicles had a head-on collision, the drivers of both the vehicles, should be held responsible to have contributed equally to the accident.

These observations were made, while taking into consideration the fact of vehicles, coming from opposite sides and the manner of bus involved, being driven by its driver, as well as, precaution having not been taken by the deceased, who was driving the car.

Now, adverting to the case in hand, it should be noted that there is categorical claim that the claimant was coming from village Kanhai to Gurgaon and when he reached near South City, Sector 31, Gurgaon, then, Innova car bearing registration No.DL-4C-AE-4251, came from Sector-44 side, which was driven by respondent No.1, at high speed, rashly, negligently, carelessly and without blowing any horn and without caring for the traffic rules and struck the same with the three-wheeler of the claimant

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from front side. Though, it is stated in the claim petition about the claimant to be coming from Sector-31, Gurgaon and respondent No.1, coming from Sector-44 side, nowhere, from the pleadings or the evidence, it is spelt out that both the vehicles came from opposite sides. Furthermore, on same assertions as pleaded, FIR was registered against No.1, in which, challan has already been presented.

In the light of the aforesaid, it should also be noticed that respondent No.1-Sanjeev Chetari, who was the best person to rebut the assertion of having caused the accident, has not stepped into the witness box. Rather, from the testimony of PW-14 Amrit, Criminal Ahlmad, it is evident that he is even evading to face the criminal trial and warrants of arrest have been issued, which conduct also raised an inkling about his being at fault, on account of which, he is shying away from all the proceedings. Above all, it is also required to take note of the fact that while conducting cross-examination of the appellant-claimant, a suggestion had been given that he was under the influence of liquor and smashed his three-wheeler, into the driver side window of the Innova vehicle. Giving of this suggestion, also demolishes the plea of contributory negligence, on account of head-on collision.

Thus, weighing the evidence in entirety, one line from the cross-examination of claimant Manoj Kumar, does not establish the plea of contributory negligence. In this regard, the findings of learned Tribunal, with regard to there being contributory negligence, on the part of the appellant-claimant, to the extent of 50%, as such, is set aside and it is held that the accident is established to be result of rash and negligent driving of

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Innova vehicle by respondent No.1-Sanjeev Chetari, which resulted into injuries on the person of the appellant-claimant.

Proceeding further, it should be noted that appellant-claimant had sustained multiple injuries, which made him a crippled man, for the rest of his life. Ample evidence, in this regard, has come on record. Appellant-claimant Manoj Kumar had stepped into witness box as PW-24 and had categorically stated in his affidavit about being shifted to Shivam Hospital, Sector-31, Gurgaon, soon after the accident and thereafter to Artemis Hospital, Sector-51, Gurgaon, where, he remained admitted till 27.05.2008 and he was operated by Dr.Harsh Vardhan Hegre. After discharge, he had taken treatment from the said hospital as OPD patient and further, had also taken treatment from Umkal Hospital, Gurgaon as OPD patient. He had also taken treatment from Dr.Manish Pahuja of Deep Physiotherapy from 11.06.2008 to 20.06.2009 and spent Rs.96,300/-. He also deposed about having taken treatment from Indian Spinal Injuries Centre, Vasant Kunj, New Delhi, from 27.06.2009 to 04.08.2009 and spent about Rs.20,000/-. Further, also deposed about having employed one Mahesh Kumar as attendant at monthly salary of Rs.3,500/- from 01.06.2008 till date. He also deposed about the issuance of the disability certificate from PGIMS, Rohtak and that he was declared to be having 100% permanent disability. He further deposed about hiring of taxi for the visits to the hospital, during the course of his treatment.

Besides himself, the appellant-claimant examined various doctors, who have categorically deposed about the treatment having extended to the claimant. In this regard, suffice to consider the testimony of PW-1 Dr.Sunil

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Yadav, Medical Officer, Shivam Hospital, who deposed about the appellant-claimant to have admitted in their hospital on 23.05.2008 and discharged on 24.05.2008. He also deposed about claimant to have suffered compound fracture L-1 with paraparesis with fracture right 7, 8, 9, 10 and 11 ribs and given conservative treatment and antibiotics and discharged on request. He proved the discharge summary Ex.P1 and MLR Ex.P2.

PW-9 Dr.Manish Pahuja is the Physiotherapist, who proved the receipts of having extended his services to the claimant and receipts are Ex.P56 to Ex.P58. PW-17 Dr.Pardeep Singh, Orthopedic Resident at Indian Spinal Injuries Centre, Delhi deposed about having attended to claimant Manoj Kumar in OPD and further also proved OPD cards Ex.79 Ex.P81. He deposed that the patient was diagnosed as a case of elsewhere operated, fracture dislocation of D12-L1 vertebra with paraplegia for which he was advised rehabilitation and physiotherapy, which he undertook in all OPD visits.

PW-18 Dr.Punit Girdhar, Orthopedic Surgeon, Max Health Care, Gurgaon, deposed about himself to be visiting Consultant at Umkal Hospital, Gurgaon. He had extended treatment to claimant Manoj Kumar as OPD patient, who was suffering from traumatic paraplegia with bed sore and proved the OPD cards Ex.P82 to Ex.P84. PW-19 Dr.Harsh Vardhan Hegde, Orthopedic Surgeon, Artemis Hospital, Gurgaon also deposed about admission of Manoj Kumar, in their hospital and that he had operated upon him for fracture dislocation of dorsal vertebral 12 and L-1. Posterior instrumentation and decompression with fusion was done. He proved the discharge summary Ex.P85.

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It is pertinent to mention that PW-12 K.K.Yadav, Modern Diagnostic and Research Centre, Gurgaon, had proved the receipts Ex.P54 of MRI Test and also proved MRI report Ex.P55, which reveals “Retrolisthesis of L1 under D12 significantly compressing conus tearing few fibres with conus hemorrhage and D12-L1 disc injury and traumatic right paracentral herination. Fracture in posterior aspect of body of L1 with mild anterior wedging with intraspinal, prevertebral hematoma and marked focal canal stenosis at L1 level, psoas, retroperitoneal contusional injury noted”.

PW-25 Dr.Raj Singh of PGIMS, Rohtak, deposed about examination of the claimant for the assessment of his disability. He stated that the board opined that patient had suffered fracture fracture D12-L1 with paraplegia with bladder bowel involvement and he had permanent disability to the extent of 100%, on account of complete paraplegia with bladder bowel involvement with operative scar mark with implant in situ with grade-1 bed sore. This witness proved the disability certificate Ex.P195.

Thus, it is evident that the appellant-claimant suffered 100% paraplegia. The appellant-claimant is driver by profession. Even, at the time of accident, he was driving the three-wheeler. In the light of the same, for the working out the extent of compensation, the earnings of the appellant-claimant, in modest estimate, in view of eventuality of not getting work on all days of the month, has been appropriately taken by learned Tribunal to be Rs.4,000/- per month.

Before assessment of the compensation, it should be noted that appellant-claimant was 29 years old, at the relevant time. It is quite obvious that his youthful dreams, pertaining to his future hopes and growth in life,

were snuffed to a great extent by the serious accident. Claimant's impaired condition, would have definitely impacted his chances of settlement in life and must have also impacted the life of his family members. Their resources and strength are bound to be stressed by the need to provide full time care to the claimant, for sufficiently long period of time, till he adopted a skill to be self-sufficient to his maximum capacity.

The Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be 'justly' determined. A person, therefore, is not only to be compensated for the injury suffered due to the accident but also for the loss suffered, on account of the injury and his inability to lead the life, he led prior to the life altering event. In *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, the Hon'ble Supreme Court made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

"...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law."

The Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the

accident on his/her life, on account of his/her physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count but the functional disability, on account of injury sustained, can always be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Hon'ble Supreme Court in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*.

The efforts of the Courts must always be to substantially ameliorate the misery of the claimant and recognize his actual needs, by accounting for the ground realities. However, the measures should be in correct proportion.

As already observed aforesaid, the claimant had suffered serious injuries, resulting into permanent disability to the extent of 100%. Disability certificate Ex.P195, specifically states about complete paraplegia with bladder bowel involvement with operative scar mark with implant in situ with grade-1 bed sore. Considering this kind of crippling condition of the appellant-claimant, obviously, he has become dependent upon others. Though, disability is on the lower part of the body, but it affected his body functionality, more particularly, bladder and bowel involvement and this kind of injury make it very restricted for a person like the appellant-claimant to work and be gainfully employed, more particularly, when the appellant-claimant will never be able to follow his vocation of driving.

In this backdrop, as already observed aforesaid, to work upon the compensation, the earnings of the appellant-claimant are appropriately taken to be Rs.4,000/- per month. Keeping in view the age of the appellant-

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claimant to be 29 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, 40% has to be added, on the count of 'future prospects'. Thus, the earnings of the injured-appellant comes to be Rs.4000+1600(40%)=Rs.5,600/-, annual whereof, comes to be Rs.67,200/-.

There has to be no deduction towards personal expenses, in the present case, on account of present case having been filed by the survivor of the accident, with severe injuries, resulting into permanent disability. Beneficial reference, to so conclude, is made to the decision rendered in *Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others, 2023(3) RCR (Civil) 573*.

Looking at the age of the appellant-claimant, in view of the judgment passed in *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '17' and, as such, the loss of earnings is assessed as Rs.67200x17=Rs.11,42,400/-. Accordingly, under the head of 'loss of earnings', on account of disability, the amount awarded by the Tribunal, is enhanced proportionately to Rs.11,42,400/-.

It should be noticed that multiple witnesses have been examined to prove various bills and the expenditure incurred on the treatment and purchase of medicines. However, it is pertinent to mention that learned Tribunal had discarded bills Ex.P181 to Ex.194 proved by PW-23 Vikram Singh Yadav, with regard to the transportation charges, while observing the same to be on higher side. However, granted Rs.10,000/-, on the count of 'transportation charges'.

Likewise, learned Tribunal had also discarded the bills Ex.P56 to Ex.P58, with regard to physiotherapy undergone by the appellant-claimant and the said bills were proved by PW-9 Dr.Manish Pahuja, which were to the extent of Rs.86,100/-. It was observed to be an exaggerated amount and a sum of Rs.20,000/- was granted on this account. Further, receipts Ex.P196 to Ex.P209, with regard to the employment of the attendant, were totally excluded from consideration, while observing that the same appear to have been prepared at one go. However, including the amount of Rs.10,000/-, on account of transportation charges as well as Rs.20,000/- on account of physiotherapy, total amount of bills was worked upon as Rs.3,25,000/-. However, excluding both the aforesaid amounts of physiotherapy and transportation, the total of residue medical bills, proved on record, is **Rs.2,95,000/-**, which ought to be taken into consideration.

Now, coming to the aforesaid count with regard to the transportation, it is pertinent to mention that keeping in view the serious injuries suffered by the appellant-claimant in the accident in question, it is quite obvious, he had to be transported in a vehicle, during the course of his treatment undergone by him, from various hospitals, as observed in the earlier portion of the judgment. Even if, bills have been discarded by learned Tribunal, but however, judicial notice can be taken of the fact of the use of vehicle for transportation of the injured, during the course of his treatment. Thus, considering the same, the amount of Rs.10,000/-, as granted by learned Tribunal is definitely inadequate and the same stands enhanced to **Rs.40,000/-**.

Likewise, on the count of 'physiotherapy' also, the amount of

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Rs.20,000/-, so granted by learned Tribunal is meagre amount. It is specifically stated by PW-17 Dr.Pardeep Singh that looking at his condition, the appellant-claimant was advised rehabilitation and physiotherapy, which he undertook, in all OPD visits. Besides the same, even, PW-9 Dr.Manish Pahuja had deposed about the physiotherapy sessions conducted by him. Considering the same, the amount of Rs.20,000/- as granted by learned Tribunal, stands enhanced to **Rs.50,000/-**.

Though, the bills of attendant, which are Ex.P196 to Ex.P209, have been discarded by learned Tribunal, but considering the extent of disability suffered and on account of claimant, having become crippled, besides the family member, the appellant-claimant ought to be having one attendant, as there was need for assisted living. Thus, under the 'attendant charges', the compensation is quantified as **Rs.50,000/-**.

Also, the appellant-claimant must have been put on highly nutritious diet and on this count, another sum of **Rs.25,000/-** is granted.

Looking at the kind of injuries suffered, the appellant-claimant, definitely, some future medical treatment ought to be extended to him, from time to time, on account of inevitable consequences of the injuries suffered by him, which may lead to often bed sores, which require specialized nursing care. Considering the same, on the count of 'future medical needs', another amount of **Rs.1 lakh** is granted.

Considering the nature of injuries suffered by the appellant-claimant, in the accident in question, which made him immobile and changed his life, for all times to come, he must have definitely passed through a painful transition. Thus, on the count of 'pain and suffering' a

sum of **Rs.50,000/-** is granted.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of earnings	Rs.11,42,400/-
2.	Medical Bills	Rs.2,95,000/-
3.	Transportation charges	Rs.40,000/-
4.	Physiotherapy	Rs.50,000/-
5.	Attendant charges	Rs.50,000/-
6.	Nutritious diet	Rs.25,000/-
7.	Future medical needs	Rs.1,00,000/-
8.	Pain and suffering	Rs.50,000/-
	Total	Rs.17,52,400/-

As such, the compensation, so awarded by learned Tribunal, stands enhanced from **Rs.5,22,500/-** to **Rs.17,52,400/-**. On the enhanced amount of compensation i.e. $Rs.1752400-522500=Rs.12,29,900/-$, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Accordingly, the impugned Award dated 30.11.2009 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

February 08, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No