



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2673-2016 (O&M)
Date of Decision: September 10, 2024

Mukesh
...Appellant

VERSUS

Jai Bhagwan and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Narender Kaajla, Advocate
for the appellant.

Mr.Satnam Singh Sisodia, Advocate for
Mr.S.K.Verma, Advocate
for respondent No.1.

Mr.Vivek Khatri, Advocate
for respondent No.2.

Mr.Rajneesh Malhotra, Advocate
for respondent No.3.

ARCHANA PURI, J.

Appellant-claimant Mukesh has filed the present appeal, thereby, seeking enhancement of the compensation awarded by learned Tribunal, on account of injuries sustained by her, in a motor vehicular accident.

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

That, on 08.04.2013, claimant was going to her house after purchasing household articles. Her maternal uncle, namely Rajender Singh was



following her. At about 3.50 p.m., a truck bearing registration No.HR-39-2881, being driven at high speed, in rash and negligent manner, had come from Siwani side, struck against the claimant, as a result whereof, she sustained grievous and multiple injuries, whereupon, she was shifted to CMC Hospital, Hisar, and thereafter, got admitted to N.C. Jindal Hospital, Hisar, where she was treated and operated.

FIR No.364 dated 09.04.2013 under Sections 279, 337 IPC was registered against respondent No.1-Jai Bhagwan, on the basis of the statement of Rajender Singh. The claimant remained admitted in the hospital from 09.04.2013 to 01.05.2013. The claimant filed claim petition for seeking compensation, on account of injuries sustained by her, in the accident in question.

Respondents No.1 and 2, in their written statements, had asserted about no accident to have taken place, as alleged and also asserted that vehicle was insured with respondent No.3, at the time of accident. Likewise, respondent No.3-insurance company also filed its written statement, wherein, it is asserted that FIR No.364 dated 09.04.2013 was falsely lodged and even vehicle bearing registration No.HR-39-2881 was falsely involved. Also, the insurance company pleaded that respondent No.1 and 2, did not produce the driving licence, fitness certificate, route permit etc. of the offending vehicle. The insurance company also disputed the maintainability of the claim petition.

After framing of the issues, evidence was adduced.

The claimant herself stepped into witness box as PW-11 and further also examined various witnesses PW-1 Vikas Kumar, PW-2



Satyawan, PW-3 Dinesh, PW-4 Gaurav Kumar, PW-5 Sajjan Verma, who proved various bills, vis-a-vis, treatment undergone by the claimant, qua the injuries sustained in the accident. Furthermore, PW-6 Dr. Manoj Aggarwal, Ortho Surgeon, CMC Hospital as well as PW-7 Dr. Anil Goyal, Trauma Incharge, Jindal Hospital, had deposed about treatment having extended to the claimant. Rajender Singh, an eye witness to the accident, stepped into witness box as PW-9. PW-12 Dr. Reena Jain, Ortho Specialist, GH, Hisar, had proved the disability certificate as Ex.P184. Furthermore, also the claimant examined PW-13 Sudesh and thereafter, evidence was closed, while tendering the various documents.

On the other hand, the respondents examined RW-1 Laxmendra Kumar, Clerk, ARTO Office, Mathura and owner of the offending vehicle, namely, Om Pal, stepped into witness box as RW-2 and thereafter, the evidence was closed.

At this juncture, it is pertinent to mention that considering the evidence aforesaid, learned Tribunal had granted compensation to the extent of Rs.4,98,265/-, which was inclusive of amount of Rs.4,07,265/-, on account of the bills of the treatment, undergone by the claimant. Besides the same, on the count of 'disability' suffered, Rs.66,000/- was granted and further Rs.25,000/- was granted, on the counts of 'pain and suffering', 'hospitalization', 'special diet', 'transportation' etc.

Also, it is pertinent to mention that liability was fastened only upon, respondents No.1 and 2, who are driver and owner of the offending vehicle, to pay the compensation, as worked upon. However, the insurance company was exonerated from liability to pay the compensation.



Being aggrieved by the exoneration of the insurance company, owner-Om Pal had filed FAO-2428-2016, which was partly allowed by this Court, vide judgment dated 27.09.2018, thereby, holding that the insurance company shall have the right of recovery against the insured, after payment of the compensation to the claimant and the same can be enforced by filing an application before the Tribunal.

In this backdrop, now adverting to the appeal in hand, it is pertinent to mention that during the pendency of the same, an application under Order 41 Rule 27 CPC was filed for leading additional evidence, qua the treatment undergone by the claimant, in the post-Award period and the same was allowed and the case was remitted to learned Tribunal and was directed to furnish the report, after adducing of the evidence by the parties. When the case was taken up by learned Tribunal, the appellant-claimant had examined PW-14 Dr.Amit Bhutani, Orthopedic Surgeon, Arogya Hospital, Hisar, who proved the discharge summary, OPD records, final bill, anesthesia bill, various bills of medicines, ambulance etc. Furthermore, claimant also examined PW-15 Poonam Devi, ANM, who proved the certificate of services rendered by her. She proved her nursing certificate also as well as bank statements, showing the receipt of the amount. Even, learned counsel for the claimant had tendered into evidence, medical bill Ex.P247.

However, in rebuttal, no evidence was led by the insurance company.

The factum of the accident, as such, is not disputed. Even, the manner of taking place of the same, need not be further dwelt upon and the



findings of learned Tribunal, on these aspects, are hereby affirmed.

On the basis of the pleaded case of the appellant-claimant and the evidence adduced, it stands established that the appellant-claimant was about 24 years old, at the time of accident and she had sustained multiple injuries, in the accident in question. PW-6 Dr. Manoj Aggarwal, Ortho Surgeon, CMC Hospital, has deposed about the claimant to be having history of road side accident. She had multiple injuries, bi-lateral crush injury of thighs, with fracture of pelvis and bi-lateral femur bone. She was managed in ICU and he proved the treatment record Ex.P149 to Ex.P153.

PW-7 Dr. Anil Goyal, Trauma Incharge, Jindal Hospital, Hisar, has also stated about the claimant to be diagnosed with polytrauma with fracture pelvis with crush injury with bi-lateral thigh. She was admitted on 09.04.2013 in their hospital for the injuries suffered in the road side accident and she was discharged on 01.05.2013. He proved the treatment record Ex.P154, discharge card Ex.P155 and proved bill Ex.156 as well as treatment file Ex.P157. Further, the cash memo bills Ex.P159 to Ex.P181 were proved.

From the bills proved in evidence, it stands established that an amount of Rs.4,07,265/- was incurred on the treatment undergone by the claimant, at first instance. In the additional evidence, various bills, as observed in the earlier portion of the judgment were also proved and the total the said bills is Rs.57,775/-. Thus, the total medical expenditure comes to be Rs.407265+57775=Rs.4,65,040/-.

Before proceeding further, it shall be appropriate to make beneficial reference to the decision rendered in *Smt.Sarla Verma vs. Delhi*



Transport Corporation and anr., 2009(3) RCR (Civil) 77, wherein, the Hon'ble Supreme Court held that the '**just**' compensation is adequate compensation and the Award must be just that-'**no less and no more**'. The plea of the victim suffering from a cruel twist of fate, when asking for some more, is not extravagant, but it is for seeking appropriate recompense, to negotiate with the unforeseeable and the fortuitous twists, in his/her impaired life. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the Courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding '**just compensation**'.

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.*

In *Sri Laxman @ Laxman Mourya v Divisional Manager, Oriental Insurance Co. Ltd, 2012(1) RCR (Civil) 509*, the Hon'ble Supreme Court held, as herein given:-

“The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation



not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."

Thus, considering the same, if the victim of the accident suffers permanent disability, then efforts should be made to award compensation, not only for the physical frame and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed, but for the disability caused, due to the accident. In ***Jagdish Vs. Mohan and others, 2018 (4) SCC 571***, the Hon'ble Supreme Court, while considering the case of a carpenter, who had sustained injuries and lost both his hands, had considered the serious disability, suffered by him and it was observed, as herein given:-

".....For a person engaged in manual activities, it requires no stretch of imagination to understand that loss of hands is a complete deprivation of the ability to earn. Nothing, at least in the facts of this case, can restore lost hands. But the measure of compensation must reflect a genuine attempt of 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. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity."

Considering the facts of the case, the disability, which was worked upon as '90%', was taken to be total disability by the Hon'ble Supreme Court and thereupon, enhancement was made.

In this backdrop, now adverting to the case in hand. From the evidence adduced, it stands established that the crush injuries were suffered



by the appellant-claimant, in the accident in question, on the lower portion of the body and furthermore, she remained admitted in the hospital from 09.04.2013 to 01.05.2013 and thereafter, subsequently for the removal of the nail, she remained admitted in the hospital, as evident from the medical record, proved by Dr.Amit Bhutani, in additional evidence, who stepped into witness box as PW-14. On the basis of the disability certificate, it is evident that the appellant-claimant had suffered 33% permanent disability.

Though, it is the categorical claim of the appellant-claimant that she is housewife, but a plea had also been taken about her to be indulging in tuition work, but no satisfactory evidence, in this regard, had come on record and this plea, has been very correctly discarded by learned Tribunal.

But anyhow, the grant of compensation for homemakers, on pecuniary basis, has been considered by the Courts, time and again.

In *Lata Wadhwa vs. State of Bihar, 2001(8) SCC 197*, emphasis was laid by the Court to determine the compensation, on the basis of services rendered by the homemaker to the house and on the basis thereof, it was observed that though there is no data for determination of compensation, but however, taking into consideration, multifarious services rendered by the housewives for managing the entire family, the value of the services should be assessed and compensation be worked upon.

In *Arun Kumar Aggarwal vs. National Insurance Company Ltd., 2010(9) SCC 218*, while considering the case of grant of compensation, on account of death of a housewife, due to the motor vehicle accident, it was observed that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. Furthermore, it was observed



that the gratuitous services, rendered by the wife with true love and affection to the children and her husband and managing the household affairs, cannot be equated with the services rendered by others. The Court also observed that though, it was impossible to quantify any amount, in lieu of the services rendered by the wife/mother, to the family, but however, for the purposes of award of compensation to the dependents, some pecuniary estimate has to be made of the services of the housewife/mother. In this context, it was held that the term “**services**” is required to be given a broad meaning and must be construed by taking into account, the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife.

Beneficial reference is also made to *Kirti and another v/s Oriental Insurance Company Ltd., 2021(2) SCC 166*, wherein, the Hon'ble Supreme Court, while considering the case of death of a homemaker, had observed, as herein given:-

“32. Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the Court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances.”

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“35. However, it must be remembered that all the above methods are merely suggestions. There can be no exact calculation or formula that can magically ascertain the true value provided by an individual gratuitously for those that they are near and dear to. The attempt of the Court in such matters should therefore be towards determining, in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation.



36. *Whichever method a Court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The Court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to claimants [National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680; Kajal v. Jagdish Chand, (2020) 4 SCC 413].*”

Therein, it was also held that effects of inflation would equally be applied to the cases of assessment of notional income of the homemaker and on this account, it was further held that the future prospects, also are required to be taken into consideration.

Thus, summing up, general observations were made regarding the issue of calculation of notional income for homemakers and grant of future prospects, with respect to them, for the purposes of grant of compensation, which was summarized, as follows:-

“a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation’s international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income



calculated in such cases, is a component of just compensation.”

In the backdrop of the aforesaid case law, further it is necessary to note that 24 years old’ youthful dreams, pertaining to her growth and future hopes, were snuffed to a great extent by the serious accident. Young woman's impaired condition, would have serious consequences, affecting her as well as her immediate family members.

Considering the aforesaid circumstances, as spelt out from the evidence adduced, which the appellant-claimant had to face, on account of injuries sustained in the accident, an attempt should always be made 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 and not only that, even the impact of the accident on her life, on account of 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 decision rendered by the Hon’ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343***, which dealt with the test for determining the effect of permanent disability, on future earning capacity, involving three steps, as was laid down in ***Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796***, as herein given:-

“13. Ascertainment of the effect of the permanent disability on



the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions, so that he continues to earn or can continue to earn his livelihood.”

Beneficial reference is also made to ***Kartik Subramanian vs. B. Sarath Bahu and another, 2021 (2) RCR (Civil) 303***, wherein, it was observed that multiplier method has to be applied for the future prospects and advancement in life and career.

While working on the same principle, the loss of earnings part was worked and towards the same, addition of future prospects was also made, while making the assessment of the compensation, which stood enhanced.

In view of the aforesaid case law, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, the addition on the count of ‘future prospects’, is required to be made.

To make assessment of the compensation, notional earnings of the appellant-claimant, ought to be made. At the prevalent time, the earnings of the un-skilled worker was to the extent of Rs.5695/- per month. Taking it to be so and also taking to consideration the multifarious duties, performed by the housewife and that too with full love and affection, towards home and



family, in modest estimate, the earnings of the appellant-claimant are taken as Rs.6,000/- per month.

To the said amount, keeping in view the age of the appellant-claimant, as per Pranay Sethi's case, an addition of 40%, ought to be made, on the count of 'future prospects' and thus, the earnings of the appellant-claimant comes to be $\text{Rs.}6000 + 2400(40\%) = \text{Rs.}8,400/-$ per month. Considering 33% disability, the annual loss of earnings, comes to be $\text{Rs.}8400 \times 12 \times 33/100 = \text{Rs.}33,264/-$.

Considering the age of the appellant-claimant, as per *Sarla Verma's case (supra)*, the suitable multiplier to be applied is '18' and by applying the same, the loss is assessed as $\text{Rs.}33264 \times 18 = \text{Rs.}5,98,752/-$.

The total of the medical bills, which have been proved is **Rs.4,65,040/-** i.e. Rs.4,07,265 (proved before Tribunal)+Rs.57,775/- (proved in additional evidence).

Looking at the kind of injuries sustained by the appellant-claimant, in the accident in question, definitely, she must have led assisted living for at least some period of time, after the accident and there is bound to be decrease in body functionality of the appellant-claimant. There must be requirement of 'assisted' living and she must have been looked after by a bye-stander/attendant throughout the course of her treatment and in the minimum, some time thereafter, till she adept to skill of self-dependence. But definitely, for certain aspects of life, there will be need for assisted living in future. Even though, in the additional evidence, PW-15 Poonam Devi has been examined, who deposed about having taken care of the appellant-claimant and she proved bank statements also, but however, from



the aforesaid bank statements, one cannot decipher about the entries, relied upon to be relating to the salary granted to Poonam Devi. But in any case, there was need for assisted living and the appellant-claimant, ought to be looked after by one person, may be by her family members. But however, it should be noted that even family members, could perform the role of caregiver, only by diverting their own time, from any form of gainful employment, which could have generated some income. Considering the same and also considering the need for attendant, in future times also, on this aspect, this Court deems it appropriate **Rs.4,00,000/-** on the count of 'attendant charges'.

Looking at the kind of injuries, it is quite obvious that on account of use of the conveyance for '**to and fro**' to the hospital, substantial amount must have been spent by the family of the appellant-claimant. Thus, on this, another amount of **Rs.50,000/-** is granted.

Obviously, during the period of treatment and some time thereafter, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, another sum of **Rs.50,000/-** is granted.

The appellant-claimant, on account of the injuries sustained, apart from becoming physically invalid, on account of crush injuries, the appellant-claimant, must have passed through a very traumatic state of mind. Considering the same and her future having been jeopardised, apart from physical ailment, another amount of **Rs.2,00,000/-** is granted on the count of 'pain and suffering'.

Thus, on various counts, as detailed aforesaid, the compensation to be granted to appellant-claimant Mukesh, is re-computed as herein given:-



1.	Loss of earnings	Rs.5,98,752/-
2.	Medical Bills	Rs.4,65,040/-
3.	Attendant charges	Rs.4,00,000/-
4.	Transportation charges	Rs.50,000/-
5.	Special rich diet	Rs.50,000/-
6.	Pain and suffering	Rs.2,00,000/-
	Total	Rs.17,63,792/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.17,63,792-4,98,265=Rs.12,65,527/-**. On the enhanced amount of the compensation i.e. **Rs.12,65,527/-**, 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.

So far as, the liability of the respondents to pay the aforesaid compensation is concerned, as observed in FAO-2428-2016, by following the principle of ‘pay and recover’, the insurance company, at first instance, shall pay the compensation amount but shall be entitled to effect the recovery of the same from respondents No.1 and 2.

With the above observations, the present appeal stands allowed.

September 10, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No