

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-4379-2017 (O&M)****Reserved on: 10.03.2025****Pronounced on: 12.03.2025****NATIONAL INSURANCE CO. LTD.****. . . .APPELLANT****Vs.****ARPIT AND OTHERS****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Argued by:-**

- Mr. Paul S. Saini, Advocate, for the appellant.
- Mr. Virender Soni, Advocate, for the respondent - claimant.
- Ms. Bindu Goel, Advocate (*Amicus Curiae*) for the respondent - claimant.

DEEPAK GUPTA, J.

By way this petition filed under Article 227 of the Constitution of India, petitioner prays for setting aside the order dated 01.04.2017 (*Annexure P6*) passed by Id. Motor Accident Claims Tribunal, Hisar.

2. Dispute pertains to calculation of the award amount. As the perusal of the paper-book would reveal that Arpit @ Banti, minor boy aged 5 years sustained serious injuries in a motor vehicular accident on 20.04.2009. He filed a claim petition through his father against driver, owner and insurer of the offending vehicle on 11.09.2008 under Section 166 of the Motor Vehicles Act of 1988, seeking compensation for the injuries caused to him. Vide order dated 01.12.2010, compensation of ₹6 lakh was awarded by the Tribunal, payable with interest @ 6% per annum by the insurer of the offending vehicle, from the date of filing of the petition till its realization. Said awarded amount was later on rectified to be ₹7 lakh.

3. The insurer as well as the claimant filed separate appeals. Both the appeals were disposed of together vide order dated 13.01.2014 by this Court. FAO-3245-2011 filed by the Insurance Company was dismissed;

whereas the FAO-4845-2011 filed by the claimant was allowed and the award was modified.

4. It will be apt to reproduce the relevant portion of the order dated 13.01.2014 passed by Coordinate Bench of this court, while modifying the award: -

“In my opinion, one very important factor which has to be considered is the expenses for medical attendant because as the child grows up, it becomes very difficult for the parents to handle him. However, we do not know how long this unfortunate claimant can survive. In the circumstances, I deem it appropriate to direct the insurance company to make a fixed deposit of ₹10 lakh in the name of the child in any nationalized bank. The interest on this amount would be utilized for the purpose of getting a medical attendant for the said child. However, on the death of the claimant, this amount would be refunded back to the insurance company and for this purpose, the created fixed deposit would remain in the custody of the insurance company. I deem it appropriate to further direct the Bank that in the event of the death of the child, the amount be refunded back to the insurance company. Ordered accordingly.

As regards the loss of earning capacity, no doubt the claimant is a child but some amount has to be awarded for loss of earning since in the normal course the child would have grown up. In **Priyanka Bhutani's case (supra)** this Court had assessed ₹10,000/- as the notional income of a 7 years old child, in whose case it was proven that she has a good academic record. In the present case, the claimant is only a 5-year-old child and there is no educational record. In the circumstances, I deem it appropriate to grant the claimant the loss of notional income of ₹5000/- p.m. Ordered accordingly.

The other heads, in my considered opinion, would be taken care of in the amount of ₹6 lacs which already stands awarded.

Learned counsel for the respondent No.1 has argued that the rate of interest @ 6% p.a. is grossly inadequate. In the circumstances, the interest is also increased to 8% p.a. on the compensation amount. It is made clear that the additional amount along with the interest be deposited in the

fixed deposit as directed by the Tribunal. However, the direction regarding payment on attaining the age of maturity would be subject to the condition of the claimant-respondent No.1. In case the claimant-respondent No.1 is not in a position to manage the money it would remain in deposit till such time as he is in such a position. It may be that with the passage of time some more expenses may be required. The claimant would be at liberty to file an application before the Tribunal for encashing the fixed deposit/portion thereof.”

5. Thus, the above said order of this Court would reveal that this Court granted following reliefs: -

- (i) Interest rate was modified from 6% to 8%.
- (ii) Insurance company was directed to get the amount of ₹10 lakh deposited in the FDR in any Nationalized Bank and interest accrued on the said account is to be utilized for medical attendant of the child and in case the child does not survive, then the amount of the FDR is to be returned to the insurance company.
- (iii) ₹5000/- per month awarded towards loss of earning capacity of the claimant in accordance with the case of **Priyanka Bhutani Vs. Sukh Pal Singh and others, 2011 (2) RCR (Civil) 586.**

6. It is not in dispute that this Court later on rectified the above order by clarifying that the amount awarded by the Tribunal was ₹7 lakh.

7. It is further noticed that since there was no reference in the order dated 13.01.2014 of this court regarding any multiplier to be applied for calculating the loss of earning capacity, an application for correction/clarification bearing CM-6898-CII-2014 was filed by the claimant in FAO-4845-2011. However, Coordinate Bench of this Court vide order dated 06.05.2014, disposed of the application by observing as under: -

“Further the clarification is sought that this Court has not mentioned anything regarding the multiplier and that is why the Executing Court is

insisting on a clarification in this aspect. In my opinion, this issue is already clear. The last part of the order reads as under:-

“Consequently, the appeal bearing FAO No.4845 of 2011, filed by the claimant-respondent No.1 is allowed and the award is modified accordingly.”

It reveals that the award has been modified as per the discussions made in the order. The necessary implication is that portion which is not touched remains unchanged. In the circumstances, there is no need for any further clarification since if there is no discussion, the multiplier continues to remain unchanged.”

8. Dispute has arisen amongst the parties regarding the calculation of the amount payable to the claimant, as per the order of the Tribunal to be read with the order as passed by this Court.

9. In the execution filed before the Tribunal, the claimant filed his calculation (*Annexure P4*) contending that an amount of ₹26,69,242/- was still payable upto 21.07.2016; and interest @ 8% per annum from 22.07.2016 till its realization.

10. On the other hand, the Insurance Company filed its own calculation (*Annexure P5*).

11. Ld. MACT/Executing Court vide impugned order dated 01.04.2017 (*Annexure P6*) held that JD-Insurance Company was liable to pay ₹24,80,482/- more, which had not been paid and that this amount was payable along with interest @ 8% per annum till the date of payment.

12. The aforesaid order has been assailed before this Court by the Insurance Company.

13. Ld. counsel for both the sides have been heard and paper-book perused. Synopsis submitted by counsels for both parties have also been considered.

14. After perusing the impugned order passed by the Tribunal and the respective calculations of both the sides, this Court feels that to arrive at

the correct calculation, the amount payable to the claimant, as per the award of the Tribunal to be read with the order passed by this Court, is liable to be considered under following separate heads:

- A) Amount as awarded by the Tribunal,
- B) The amount payable for loss of earning capacity, and
- C) The amount of interest payable on the FDR of ₹10 lakh to meet out the expenses of medical attendant.

A) Amount as awarded by the Tribunal:

15. Admittedly, initially awarded amount was ₹6 lakh as per the award dated 01.12.2010 of the Tribunal. Interest was awarded @ 6% per annum. While filing the appeal, an amount of ₹25,000/- was deposited by Insurance Company with this High Court.

16. As per the stand of Insurance Company, as there was no stay in the appeal, so it (insurance company) deposited the initially awarded amount vide cheque No.773779 dated 08.06.2011 for ₹6,75,849/- as per the following details: -

(i)	Awarded amount	₹6,00,000/-
(ii)	Interest @ 6% p.a. (11.09.2008 to 08.06.2011)	₹98,477/-
(iii)	Costs	₹2,372/-
(iv)	Minus deposited in the Hon’ble HC	₹25,000/-
TOTAL		₹6,75,849/-

17. After the award amount was rectified by the Tribunal to ₹7 lakh, the insurance company paid the amount of ₹1 lakh (₹7 lakh - ₹6 lakh) along with interest @ 6% per annum from 11.09.2008 to 11.01.2016 i.e. ₹43,479/-, totaling ₹1,43,479/- vide cheque No.8829 dated 20.01.2016.

18. The total amount paid by the insurance company till 20.01.2016 works out to be ₹8,44,328/- (₹6,75,849/- + ₹25,000/- +

₹1,43,479). The claimant in his calculation (*Annexure P4*) submitted before the Tribunal conceded that amount of ₹8,44,328/- had already been paid.

19. It is, thus, clear that amount of ₹7 lakh as awarded by the Tribunal along with interest @ 6% per annum from the date of filing of the petition till the date of payment of the principal amount has already been paid to the claimant.

20. Since the principal amount of ₹7 lakh as awarded by the Tribunal, already stood paid, therefore, claimant is entitled only for enhanced interest of 2% per annum (8% as awarded by the High Court minus 6% as awarded by the Tribunal) on the amount of ₹7 lakh from the date of filing of the petition till actual payment. It is held accordingly under this head.

B) The amount payable for loss of earning capacity:

21. Coming to the amounts as awarded by the High Court, ₹5,000/- per month has been awarded towards loss of earning capacity, in the light of the judgment passed in *Priyanka Bhutani's case (supra)*. The claimant was aged 5 years. Multiplier applied in *Priyanka Bhutani's case (supra)* was 18 and as such, amount payable to the claimant under this head of loss of earning capacity works out to be ₹5,000/- x 12 x 18 i.e., ₹10,80,000/-. Accordingly, it is held that Tribunal is to calculate the amount under the head of loss of earning capacity to be ₹10,80,000/- payable to the claimant alongwith interest @ 8% per annum from the date of filing of the claim petition till payment. It is held accordingly under this head.

C) The amount of interest payable on the FDR of ₹10 lakh to meet out the expenses of medical attendant.

22. Coming to the above head, this Court vide order dated 13.01.2014 directed to convert the amount of ₹10 lakh in FDR to be issued by a nationalised bank and to pay interest accrued on this amount to meet out the expenses for medical attendant for the claimant. The Insurance Company got issued the FDR of ₹10 lakh on 04.05.2016. Copy of that FDR is Annexure P3. The claimant was entitled to interest accrued on the amount

of ₹10 lakh deposited in the FDR from the date of filing of the claim petition i.e., 11.09.2008. However, claimant cannot be held entitled for interest @ 8% per annum on this amount as awarded under other heads, because as per the order dated 13.01.2014 (Annexure P2) of this Court, the interest accrued on the FDR of ₹10 lakh is to be utilised for the purpose of medical attendant. Copy of the FDR (Annexure P3) would reveal that rate of interest payable by the bank on the amount of FDR was 7.25%.

23. As such, it is held that from 11.09.2008 i.e., from the date of filing of the petition till the date of converting the amount of ₹10 Lacs in FDR i.e., 04.05.2016, the claimant will be entitled to interest @ 7.25% per annum on the amount of ₹10 lakh, for meeting out the expenses for medical attendant. It is held accordingly under this head.

24. The Tribunal is directed to calculate the amount payable to the claimant as per the aforesaid order under three different heads. It is further made clear that amount is to be paid to the claimant as per directions contained in the order dated 13.01.2014 of this Court.

Present Revision is hereby disposed of accordingly.

12.03.2025

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes