



FAO-2797-2007 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-2797-2007 (O&M)

Date of Decision: February 28, 2025

Rajesh Goyal

.....Appellant

Vs.

Darshan Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. D.K. Singal, Advocate, for the appellant.

Mr. Rajneesh Malhotra, Advocate with Ms. Manvi Verma, Advocate
for respondent No. 3-Insurance Co.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 01.02.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal'), for enhancement of compensation granted to the claimant to the tune of Rs.3,03,000/- along with interest @ 9% per annum, on account of injuries suffered by him in a Motor Vehicular Accident, occurred on 14.08.2003.

2. As sole issue for determination in the present appeal is confined to quantum of compensation awarded by the learned Tribunal, a detailed narration of the facts of the case are not reproduced for the sake of brevity.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

3. The learned counsel for the claimant-appellant contends that the compensation assessed by the learned Tribunal is on the lower side, as the claimant/appellant was 34 years of age at the time of accident. He is the sole bread earner of the family with six dependents including 3 minor children. He suffered multiple injuries including injury on his left arm i.e amputation of left arm above

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elbow. His permanent disability was assessed to the extent of 80%, as per disability certificate Ex P35. Further nothing has been awarded under the head of pain and sufferings, attendant charges etc. Therefore, he prays that the present appeal be allowed and compensation should be enhanced as per latest law.

4. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted.

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

6. A perusal of the record shows that the appellant was 34 years of age at the time of accident and was self employed. The claimant/appellant has produced his income tax return (Ex P34) showing that his annual income is Rs.63780/-. Therefore, after deducting the required tax on the annual income of the appellant, his net income for computation of compensation is assessed as Rs.5169/- per month/-. The claimant/appellant suffered disability to the extent of 80%, as per disability certificate Ex P35. The appellant sustained multiple injuries. He remained admitted in various hospitals. His left arm above elbow was amputated. The learned Tribunal while granting the compensation has not taken into consideration the future of the appellant, consequent to the accident. The learned Tribunal has not rightly assessed the income of the appellant while awarding compensation. Therefore, the award requires indulgence of this Court.

7. A perusal of the record reveals that the claimant/appellant suffered various injuries on his body and due to the injuries, his left arm above elbow was amputated, due to which, he has to depend upon prosthetic for his entire life.

Therefore, he must be granted compensation on account of the expenditure made



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judgment of Hon'ble the Supreme Court of India in a case of ***G Vivek Vs National Insurance Co. Ltd. & Anr., 2023 ACJ 585***. The operative part of the judgment reads as under:-

7. While accepting the appeal preferred by the Insurance Company in part, thereby reducing the compensation amount of Rs.56,00,000/-, the only reason discernible from the Order passed by the High Court reads as follows:- "As the claimant sustained disability to the extent of 97% due to amputation of his right leg and other complications, learned Tribunal has applied the multiplier of '15' to calculate the loss of income. Taking the notional income of the claimant at Rs.10,000/- per month and adding 50% towards his future prospects, learned Tribunal has awarded Rs.27,00,000/-, towards loss of future income. Learned Tribunal has further awarded Rs.16,82,497/- towards medical expenses, transport and attendant charges, Rs.3,00,000/- towards pain and suffering, Rs.2,00,000/- towards future medical expenses and Rs.2,00,000/- towards loss of engagement and marriage prospects. Law is well settled that pecuniary loss suffered by the claimant is to be assessed on the basis of actual expenses incurred. Therefore, the claimant having filed bills and vouchers to show that he had incurred medical expenses of Rs.10,15,949/-, learned Tribunal was not justified in awarding Rs.16,82,497/- towards medical expenses, transport and attendant fees. Moreover there is no basis for assessing the cost of new prosthesis at Rs.5,00,000/- nor there is any basis for calculating medical future expenses at Rs.2,00,000/. Though non pecuniary loss can be

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assessed on notional basis, the same must have a co-relation to the actual cost which an injured may incur in future for treatment of his injuries sustained in the accident. In other words, non-pecuniary loss towards future medical treatment, loss of income towards attendant expenses etc. must have a nexus with the actual rate for incurring such expenses and not on mere assumption. The award of compensation must be just and fair irrespective of the claims made and the same should not be a bonanza for the claimant."

8. The aggrieved Appellant is before us.

9. We have heard learned counsel appearing for the parties and gone through the record.

10. It may be seen that the High Court has not employed any reasoning, logic or evidence to reduce the cost of a new prosthesis from Rs.5,00,000/- to Rs.2,00,000/-. The High Court is also silent regarding its maintenance cost.

11. In our view, the Tribunal was justified in awarding a sum of Rs.20,00,000/- towards cost of new prosthesis at the rate of Rs.5,00,000/- to be changed four times in five years. In other words, the Tribunal awarded this cost component only for 20 years despite the fact that Appellant was hardly of the age of 15-16 years old at the time when the Award was passed.

12. There is no rationale for the High Court to reduce the cost of the prosthesis from Rs.20,00,000/- to Rs.5,00,000/-.

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8. Keeping in view the aforesaid judgment, the claimant/appellant is entitled for compensation under the head of future expenses on account of purchase and maintenance of prosthetics.

9. Further perusal of the record shows that the appellant/claimant suffered various grievous injuries on his body making his life miserable. As a result, he had to depend on others for his daily activities and likely to have employed an attendant to assist him for his physical movements. This Court has dealt with similar issue in case titled as ***Rani and others v. Harmit Singh alias Kala and others, passed in FAO No 4331-2006, decided on 27.02.2025.*** The relevant portion of the same is reproduced as under:-

7. xxx xxx xxx

*“The Co-ordinate Bench of this Court has dealt with the same issue in a judgment passed in **FAO-4516-2006** titled as ‘**Neelam Devi and others Vs. Baljit and others**’ decided on 04.12.2012. The relevant portion of the same is reproduced as under:-*

“6. The fact remains that deceased Jag Bhagwan who was admitted to PGIMS, Rohtak on reference for 47 long days died on 15.7.2008 in the hospital itself. When the patient had died in the hospital itself, the hospital would not have thought of issuing any discharge summary. Of course, the records maintained by the PGIMS, Rohtak should have been summoned by the claimants. But, just because they had not summoned the hospital records, we cannot reject the case of the claimants as Ex.P2, P3 and P9 would go to show that the injured was admitted to hospital for treatment in an unconscious state for the blood clot in the mid cerebral region and died in the hospital during the course of treatment.

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7. *It is not a common practice for such hospitals to issue prescriptions for purchasing medicines. Some slips are issued to the caretaker of the patient for the purpose of procuring the medicine from outside. The hospital authorities simply maintain medical records showing the prescriptions.*

8. *The injured had taken treatment for 47 long days, that too, in an unconscious state. At least, one or two attendants would have definitely attended him during the course of treatment. The claimants would have spent at least a sum Rs.200/- per day towards attendant charges.”*

In view of the above referred to judgment, the appellants/claimants are also entitled to the attendant charges at the rate of Rs.150/- per day from the date of accident till the date of the death of deceased.

10. Keeping in view the above referred to judgment, the claimant/appellant is entitled for compensation under the head of attendant charges. Therefore, the award requires indulgence of this Court.

SETTLED LAW ON COMPENSATION

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*

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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.



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(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.



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(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 :



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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 : (27000×17) : 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 : (42000×18) : 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:-



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- (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';

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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;

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- (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,

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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

14. In view of the above, the present appeal is allowed and award dated 01.02.2006 is modified. 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 enhanced amount of compensation as calculated below:-

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Income	Rs.5169/- per month
Loss of Future Prospect 40%	Rs.2068/-(5169X40%)
Annual Income	Rs.86,844/- (7237 X12)
Loss of future earning on account of 80% disability	Rs.69,475/- (80% of 86844)
Multiplier of 16	Rs.11,11,603/- (69475X16)
Medical Expenses	Rs.70,000/-
Pain and suffering	Rs.4,00,000/-
Attendant Charges	Rs.5,75,000/-
Transportation Charges	Rs.50,000/-
Loss of amenities of life	Rs.1,50,000/-
Special Diet	Rs.1,00,000/-
Artificial limb	Rs.15,000/-
Future treatment for prosthetics	Rs.2,00,000/-
Total compensation awarded:-	Rs.26,71,603/-
Deduction:- Amount awarded by Tribunal	Rs.3,03,000/-
Enhanced amount of compensation	Rs.23,68,603/- (2671603- 303000)

15. 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 amount so calculated shall carry an interest @ 9% per annum from the date of filing of the claim petition, till the date of realization.

16. Respondent No.3-Insurance Company is directed to deposit the enhanced amount along with interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is directed

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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.

17. Further Insurance Company is directed to disburse the current scheduled fees to Mr. Rajneesh Malhotra, Advocate, within a period of twenty days from the date of receipt of certified copy of this order, pursuant to order dated 18.07.2024 passed by this Court in FAO No.1682 of 2007.

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

(SUDEEPTI SHARMA)
JUDGE

February 28, 2025

Gaurav Arora

Whether speaking/non-speaking : Yes

Whether reportable : Yes