IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-2939-2007 (O&M)
Date of Decision: May 08, 2025

Sukhbir Singh ......Appellant

Vs.

Raj Kumar and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Himanshu Garg, Advocate for
Ms. Shweta Sanghi, Advocate (Through VC)
for the appellant.

Mr. Gopal Mittal, Advocate for
Mr. Puneet Jain, Advocate, for respondent No. 2 and 4-Insurance Co.
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SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 06.02.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal'), for enhancement of compensation granted to the appellant/claimant to the tune of Rs.25,000/-, on account of injuries suffered by him in a Motor Vehicular Accident, occurred on 18.09.2004.

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 is not required to be 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 appellant was 32 years of age at the time of accident. He was serving in the Indian Army at the time of the accident. He submits that due to the injuries sustained by

the appellant in the accident, the index finger of his left hand was amputated and on account of permanent disability, the Board of Doctors of Army declared him unfit for service.

4. Learned counsel further submits that the appellant would have received pension only, if he would have completed continued service of 17 years, however, he was discharged from service on account of injuries suffered by him in the accident. He further submits that at the time of the accident, the appellant had completed approximately 12 years of service in the Army. He, thus prays that the present appeal be allowed.

5. 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. He prays for dismissal of the appeal.

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

7. A perusal of the record shows that the appellant was 32 years of age at the time of accident and was serving in the Indian Army. It is not in dispute that the appellant met with an accident on 18.09.2004 and due to accident, his left index finger was amputated. Further a medical Board was constituted to assess the injury suffered by the appellant in the accident and he was placed in Low Medical Category w.e.f 20.01.2005 and his disability was assessed between 11 to 14 per cent, as per Mark A-9. The learned Tribunal has gravely erred in law in concluding that the discharge of the appellant from his service was not due to any amputation but as per Mark A-10, it is very much clear that the appellant was discharged from the service after being placed in Medical category lower than SHAPE-I and not up

to the prescribed minimum physical standard. Thus, there is no doubt that the appellant was relieved from his service due to amputation occurred in the accident.

8. The appellant was drawing a gross salary of Rs.8389/- per month at the time of accident, as per Mark A-12. The Tribunal has gravely erred in law in granting a compensation of only Rs.25,000/- on account of the injuries suffered by the appellant in the accident. Even though, the perusal of the record shows that the appellant suffered 11 to 14% permanent disability on account of injuries suffered by him in the accident and due to injury, he was relieved from service as well. The service conditions of the appellant are such that he has to serve minimum 15 years in the Army to become eligible for the pensionary benefits. But due to the accident, he become unfit and could not complete minimum 15 years of service and was relieved without any pensionary benefits. Although, the disability incurred on the appellant varies between 11 to 14% but the actual result of the injuries suffered by the appellant is much more than this, as he got relieved from his job without any pensionary benefits and he had to start his life again from zero level. Therefore, this Court is of the view that the functional disability of the appellant should be considered more than what was considered on paper.

9. This Court has dealt with a similar issue in the case of ***Naresh Kumar Vs. Sham Lal and others, passed in FAO No. 527-2007, decided on 10.02.2025.*** The relevant portion of the judgment reads as under:-

> *"7. An examination of the award reveals that PW-2, Dr. Neeraj Gupta, a member of the Medical Board, testified that the appellant, Naresh Kumar, was assessed to have sustained a permanent physical disability of 57% in relation to his whole body. He also proved disability certificate, as Ex. P-68, which was signed*

by him and other members of the Board. Furthermore, a careful reading of the award indicates that the appellant/claimant was engaged as a labourer at the time of the incident. Given the nature and extent of his injuries—resulting in 57% permanent disability—it is evident that the functional impact of such impairment would render him incapable of continuing his previous employment or engaging in any gainful occupation. Consequently, his functional disability should be re-assessed as 100%. This conclusion finds support in the precedent established by the Hon'ble Supreme Court in "Rahul Ganpatrao Sable" supra, wherein, the Apex Court recognized that in cases where the nature of disability effectively precludes a person from engaging in any meaningful employment, the assessment of functional disability must be considered in light of the resultant loss of earning capacity rather than the mere medical assessment of physical impairment. The relevant extract of the same is reproduced as under:-

> *14. "The five injuries which are permanent in nature apparently make him unfit for any employment even though the disability may be 60% or 85%. The compression fractures of seven cervical vertebra resulting into Paraplegia and further loss of bladder function make it absolutely impossible for a person to work and be gainfully employed. Considering the nature of disability, loss of income, is, thus, held to be 100% and not 50% as held by the High Court."*

8. Further the Hon'ble Apex Court in ***Gurdev Singh Vs. Reliance General Insurance Company Ltd. 2023(2) TAC 721*** *held as under:*

> *"6. Insofar as the assessment of the disability, we note that the MACT, on taking into consideration all aspects of the matter including the disability certificate and the avocation of the appellant, has recorded its finding in paragraph 24 as follows:*
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> *"24. That, the disability certificate, issued by the Medical Board of Dr. Baba Saheb Ambedkar Hospital, Delhi and as per disability certificate, there is 30% permanent visual impairment disability in relation to his left eye and because of the grievous injuries sustained by the petitioner in the road traffic accident and due to said disability, he is not able to work. The petitioner/injured was a professional driver at the time of the accident and was driving the heavy goods vehicle and was also having valid DL, therefore, in the given facts and circumstances, he is not been able to drive any heavy vehicle in future because of disability and this tribunal is of the considered view that there is 100% permanent functional disability of the petitioner."*
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> *7. A perusal of the same would indicate that the MACT on taking note of the evidence has recorded a finding of fact with regard to the nature of disability and keeping in*

view the disability assessed by the Doctor at 30% has concluded that it would affect his avocation as a driver and therefore related the said disability to the functional disability.

8. As against the finding recorded by the MACT, a perusal of the consideration made by the High Court would indicate that no other contrary material has been appreciated nor the available records have been re-appreciated to record a finding of fact. The High Court, in fact, has only taken note of the decision of this Court which indicate the manner in which the disability is to be considered and has abruptly arrived at the conclusion that the functional disability was not more than 30%. We are of the opinion such conclusion reached by the High Court is only in the nature of presumption which cannot be sustained.

9. In that view, in the present facts, the disability is to be reckoned at 100% and the compensation is to be recalculated."

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10. In view of above referred to judgment, this Court is of the view that the functional disability of the appellant should be assessed not less than 50% and he should be awarded compensation under all the conventional heads.

11. With respect to awarding of compensation to the appellant under head "loss of amenities of life", reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Sri. Benson George vs. Reliance***

General Insurance Co. Ltd. and another, passed in Civil Appeal No. 1540-2022, decided on 25.02.2022. The relevant portion of the judgment is reproduced as under:-

"7.2 Similarly, the amount of Rs.1,00,000/ awarded by the High Court under the head loss of amenities and happiness can also be said to be on lower side. As observed hereinabove no amount can compensate the loss of amenities and happiness more particularly a person who is in coma since number of years and is bedridden for the entire life.

In the facts and circumstances of the case, we are of the opinion that if the amount of compensation under the head loss of amenities and happiness is enhanced to Rs.10,00,000/ (Rupees Ten Lakhs) from that of Rs.1,00,000/ as awarded by the High Court, it can be said to be a reasonable amount under the head loss of amenities and happiness.

8. Now with regard to reliance placed upon the decisions of this Court in the case of Raj Kumar (supra) and Lalan D. alias Lal (supra), relied upon by learned counsel appearing on behalf of the Insurance Company is concerned, we are of the opinion that the amount of compensation to be awarded under the heads, pain and suffering and loss of amenities and happiness, there cannot be straight jacket formula. It depends upon the facts and circumstances of each case and it varies from person to person who has suffered due to the accident. So far as awarding compensation on the head of pain, shock and suffering is concerned, multiple factors are required to be considered namely, prolonged hospitalization; the grievous injuries sustained; the operations underwent and the consequent pain, discomfort and suffering.

8.1 Similarly, loss of amenities and happiness suffered by the claimant and his family members also depend upon various factors, including the position of the claimant post-accident and whether, he is in a position to enjoy life and/or happiness which he was enjoying prior to the accident. To what extent the claimant has lost the amenities in life and the happiness will depend on the facts of each case.

Therefore, in the facts and circumstances of the present case when the claimant is in coma even after a period of eight long years and that he will have to be permanently bedridden during his entire life, as observed above the amount of compensation awarded under the head loss of amenities and happiness of Rs.1,00,000/- only is unreasonable and meagre."

12. In view of above, it is very much clear that the compensation regarding loss of amenities of life depends upon the facts and circumstances of each case. While awarding the same, this Court must kept in mind multiple factors such as injuries suffered and the effect caused by these injuries, since the effect would not only limited to the appellant alone but to his whole family members. In the present case, the loss of service of the appellant had caused a great loss to him and his family members, who were dependent upon him, as he was relieved from service without any subsistence. Therefore, this Court is of the view that the appellant must be awarded much more compensation than the one awarded in the other injury cases.

SETTLED LAW ON COMPENSATION

13. Hon'ble Supreme Court has settled the law regarding grant of compensation with respect to 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)].

14. 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."

15. 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:*
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> *(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

16. In view of the above, the present appeal is allowed and award dated 06.02.2007 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:-

Income	Rs.8389/- per month
Future Prospects @50%	Rs.4195/- (8389X50%)
Annual Income	Rs.1,51,008/- (12584 X12)
Loss of future earning on account of 50% disability	Rs.75,504/- (50% of 151008)
Multiplier of 16	Rs.12,08,064/ (75504X16)
Pain and suffering	Rs.1,50,000/-
Attendant Charges	Rs.10,000/-
Transportation Charges	Rs.10,000/-
Loss of amenities of life	Rs.4,00,000/-
Special Diet	Rs.20,000/-
Total compensation awarded:-	**Rs.17,98,064/-**
Deduction:- Amount awarded by Tribunal	**Rs.25,000/-**
Enhanced amount of compensation	**Rs.17,73,064/- (1798064-25000)**

17. 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.

18. Respondent-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 to disburse the same to the appellant-claimant in his bank account. The appellant-claimant is directed to furnish the bank account details to the Tribunal.

19. Further Insurance Company is directed to disburse the current scheduled fee to Mr. Puneet Jain, Advocate, within a period of twenty days from the date of copy of this judgment, pursuant to order dated 18.07.2024 passed by this Court in FAO No.1682 of 2007.

20. Pending application (s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

May 08, 2025
Gaurav Arora

Whether speaking/non-speaking : Yes
Whether reportable : Yes