IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-2676-2006 (O&M)
Reserved on: 02.05.2025
Pronounced on : 06/ 06/ 2025

Santosh Kumari ......**Appellant**

Vs.

Pawan Kumar and others ......**Respondent(s)**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Mandeep Singh Sachdev and Mr. Om Malhan, Advocates for the appellant.

Mr. R.C. Kapoor, Advocate for the respondent-Insurance company.

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been preferred against the award dated 21.12.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Hoshiarpur (for short, 'the Tribunal') vide which the claim petition filed by the appellant/claimant-Santosh Kumari (since deceased), was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on the fateful day i.e. 18.05.2000, claimant/appellant-Santosh Kumari alongwith her son Rakesh Kumar and daughter in law Seema Kumari was coming towards Hoahiarpur in Maruti Car bearing registration No. PB-33-4366 being driven by Shah Ram-respondent No.4. When they reached in the area of village Gujran near ACC Cement Dump, a Tata 407 bearing registration No.

PB-10-AJ-9526 (hereinafter referred to as 'offending vehicle') being driven by respondent No.2 in a rash, negligent manner at a very high speed came from the opposite direction. The offending vehicle dashed into the car. As a result of which, the car was dragged by it towards other side, resulting into injuries to all the occupants of the car. The car was also totally smashed. The accident took place solely due to the rash and negligent driving of the offending vehicle by its driver. The injured were rushed to civil hospital Hoshiarpur. The driver of offending vehicle got registered false case against the driver of Maruti car of the appellant/claimant. Subsequently, all the injured namely Rakesh Kumar, Smt. Seema and Smt. Santosh Kumari were shifted to DMC, Ludhiana where they remained under treatment for a period of 1 ½ year.

3. Upon notice of the claim petition, respondents appeared and filed their separate written replies denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

> *1. Whether the claimant sustained injuries in motor vehicle accident which took place on 18.5.2000 at about 9.15 a.m. in the area of Chak Gujjran due to rash and negligent driving of truck bearing No. PB-10-AJ-9526 by Mukesh Kumar respondent No. 2? OPA.*
> *2. Whether respondent No.2 was not having any valid driving licence at the time of the accident? OPR-3*
> *3. Whether the claim petition has been filed in collusion with respondents No.4 and 5? OPR-3*
> *4. To what amount of compensation the claimant is entitled and from whom?OPA*
> *5. Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence, the claimant/appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellant contends that the claim petition was dismissed only on the ground that negligence of the driver of offending vehicle- Tata 407 bearing registration No.PB-10-AJ-9526 was not proved. He further contends that the factum of accident is proved by evidence on record and the accident is admitted by respondents No.1 and 2 i.e. owner and driver of TATA-407 bearing registration No.PB-10-AJ-9526. Therefore, even if the negligence was contributory qua drivers of both vehicles, the claim petition of appellant/claimant could not have been dismissed and compensation should have been granted. Therefore, he prays that the present appeal be allowed and compensation be granted as per settled law.

7. *Per contra*, learned counsel for the respondent-Insurance Company vehemently argues on the lines of the award and submits that no complaint or FIR was lodged by the claimant/appellant against driver (respondent No.2) of TATA-407 or driver of the car (respondent No.4). He further submits that FIR No.116 dated 18.02.2000 was lodged against the driver of the Maruti Car (respondent No.4). The driver of Maruti car-respondent No.4 was acquitted in the said FIR on 14.01.2002 and it is only thereafter on 15.02.2002, the claim petition was filed. He further contends that when the appellant/claimant came to know that the Maruti car bearing registration No.PB-33-4366 is not insured, he filed the claim petition seeking compensation from the respondents. Therefore, he prays that the present appeal be dismissed.

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

9. The relevant portion of the award is reproduced as under:-

*" **Issue No.1 and 3***

15. Both these issues being interwoven have been taken up together to avoid repetition of discussion and further that the findings or observation made with regard to these issues have got bearing on the findings of one another. Onus to prove issue No.1 lies upon the claimants whereas onus to prove issue No.3 is on the respondents. In order to prove that accident occurred due to the rash and negligent driving of Tata 407 PB-10-AJ-9526 by its driver respondent No.2, it has been submitted by learned counsel for the claimants Sh. M.P.Singh that the claimants have examined all the three claimants namely Rakesh Kumar, Smt. Seema and Smt. Santosh Kumari AW-6 to AW-8 respectively. They were occupants of the car which met with an accident and all the three sustained injuries. Even they remained under treatment for a sufficient long time in DMC Ludhiana as well as in some other private hospitals. Since these witnesses sustained injuries, they can be termed to be stamped witnesses. The case of the present claimants right from the beginning is that when they were coming towards Hoshiarpur in a maruti car bearing registration No. PB-33-4366 and reached in the area of village Chak Gujran near ACC Cement Dump at about 9.15 a.m. truck Tata 407 was bearing registration No. PB-10-AJ-9526 being driven by Mukesh Kumar respondent No.2 at a high speed and in a rash and negligent manner came from the opposite direction and the driver of truck struck the same against the car, as a result of which, car was dragged towards other side resulting into injuries to all the occupants i.e. the present claimants. Besides this, the car was also badly damaged. It has further been categorically unfolded in the claimant petition as well as in the statements made by the *aforesaid witnesses namely Ramesh Kumar, Seema and Smt. Santosh Kumari that there was no negligence on the part of the car driver but despite that fact respondent No.2 driver of Tata 407 succeeded in getting false case registered against the driver of the car respondent No.4. Shah Ram, in which, he was subsequently acquitted as the prosecution in the said case could not establish any rashness and negligence on the part of respondent No.4. AW-6 Rakesh Kumar, AW-7 Smt. Seema and AW-8 Smt. Santosh Kumari have specifically attributed rashness and negligence in causing accident on the part of truck driver i.e. Mukesh Kumar respondent No.2. Besides it, statement of Mukesh Kumar, who appeared in the witness box as RW-1 is also relevant and corroborates the version of the claimants. In the examination in chief, he has deposed that on 18.05.2000 at about 9.15 a.m., he was going from Hoshiarpur to Jalandhar while driving Tata 407 bearing No. PB-10-AJ-9526 and reached near ACC Cement Dump in the area of village Chak Gujran, one tractor was coming and when he tried to over take said tractor, a maruti car came immediately after the tractor and Tata 407 struck against the said car and accident took place and further that the accident had taken place due to sudden coming of truck in front of him. He has not attributed any rashness and negligence on the part of the car driver. There is no rebuttal to the evidence adduced by the claimants referred to above which fully establishes the fact that the accident took place due to the rash and negligent driving of Tata 407 by respondent No.4.*

16. It has further been submitted by the learned counsel for the claimants that there was not an iota of evidence adduced by Respondent No.3 Insurance Company that instant claim petitions have been filed by the claimants in connivance with respondents No.4 and 5. Mere pleadings without any substantive evidence is not sufficient to hold that there is or was collusion in between the claimants and respondents No.4 and 5. The claimants Rakesh

Kumar, Seema and Smt. Santosh Kumari have rightly deposed before the learned Magistrate in a case registered against Shah Ram respondent No. 4 at the instance of Mukesh Kumar that Shah Ram was not rash or negligent and he did not play any role resulting into accident. The mere fact that instant claim petitions have been filed after the acquittal of Shah Ram respondent No.4 in aforesaid criminal case in respect of which FIR Ex.A-1 was registered is itself no ground to show any collusion in between the claimants and respondents No.4 and 5 especially in the circumstances after the amendment of the provisions of the Motor Vehicle Act. There is no limitation in filing claim petition. Present claimants filed claim petition after they recovered from the injuries. So, the delay if any in filing the claim petition is not fatal to the case of the present claimants.

17. These arguments have been controverted by the learned counsel for respondent No.3 Sh. V.K. Gupta Advocate contending that the claimants have miserably failed to establish either rashness and negligence on the part of respondent No.2 driver of Tata 407 or that they have approached the court with clean hands. Some dates are relevant to be noted to establish connivance or collusion in between the claimants and respondents No.4 and 5. The collusion or connivance cannot be proved by way of direct evidence and the circumstances which point out towards the collusion are to be taken into consideration. The accident in the case in hand took place on 18.05.2000 in the area of village Chak Gujran falling in police station, Sadar, District Hoshiarpur and FIR No. 116 dated 18.5.2000 was promptly registered against the driver of car No. PB-33-4366, in which the claimants were travelling at the time of accident under section 279/337/338/427 IPC, copy of which is Ex.A-1 on the same day at 12.30 p.m. at the instance of Mukesh Kumar driver of Tata 407. Respondent No.4 Shah Ram driver of the car aforesaid was acquitted by the learned Magistrate in the aforesaid case on 14.01.2002 for want of *evidence as neither claimants namely Rakesh Kumar, Smt. Seema and Smt. Santosh Kumar deposed against him supporting version contained in the FIR nor Mukesh Kumar who got the FIR registered and subsequently, the instant claim petitions were preferred on 15.02.2002. Necessary permission under section 170 of the Motor Vehicle Act has already been granted to the Insurance Company by the learned Tribunal vide order dated 28.7.2004. The statements of Rakesh Kumar AW-6, Seema AW-7 and Smt. Santosh Kumar AW-8 particularly the cross examination fully spells out collusion or connivance with respondents No.4 and 5. Rakesh Kumar has categorically admitted that he as well as his mother Santosh Kumar and wife Seema made statements before the criminal court in a criminal case registered against Shah Ram respondent No.4 that there was no negligence on the part of Shah Ram at the time of accident and the accident took place due to the negligence of the truck driver. Similar statements was made by Seema and Smt. Santosh Kumar, as a result of which the driver of the car was acquitted, after their statements. It is also admitted fact that car in question was not insured at the time of accident. AW-7 Seema though initially denied the registration of any case or initiation of any criminal proceedings in respect of the accident and with regard to her appearance in the court as a witness but subsequently, she admitted that she appeared as a witness to depose in favour of car driver and further that car driver was acquitted after her statement recorded by the Court in the State Case. She has also admitted that the car in question was not insured at the time of accident. AW-8 Smt. Santosh Kumari while subjected to cross-examination has stated that her statement was recorded by the police but no FIR was registered by the police in respect of the accident and further that she did not appear as a witness in any court. All these three AWs have categorically deposed that there was no tractor trolley in front of their car at the time of accident. Not only this, Mukesh Kumar respondent No.2* *while appearing in the witness box as RW-1 has also sided with the claimants and absolutely retracted from the version unfolded by him to the police at the time of registration of the FIR, copy of which is Ex.A-1. So from the aforesaid facts and circumstances, it clearly emerges that instant claim petitions are nothing but an outcome of collusion in between the claimants and the respondents No.4 and 5 especially in the circumstances that car in question was not insured at the time of accident and further that the FIR was registered against the car driver in causing accident. So it cannot be said that the accident occurred due to rash and negligent driving of truck by its driver. Therefore, the claim petitions are not maintainable on this score alone and are liable to be dismissed with special costs.*

18. I have weighed the rival contentions of the learned counsel for the parties and have minutely scanned the evidence on the file.

19. It is an undisputed fact that the accident occurred in the area of village Chak Gujran, in which all the three claimants sustained injuries and remained admitted in DMC Ludhiana for treatment and further that the FIR was registered on the basis of the statement of Mukesh Kumar respondent No.2 driver of truck Tata 407 against Shah Ram driver of car PB-33-4366.

20. It would be pertinent to mention here that instant claim petitions have been preferred by claimants seeking compensation under section 166 of the Act in which it is incumbent upon them to establish rashness and negligence on the part of the driver of the offending vehicle and to establish the same. The claimants have themselves appeared in the witness box as AW-6 to AW-8 respectively. After registration of the FIR Ex.A1 against Shah Ram respondent No.4 driver of the car in question neither the driver nor the present claimants ever lodged any protest to the effect that *driver of the car has been involved falsely in the case registered against him for causing accident. Rather, they kept mum in this regard. The driver was arrested and was subsequently bailed out. He faced trial but ultimately acquitted on 14.01.2002. He was acquitted as none of the present claimants nor the other witnesses supported the prosecution version unfolded in the FIR copy of which is Ex.A1. All the three claimants namely Rakesh Kumar, Seema and Smt. Santosh Kumar while appearing in the witness box as AW-6 to AW-8 respectively and subjected to cross-examination have categorically admitted that they did not depose against Shah Ram respondent No.4 and ultimately, after recording their statements in the court, Shah Ram respondent No.4 was acquitted. No effort was also made by the present claimants to lodge any complaint with the SSP or any other senior police officers that in fact the accident did take place due to the rashness and negligence on the part of Tata 407 driver and this fact was disclosed by the claimants for the first time while filing claim petitions, which admittedly have been filed after the acquittal of Shah Ram respondent No.4. It is also an admitted fact that car in question was not insured on the day of accident and it appears that due to this reason they did not lodge any protest with any senior officer of police and also did not file claim petitions prior to the acquittal of Shah Ram respondent No.4. No doubt, there is no limitation at present prescribed for filing the claim petition from the date of accident and it can be preferred at any time but the sequence of events and circumstances is itself suggestive of the fact that claimants waited for the acquittal of respondent No.4 and then preferred the instant claim petition. Not only this, this Tribunal will not hesitate to record that even Mukesh Kumar respondent No.2 driver of Tata 407 truck was also prevailed upon by the present claimants. He also deviated from the contents of the FIR Ex.A-1 while appearing in the witness box as RW-1 in which, the rashness and negligence was specifically attributed on the part of*

Shah Ram respondent No.4 i.e. driver of Maruti car in causing accident. Even Mukesh Kumar also deviated from the contents of the written statement filed by him while appearing in the witness box as RW-1, in which, it has been specifically pleaded that accident had taken place on account of rash and negligent driving of respondent No.4 whereas he twisted the aforesaid facts by stating that the accident had taken place due to the sudden coming of the tractor in front of him or that there was no fault of any of the parties and the accident occurred due to sudden intervention of tractor trolley which was going in between. So from the statement of Mukesh Kumar, it cannot be inferred that the accident had taken place due to negligence on his part. It would also not be out of place to mention here that Mukesh Kumar was not subjected to any effective cross-examination Sh.M.P. Singh, Advocate representing the claimants with regard to the accident. No suggestions has been given to him that FIR was falsely registered by him against Shah Ram or that the accident took place due to his rash and negligent driving. So, from these facts and circumstances, it can be said that there is collusion in between the claimants and respondents No.4 and 5 and even the claimants appear to have prevailed upon respondent No.2 when he appeared in the witness box as RW-1. So, issue No.1 is decided against the claimants whereas issue No.3 is decided in favour of Respondent No.3 Insurance Company.

10. Upon careful perusal of the impugned award, it is evident that the learned Tribunal committed a manifest error in dismissing the claim petition solely on the purported ground of collusion between the appellant/claimant and respondents No. 4 and 5, namely the driver and owner of the Maruti car. The reasoning given by the learned Tribunal appears to be speculative and unsupported by cogent evidence on record.

11. It is a matter of record, and indeed undisputed, that the accident in question occurred involving Maruti car bearing registration No.PB-33-4366 and Tata 407 bearing registration No.PB-10-AJ-9526, as a consequence of which the appellant/claimant sustained grievous injuries. It is equally uncontroverted that all three occupants (present appellant alongwith her son and daughter-in-law) of Maruti car suffered injuries necessitating prolonged medical treatment and hospitalization.

12. The appellant/claimant has unequivocally attributed the cause of the accident to the rash and negligent driving of the Tata 407 (offending vehicle) by respondent No.2 (Mukesh Kumar). Significantly, the appellant/claimant, in a candid and transparent manner, also arrayed the driver and owner of the Maruti car as party-respondents to the claim petition. This act reflects their intention to facilitate a just adjudication of the issue of liability, whether exclusive or contributory in nature.

13. However, instead of rendering a reasoned finding on the core issue i.e. whether the accident was attributable to the negligence of one or both drivers or proceeding to apportion liability in accordance with the doctrine of contributory negligence, the learned Tribunal erroneously chose to dismiss the claim in toto. This approach of learned Tribunal is legally unsustainable and runs counter to the well-settled principles governing adjudication under Section 166 of the Motor Vehicles Act, 1988, which mandate that the learned Tribunal must assess the evidence on record and determine the liability of the parties, rather than rejecting a claim on speculative or extraneous grounds.

14. The testimony of the injured Rakesh Kumar (AW-6), who is also an eye-witness and injured victim, was detailed and consistent. Despite being

subjected to extensive cross-examination, his deposition remained unshaken and credible. Similarly, the testimonies of co-passengers and injured namely Smt. Seema (AW-7) and Smt. Santosh Kumari (AW-8) were also consistent and in consonance with AW-6-Rakesh Kumar, the present appellant. They categorically deposed about the rash and negligent manner in which the Tata 407 (offending vehicle) was driven and corroborated the sequence of events. Their depositions inspire the confidence of this Court and are not liable to be brushed aside merely because FIR Ex. A-1 was initially lodged by respondent No.2 (driver of Tata 407) against the respondent No.4 (driver of the Maruti car) and that during the criminal trial, the appellant/claimant had not attributed negligence on the part of driver of the Maruti car, which led to his acquittal.

15. The learned Tribunal, without pointing out any material contradiction or inherent improbability in the testimonies of eye witnesses i.e. AW-6-Rakesh Kumar, AW-7-Seema and AW-8-Santosh Kumari, discarded their version merely on conjectures and surmises.

16. It is well settled law that mere delay in lodging the claim petition or absence of a protest against an FIR does not by itself constitute evidence of collusion. The Hon'ble Supreme Court in ***Geeta Dubey v. United India Insurance Co. Ltd., 2024 INSC, 998***, has categorically held that the burden to prove collusion lies upon the insurance company and cannot be presumed merely from circumstances unless supported by concrete evidence. The relevant portion of the judgment ***Geeta Dubey*** (Supra) is reproduced as under:-

> *"22. Thirdly, the claimants having discharged the initial onus, if the insurance company had a case that there was collusion between the driver/owner of the truck and the claimants, it ought*

to discharge that burden. It is candidly admitted by the witness Raj Kumar Kachhwah that they had taken no steps in this regard.

23. As held in Sajeena Ikhbal (supra) and Bimla Devi (supra), we are convinced that on the principle of preponderance of probability, the claimants have established the involvement of vehicle bearing registration no. MP-19-HA-1197. The insurance company having set up a specific plea of collusion has not established the same. As was held in Bimla Devi (supra), here too, we feel that there was no reason for the police to falsely implicate the vehicle concerned in the matter and launch prosecution against the driver. If the insurance company had suspected collusion, they would have taken steps to file appropriate complaints including moving the higher police authorities or the court to order an investigation into the alleged wrongful involvement of the vehicle. There is no case for the insurance company that the police officer also colluded. The investigation by the police has resulted in charge-sheet being filed.

17. In the instant case, apart from vague assertions, no substantive or cogent evidence was led by the insurance company (respondent No.3) to establish collusion between the claimant/appellant and respondents No. 4 &5.

18. Furthermore, the testimony of RW-1 Mukesh Kumar (driver of Tata 407, offending vehicle) is itself contradictory. In the FIR (Ex. A-1), he attributed negligence to the driver of the Maruti car, however, during his deposition before the Tribunal, he gave a different version, blaming sudden appearance of a tractor trolley. These material contradictions render his testimony unreliable and incapable of rebutting the direct and cogent evidence led by the claimant/appellant.

19. Medical evidence too corroborates the version of the appellant/claimant. AW-9 Dr. Anil Kumar deposed regarding the injuries

suffered by the appellant/claimant and her treatment. AW-2 Daljit Kaur, a Clerk from the Civil Hospital, Hoshiarpur also proved the bed tickets (Ex. A2 to A6) and MLR of the appellant/claimant. This documentary evidence establishes that the appellant/claimant was hospitalized for a substantial period, substantiating her claim of having sustained injuries in the accident.

20. In light of the above discussion, this Court is of the considered view that the finding of the learned Tribunal regarding collusion is based on mere assumptions and not borne out from the evidence on record. The consistent, credible and unimpeached testimonies of the eye-witnesses duly corroborated by medical and documentary evidence, clearly establish that the accident was caused solely due to the rash and negligent driving of Tata 407-offending vehicle by Respondent No.2 (Mukesh Kumar).

21. Consequently, the impugned award dated 21.12.2005 is hereby set aside. It is held that the accident in question occurred due to the rash and negligent driving of the Tata 407 bearing registration No. PB-10-AJ-9526 by Respondent No.2 (Mukesh Kumar). Therefore, the appellant/claimant is entitled to compensation as per settled law.

22. With respect to determination of compensation, the record contains evidence of hospital admission, the claimant's earning and expenses incurred for medical treatment and hospitalization. Consequently, this Court shall adjudicate the compensation in accordance with the documentary evidence on the record.

<u>SETTLED LAW ON COMPENSATION</u>

23. 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 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.

xxx xxx xxx xxx

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)].

24. 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."*

25. 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:

1. *Pain, suffering and trauma resulting from the accident;*
2. *Loss of income including future income;*
3. *The inability of the victim to lead a normal life together with its amenities;*
4. *Medical expenses including those that the victim may be required to undertake in future; and*
5. *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

26. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 21.12.2005 is hereby set aside. The appellant-claimant is entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation awarded
1.	Medical expenses	Rs.20,000/-
2.	Pain and suffering	Rs.40,000/-
3.	Transportation charges	Rs.20,000/-
4.	Attendant Charges	Rs.15,000/-
5.	Loss of Amenities of life	Rs.40,000/-
6.	Special diet	Rs.20,000/-
	Total Compensation	Rs.1,55,000/-

27. **CM-1680-CII-2025** was filed by legal representatives of the appellant/claimant-Santosh Kumari seeking their impleadment in present appeal consequent to her demise. Vide order dated 14.02.2025, the same was allowed and legal representatives of the deceased-appellant were brought on record.

28. Now, it is settled law that Motor Vehicle Accident Claim does not abate on the death of injured claimant. Reference at this stage, can be made to the judgment passed by this Court in FAO-2351-2006 titled as ***Baldev Singh and others Versus Gursewak Singh and others***. The relevant extract of the same is reproduced as under:-

> *"10. The pivotal issue for consideration before this Court is:-**"Whether the right to claim compensation under the Motor Vehicles Act survives to the legal representatives of the injured***

claimant upon his death during the pendency of the claim petition?"
11. This issue is no longer res integra and stands conclusively settled by the Hon'ble Supreme Court in The ***Oriental Insurance Co. Ltd. v. Kahlon @ Jasmail Singh, 2021 (4) RCR (Civil) 1*** *wherein the Hon'ble Court held that a claim petition filed under the Motor Vehicles Act does not abate upon the death of the injured claimant, and that the legal heirs of such a claimant are entitled to prosecute the claim and receive compensation."*

29. In light of the aforementioned judgment of Hon'ble the Apex Court, as followed by this Court in ***Baldev Singh*** (supra), the legal representatives of deceased/appellant are held entitled to receive the compensation.

30. 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 Nadu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the appellant-claimant is granted the interest @ 9% per annum on the amount of compensation from the date of filing of claim petition till the date of its realization.

31. Now coming to the findings so rendered by the Learned Tribunal on issues No. 2 and 4. The issues No.2 and 4 were framed as under:-

> Issue No.2 "*Whether respondent No.2 was not having any valid driving licence at the time of the accident? OPR-3 and*
> *Issue No. 4 "To what amount of compensation the claimant is entitled and from whom?"*

No findings with regard to above issues were rendered by learned Tribunal. Consequently, the matter is remanded to the Ld. Tribunal to decide issues No.2 and 4 afresh, preferably within a period of three months on day to day basis from the date of receipt of copy of this judgment. The parties are directed to appear before the Tribunal on 18.07.2025.

32. Upon deciding of issues No.2 and 4, the respondent who is held liable to pay the compensation, shall deposit the amount calculated by this Court with learned Tribunal within 45 days from the date of decision by the learned Tribunal. The learned Tribunal shall disburse the said amount of compensation in equal shares in the accounts of Legal Representatives of deceased-Santosh Kumari/appellant. The legal representatives are directed to furnish their bank accounts details to the learned Tribunal.

33. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. R.C. Kapoor Advocate, for Insurance Company-respondent No.3, within a period of 20 days from the date of receipt of the copy of this judgment, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, by this Court forthwith.

34. Registry is directed to send a copy of this judgment to the Ld. Tribunal alongwith original record, if received, in this Court forthwith.

35. All the pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

06/06/2025
sonia arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes / No