

**104+221****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO-1976-2010 (O&M)****Date of Decision : 09.01.2025**

Ashok Kumar

... Appellant(s)

Versus

Subhash Prashad & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Ekta Thakur, Advocate for the appellant.

Mr. Ravinder Arora, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the claimant-appellant aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal') vide the impugned Award dated 10.08.2009.

2. Brief facts relevant to the present *lis* are that the claimant-appellant herein, who was working with Chawla Dry Cleaners, was going on a scooter bearing registration No.CH-01-W-5469 on 01.01.2006 at about 09.20 pm from Sector 30 to Sector 20 Chandigarh and when he reached near Police Booth Sector 30, Chandigarh, a Canter bearing registration No.CH-01-Y-8869, which was being driven by respondent No.1, came from behind and hit the scooter, as a result of which the claimant-appellant received serious injuries and was admitted in the Intensive Care Unit (ICU) of Government Medical College and Hospital, Sector 32 Chandigarh for almost a month. The claim petition was contested by the respondents. The Tribunal vide the impugned award awarded the following compensation :

Sr. No.	Head	Amount
1	Actual expenses	₹96,800/-
2	Pain and Agony	₹10,000/-
3	Conveyance, Special Diet and attendant charges etc.	₹7,000/-
4	Permanent disability	₹70,000/-
5	Total	₹1,83,800/-
	Interest	6%

3. Learned counsel for the claimant-appellant would contend that the claimant-appellant received injuries to the collar bone, right hand, ribs and his right elbow was plastered and as a result he had suffered 35% permanent disability and has been diagnosed as a case of “*malunited fracture (L) distal humerous with fracture (R) radial & (R) ulna with severe restriction of elbow movements*”. It is further the contention of the learned counsel that the claimant-appellant was working as a Pressman with Chawla Dry Cleaners which fact was fortified by Parminder Singh Chawla – PW3 who placed on record a copy of the ledger (Ex.P81). It was stated by the said witness that the claimant-appellant was earning ₹5,000/- per month while working as a Pressman with him. The learned counsel would further contend that the amount of compensation ought to have been awarded by applying a multiplier method as laid down by the Supreme Court in the case of **Pappu Deo Yadav vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** as post the accident the claimant-appellant is unable to carry out his work of Pressman. It is further the contention of the learned counsel that a consolidated amount of ₹7,000/- has been awarded towards attendant charges, special diet and conveyance etc., which is on the lower side. It is

further the contention of the learned counsel that the amount of ₹10,000/- awarded by the Tribunal under the head 'Pain and Agony' is also on the lower side.

4. *Per contra* the learned counsel for respondent No.3-Insurance Company has contended that though it has come in the evidence that the claimant-appellant was working as a Pressman, however, there is no averment in the claim petition that he was a Pressman. It is further the contention of the learned counsel that no doctor was examined by the claimant-appellant to show that he cannot do the work of a Pressman. It is further the contention of the learned counsel that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

5. I have heard the learned counsel for the parties.

6. In the present case the claimant-appellant received injuries to his right hand, ribs and his right elbow was plastered. As per the Disability Certificate (Annexure P-5), the claimant-appellant has been diagnosed as a case of "*malunited fracture (L) distal humerous with fracture (R) radial & (R) ulna with severe restriction of elbow movements*" and he is stated to be permanently disabled by 35% with respect to his right upper limb. The said Disability Certificate has been issued by the Government Medical College and Hospital, Sector 32, Chandigarh where the claimant-appellant was admitted. It has also come on the record that the claimant-appellant was on the ventilator in the ICU and remained in hospital for a period of one month.

PW3-Parminder Singh Chawla had stepped into the witness box and

deposed that the claimant-appellant was working with him as a Pressman and was earning ₹5,000/- per month. Even in his own statement the claimant-appellant has stated that he was working as a Pressman. Further still, Parminder Singh Chawla, when stepped into the witness box as PW3 had brought on record the original ledger also and a photocopy thereof was placed on the record as Ex.P81. No suggestion has been given to either of the witnesses that the claimant-appellant was not working as a Pressman. Dr. Rohit Jindal stepped into the witness box as PW4 and stated that he was a member of the Medical Board and that there was a permanent disability to the extent of 35% with severe restriction of the elbow movements. In the claim petition it was clearly stated that the claimant-appellant was working with Chawla Dry Cleaners and was earning ₹5,000/- per month. In view thereof, the argument of the learned counsel for respondent No.3-Insurance Company that there was no averment in the claim petition that the claimant-appellant was working as a Pressman and, hence, he cannot be treated as a Pressman, stands rejected.

7. Hon'ble the Supreme Court in the case of **Pappu Deo Yadav** (supra) has held as under :

“12. In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the Pranay Sethi principle).

13. The factual narrative discloses that the appellant, a

20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High Court re-assessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity.”

8. In view of the law laid down in the case of **Pappu Deo Yadav** (supra), a multiplier method is applied in the present case keeping in view the permanent disability suffered by the claimant-appellant.

9. In the present case, the claimant-appellant was working as a Pressman with Chawla Dry Cleaners and was earning ₹5,000/- per month and, hence, his income is assessed as ₹5,000/- per month. At the time of the accident, the claimant-appellant was 50 years of age, hence, a multiplier of ‘13’ would be applicable. The Tribunal has only awarded a consolidated amount of ₹7,000/- towards attendant charges, special diet and conveyance etc. The claimant-appellant was admitted in the ICU of the GMCH, Sector 32, Chandigarh and was on the ventilator and remained hospitalized for a period of one month and he would have required two attendants. The minimum wages of an unskilled worker at the relevant point of time were ₹114/- per day thereby ₹3,420/- per month and hence an amount of ₹6,840/- (₹3,420x2x1) is awarded towards attendant charges. Further, an amount of ₹20,000/- is awarded towards special diet and ₹10,000/- towards conveyance. Further, keeping in view the fact that the claimant-appellant received grievous injuries and remained admitted in hospital for a month, the amount of ₹10,000/- awarded by the Tribunal under the head ‘Pain and Agony’ is also on the lower side and the same is enhanced to Rs.2,00,000/-. The amount of ₹96,800/- awarded by the Tribunal towards medical bills/expenses is maintained. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹5,000/-
2	Annual Income	[₹5,000 x 12] = ₹60,000/-
3	Loss of annual Income on account of 35% permanent disability	₹21,000/-

4	Loss of income after applying multiplier ‘13’	[₹21,000 x 13] = ₹2,73,000/-
5	Pain and suffering	₹2,00,000/-
6	Attendant Charges	₹6,840/-
7	Special Diet	₹20,000/-
8	Conveyance	₹10,000/-
9	Medical bills/expenses	₹96,800/-
	Total Compensation	₹6,06,640/-

10. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the claim petition till the realization of the entire amount.
11. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal stands modified accordingly. Pending applications, if any, also stand disposed off.

09.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO