IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

106 **FAO-2400-2012 (O&M)**
Date of Decision : 14.01.2025

Sumitra Devi ....Appellant

VERSUS

Jairam @ Jag Parkash and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arvind Kumar Yadav, Advocate for the appellant.

Mr. Harsh Aggarwal, Advocate for respondent No.3.

<u>ALKA SARIN, J.</u> (Oral)

1. Present appeal has been preferred by the claimant-appellant aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as the 'Tribunal') vide award dated 04.02.2012 on account of the injuries received by her in a motor vehicular accident which took place on 18.11.2008, rendering her 100% disabled.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Compensation on account of expenses for getting medical treatment which includes hospitalization charges, expenses in purchasing medicines etc.	Rs.3,69,852/-

2	Compensation on account of pain and suffering and future prospects	Rs.50,000/-
3	Compensation on account of special diet	Rs.50,000/-
4	Compensation on account of attendant	Rs.10,000/-
5	Compensation on account of transportation charges	Rs.50,000/-
6	Compensation on account of disability to the extent of 100%	Rs.2,37,600/-
	Total Compensation	**Rs.7,67,452/-**
	Interest	**6% per annum**

4. Learned counsel for the claimant-appellant would contend that the compensation awarded by the Tribunal is on the lower side inasmuch as the income of the claimant-appellant has been assessed as Rs.3600/- per month as per the minimum wages whereas the claimant-appellant in the present case was a student of B.Com. final year. Relying on the judgment of this Court in **FAO-1386-2013 [Palwinder Kaur & Ors. vs. Surinder Singh & Ors.]** decided on 15.03.2024, where the notional income of the deceased, who was a student of 10+2, was assessed as Rs.10,000/- per month for an accident which took place in 2006, learned counsel for the claimant-appellant would contend that income of the claimant-appellant ought to have been assessed @ atleast Rs.15,000/- per month. It is further the contention that no amount has been awarded towards loss of future prospects and the multiplier has also wrongly been applied. It has further been contended that no amount has been awarded towards loss of amenities of life and loss of marriage prospects and that the amounts awarded under the heads pain and suffering, attendant charges, special diet and

transportation charges are also on the lower side. Learned counsel for the claimant-appellant has relied upon a judgment of the Hon'ble Supreme Court in the case of **Abhimanyu Partap Singh vs. Namita Sekhon & Anr. [2022 (3) RCR (Civil) 557]** to contend that the attendant charges ought to have been granted for life keeping in view the fact that the claimant-appellant herein is 100% disabled.

5. *Per contra* learned counsel for respondent No.3 has vehemently contended that income of the claimant-appellant has rightly been assessed, and that sufficient amount of compensation has already been awarded and there is no scope of any further enhancement.

6. Heard.

7. In the present case, it has been duly proved by way of cogent evidence by Dr. Ashok Saini, Medical Officer, General Hospital, Rewari who stepped into the witness-box as PW-7 that the claimant-appellant herein was 25 years of age at the time of accident and had suffered 100% disability due to a head injury with altered sensorium with bowel and urine incontinence. Ex.PW-7/A is her disability certificate. It has further come in the cross-examination, on a suggestion put by the respondents, that the disability is permanent and would not improve with the passage of time or physiotherapy.

8. In case of **Raj Kumar vs. Ajay Kumar [(2011) 1 SCC 343]** the Hon'ble Supreme Court had held as under :

> " General principles relating to compensation in injury *cases :*

5. The provision of the Motor Vehicles Act, 1988 (`the 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 vs. T. Kunhikuttan Nair - AIR 1970 Supreme Court 376, R.D. Hattangadi vs. Pest Control (India) Ltd. (1995) 1 SCC 551 and Baker vs. 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, hospitalisation, 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.*"

Then again in the case of **Jagdish vs. Mohan and Others [2018 (2) RCR (Civil) 308]** their Lordships of the Apex Court have held as under :

> " 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;*
>
> *(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.*"

In **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Co. Ltd. [2012(1) RCR (Civil) 509 : 2011 (12) SCALE 658]** this Court held:

> " *The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident."*
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> *In K. Suresh v. New India Assurance Company Ltd. 2013(1) R.C.R.(Civil) 312 : (2012)12 SCC 274, this Court adverted to the earlier judgments in Ramesh Chandra v. Randhir Singh (1990) 3 SCC 723 and B. Kothandapani v. Tamil Nadu State Transport Corporation Limited 2011(3) R.C.R.(Civil) 206 : (2011) 6 SCC 420. The Court held that compensation can be granted for disability as well as for loss of future earnings for the first head relates to the impairment of a person's capacity while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.*

In Govind Yadav v. New India Insurance Company Limited, 2011(4) R.C.R.(Civil) 817 : (2011) 10 SCC 683, this Court adverted to the earlier decisions in R.D. Hattangadi v. Pest Control (India) (Pvt) Ltd. (1995) 1 SCC 551, Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka 2009(3) R.C.R.(Civil) 174 : (2009) 6 SCC 1, Reshma Kumari v. Madam Mohan, 2009(3) R.C.R.(Civil) 908 : (2009) 13 SCC 422, Arvind Kumar Mishra v. New India Assurance Company Limited, 2010(4) R.C.R.(Civil) 917 : (2010) 10 SCC 254, and Raj Kumar v. Ajay Kumar, 2011(2) R.C.R.(Civil) 101 : (2011) 1 SCC 343 and held thus:

> *" 18. In our view, the principles laid down in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Raj Kumar v. Ajay Kumar must be followed by all the Tribunals and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and*

enjoy amenities, which he would have enjoyed but for the disability caused due to the accident." (Id at page 693)"

These principles were reiterated in a judgment of this Court in Subulaxmi v. MD Tamil Nadu State Transport Corporation, 2012(4) R.C.R.(Civil) 945 : Civil Appeal No. 7750 of 2012, decided on 1 November 2012 delivered by one of us, Justice Dipak Misra (as the learned Chief Justice then was)."

9. The accident in the present case took place on 18.11.2008. Hon'ble Supreme Court in the case of **Bishnupriya Panda vs. Basanti Manjari Mohanty [2023 ACJ 2393]**, where the accident took place on 27.07.2013, had assessed the notional income of a deceased student who was in 4th year of MBBS, as Rs.50,000/-. In the case of **Arjun Kumar Aggarwal vs. New India Assurance Company Ltd. [Civil Appeal No.3644-3645 of 2023 decided on 12.05.2023]**, the notional income of the injured therein was taken as Rs.29,166/- on the basis of an appointment letter. In the case of an engineering student in case of **Kandasami & Ors. vs. Lindabriyal & Anr. [2023 ACJ 1653]**, where the accident took place on 28.09.2008, the notional income was assessed as Rs.25,000/-. In view thereof, taking a conservative estimate as the date of accident in the present case is 18.11.2008, the notional income of the claimant-appellant is assessed as Rs.15,000/- per month.

10. Further, the Tribunal has not awarded any addition towards loss of future prospects. Hon'ble the Supreme Court in the case of **Pappu Deo Yadav vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** 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).*
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> *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."

11. In view of the principles as laid down by the Hon'ble Supreme Court in the case of **Pappu Deo Yadav** *(supra)*, 40% addition is to be made towards loss of future prospects. The claimant-appellant in the present case was 25 years of age at the time of accident and the Tribunal has wrongly applied a multiplier of '11' and hence a multiplier of '18' would be applicable.

12. The Tribunal has awarded an amount of Rs.10,000/- towards attendant charges. The Supreme Court in the case of **Abhimanyu Partap**

Singh *(supra)* had assessed the attendant charges for the injured who was totally confined to the bed as Rs.5000/- per month for whole life, calculating the compensation applying a multiplier of '18'. In the present case, the appellant is 100% disabled and requires an attendant 24x7. The minimum wages of an unskilled worker at the time of the accident i.e in the year 2008 were Rs.3,600/- per month and hence the claimant-appellant, who is totally confined to bed, would be entitled to an amount of Rs.7,77,600/- [Rs.3,600x 12x18 (multiplier)] towards attendant charges.

13. Further, the amount of Rs.50,000/- awarded under the head pain and suffering is enhanced to Rs.10,00,000/-. The amount of Rs.50,000/- awarded towards special diet is enhanced to Rs.2,00,000/-. The amount of Rs.50,000/- awarded under the head transportation is enhanced to Rs.1,50,000/-. The Tribunal has not awarded any amount towards loss of amenities of life and loss of marriage prospects. This Court deems it appropriate to award an amount of Rs.2,00,000/- towards loss of amenities of life and Rs.5,00,000/- towards loss of marriage prospects. The Tribunal has not awarded any amount towards future medical expenses. Keeping in view the condition and the disability of the claimant-appellant, she would require medical treatment for the rest of her life and therefore this Court deems it appropriate to award an amount of Rs.10,00,000/- towards future medical expenses. The amount of Rs.3,69,852/- awarded by the Tribunal towards medical expenses is maintained. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.15,000/-
2	Annual Income	[Rs.15,000 x 12] = Rs.1,80,000/-
3	Future prospects @ 40%	[Rs.1,80,000+72,000/-] = Rs.2,52,000/-
4	Loss of income after applying multiplier ‘18’	[Rs.2,52,000 x 18] = Rs.45,36,000/-
5	Pain and suffering	Rs.10,00,000/-
6	Special Diet	Rs.2,00,000/-
7	Transportation charges	Rs.1,50,000/-
8	Loss of Amenities of life	Rs.2,00,000/-
9	Loss of marriage prospects	Rs.5,00,000/-
10	Future medical expenses	Rs.10,00,000/-
11	Attendant Charges	[Rs.3,600 x 12 x 18] = Rs.7,77,600/-
12	Medical Bills	Rs.3,69,852/-
	Total Compensation	**Rs.87,33,452/-**

14. So far as the interest on the enhanced amount of compensation is concerned, it stands clarified that this Court has to modify the impugned award under all the heads as awarded by the Tribunal and thus, the amount as enhanced, shall carry interest @ 6% per annum from the date of filing of the present appeal. The interest awarded by the Tribunal vide the impugned award shall remain the same till filing of the present appeal so far as the compensation awarded by the Tribunal vide the impugned award is concerned.

15. In view of the above discussion, the present appeal is allowed and the impugned award passed by the Tribunal stands modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

14.01.2025
jk

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