IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-1157-2015 (O&M)

National Insurance Company Limited

...Appellant

VERSUS

Mandeep Singh and others

...Respondents

(ii) FAO-4442-2016 (O&M)

Mandeep Singh

...Appellant

VERSUS

Sanjeev Kumar and others

...Respondents

Date of Decision: February 25, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Neeraj Khanna, Advocate for
Mr.Ravinder Arora, Advocate
for the appellant (in FAO-1157-2015) and
for respondent No.3. (in FAO-4442-2016).

Mr.H.S.Rakhra, Advocate
for appellant (in FAO-4442-2016) and
for respondent No.1 (in FAO-1157-2015).

Mr.Digvijay, Advocate for
Mr.Rakesh Gupta, Advocate
for respondent No.3 (in FAO-1157-2015).

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ARCHANA PURI, J.

These are two appeals filed to assail the Award dated 27.08.2014 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted, on account of injuries sustained by Mandeep Singh, in a motor vehicular accident, which took place on 29.06.2012.

FAO-1157-2015 has been filed by the insurance company, thereby, seeking complete exoneration from the liability to pay the compensation worked upon by learned Tribunal.

FAO-4442-2016 has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation awarded by learned Tribunal.

For the convenience of discussion, the parties are referred to, as making appearance before learned Tribunal.

So far as, the factum and manner of taking place of the accident is concerned, none of the respondents, who have been fastened with the liability, have challenged the same. Respondents No.1 and 2, the driver and owner of the offending truck bearing registration No.PB-23F-1141, have not filed any appeal, to assail the same and the liability fastened upon them, which was joint and several, together with the insurance company. In fact, the insurance company has alone filed the appeal and that too, only to challenge the liability fastened upon it, to pay the compensation, worked upon by learned Tribunal.

The date of the accident, which is to be noticed is 29.06.2012.

Even though, it is the pleaded case of the claimant that he was earning Rs.4500/- per month as salary, from his indulgence as labourer in industries at village Harbanspura, Mandi Gobindgarh and he was earning Rs.10,000/- per month from dairy farming, but however, on appraisal of the evidence, brought on record, learned Tribunal had concluded about claimant-Mandeep Singh to be 21 years old and his earnings to be Rs.5000/- per month. Even though, as per the disability certificate, coming on record, the extent of disability was stated to be 50%, but however, learned Tribunal concluded about the disability of the whole of the body to be 25% and thus, worked upon the compensation as Rs.1250x18x12=Rs.2,70,000/-. Besides the same, considering the bills proved on record, had granted an amount of Rs.1,30,269/-, which was rounded off to Rs.1,30,270/-, towards medical expenses. Considering various other counts, the compensation was granted by learned Tribunal, which was worked upon in tabular form, which is reproduced as herein given:-

INJURY CASE

Age 21 years

Period of Hospitalization 25.6.2013 to 15.7.2013 21 days

Occupation – Factory worker

Sr.No.	**Heads of Claim**	**Amount (Rs.)**
1	Loss of income	10,000/-
2	Medical Expenses including medicines & Hospital charges	1,30,270/-
(i)	Attendant charges	7,000/-
(ii)	Special diet	10,000/-
3	Transportation	8,000/-
4	Pain & suffering @ Rs.10000/- per fracture + Rs.7500/- per surgery	17,500/-
5	Loss of amenity and earning capacity due to permanent disability.	Rs.2,70,000/-
6	**Total**	Rs.4,52,770/-

The respondents i.e. driver, owner and insurer, were together held jointly and severally, liable to pay the compensation, worked upon aforesaid.

Being aggrieved, the insurance company has filed the appeal, thereby, assailing the liability, so fastened upon it vide impugned Award and even, the claimant has filed an appeal, thereby, seeking enhancement of the compensation.

However, the compensation, worked upon aforesaid, do call for re-computation.

Before proceeding further, it is pertinent to mention that Courts ought to keep in mind that the amount of compensation worked upon, should be ‘just’. The statutory provisions of the Motor Vehicle Act, which is benevolent piece of legislation, clearly indicate that the compensation must be just and it cannot be bonanza, nor a source of profit, but the same should not be pittance also. The Courts are expected to have realistic approach and also have the duty to weigh various factors, to quantify the amount of compensation, which should be ‘**just**’. Every method or mode adopted for assessing the compensation, has to be considered, in the background of ‘just’ compensation, which is pivotal consideration.

If the victim of the accident suffers permanent disability, then efforts should always be made to award compensation, not only for the physical frame and treatment, but also for the loss of earnings and his inability to lead normal life and enjoy amenities, which he would have enjoyed, but for disability caused due to the accident.

The test for determining the effect of permanent disability, on future earning capacity involves the following three steps, as were laid down in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*** and reiterated in ***Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796***, as herein given:-

> *“13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal*

> *has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions, so that he continues to earn or can continue to earn his livelihood."*

Now, adverting to the case in hand. It is pertinent to mention that claimant-Mandeep Singh himself stepped into witness box as CW-2 and in his affidavit Ex.CW2/A, he has reiterated all the assertions made in the claim petition, about the manner of taking place of the accident and the injuries sustained by him. He categorically stated that he had sustained multiple grievous injuries upon his legs, left arm, major cut on lips and four front teeth were also broken and he received head injury, for which, he was hospitalized. Furthermore, he was taken to Civil Hospital, Fatehgarh Sahib and then, he was shifted to PGI, Chandigarh. He also proved admission and discharge card of PGI, which is Ex.C52 and proved medical bills Ex.C19 to C50. The operation bills of Gurpreet Hospital, Fatehgarh Sahib were proved as Ex.C53 and C54, receipt of test reports of PGI Ex.C1 to C18 and bills of Rlink Surgicals Ex.C51.

Furthermore, Gurmeet Singh, who is an eye witness to the accident, has also supported the version of the claimant. Also, claimant examined CW-3 Dr.Gurpreet Singh Padda, Orthopedics Surgeon, Gurpreet Hospital, who deposed about the admission of the claimant in their hospital on

13.12.2012 and that he was diagnosed to be case of non union of fracture, right tibia right side with dislocation of left elbow with supra condylar fracture of humerous and he was treated inter locking nail of right tibia with left elbow reconstruction and he was discharged on 15.12.2012. He also proved bill of the hospital, which is Ex.C54, bed head ticket Ex.C61 and follow up treatment and prescription slip Ex.C53.

Various other bills have been proved by way of examination of CW-4 Rakesh Sharma. Even, Dr.Parshotam Dass, has been examined as CW-6, who proved the disability certificate Ex.C66, wherein, the disability assessed was 50%.

However, taking the disability of only left upper limb and not qua the whole body, learned Tribunal, had assessed the disability as 25%, qua the whole body. No reason, as such, is assigned, in what manner, the disability was considered to this extent. One has to keep in mind that though the claimant had asserted himself to be also indulging in dairy farming, apart from labour work, but however, no evidence, as such, has come on record. In the given circumstances, his earnings are to be considered as that of a labourer. Considering this source of livelihood, it is pertinent to mention that close perusal of disability certificate Ex.C66, states about his case to be of locomotor disability and the extent of physical disability was assessed as permanent, that too, to the extent of 50%. It was a case of multiple fracture of both lower limbs and *united fracture of tibial shaft ®, tibial condylar (Rt), excision lateral condylar humerous, malunited fracture reaching head with dislocated elbow…*".

The kind of fractures, which the claimant had suffered, on various parts of his body, as detailed in the disability certificate, form the basis of the assessment of the permanent disability to the extent of 50%. It cannot be taken only qua left upper limb, as observed by learned Tribunal.

The impact of this extent of the disability, ought to be taken into consideration. It ought to be kept in mind that the claimant has been taken to be working as labourer and that being so, considering the kind of fractures he suffered, which had not properly healed and thus, resulted into permanent disability, has to be considered, as having huge impact upon his earning capacity. It is bound to prevent him or restrict him from doing labour work, in the same manner, as he was doing prior to the accident in question. He cannot be taken to be disabled to the extent of 25%, as observed by learned Tribunal. If not more, in the minimum, on account of multiple fractures suffered, his body functionality must have been badly affected, which must have reduced his capacity to work. Thus, in the minimum, the disability is ought to be taken as 50%, as assessed by the medical board.

Considering it to be so, the compensation has to be re-determined.

Taking the earnings of the claimant as Rs.5000/- per month, annual whereof comes to be Rs.60,000/-, addition on the count of 'future prospects' has to be made. Considering claimant to be 21 years old, at the relevant time, 40% addition has to be made, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, and thus, the earnings of the claimant comes to be Rs.6000+2400=Rs.84000/-.

Considering the disability to be 50%, the loss of earnings is taken as

Rs.84000-42000=Rs.42,000/-.

Considering the age of claimant Mandeep Singh, as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the appropriate and suitable multiplier to be applied is '18' and thus, the compensation is worked upon as Rs.42000x18=**Rs.7,56,000/-**.

Claimant Mandeep Singh, on account of the injuries sustained, must have passed through a very traumatic state of mind, while considering his future to have been jeopardised, on account of injuries sustained. Considering the same, on the count of 'pain and suffering', the compensation of Rs.17,500/- awarded by learned Tribunal, now stands enhanced to **Rs.50,000/-**.

On the count of 'transportation', the compensation of Rs.8,000/- awarded by learned Tribunal, is too meagre. Various rounds must have been made by the family members to the hospital to take care of the claimant and even, after discharge, various trips must have been made to the hospital, by the claimant for medical care. Considering the same, the compensation on the count of 'transportation' stands enhanced to **Rs.25,000/-**.

Obviously, during the period of treatment and some time thereafter, the claimant must have been put on special rich diet, for the healing process. On this count also, the compensation is enhanced to **Rs.25,000/-**.

Looking at the kind of injuries sustained by the claimant, he must have required constant help, to lead 'assisted living'. Considering the same, even though, he must have been looked after by his family members, but it is quite obvious that his family members ought to have taken care by diverting their own time, from any form of gainful employment, which could have generated some income. Considering the same, on the count of 'attendant charges', the amount granted by learned Tribunal, to the extent of Rs.7000/- is too meagre, which calls for enhancement and thus, stands enhanced to **Rs.25,000/-**.

Another amount of **Rs.1,30,270/-** is granted, on the basis of the medical bills, proved in evidence.

Thus, on various counts, as detailed aforesaid, the compensation to be granted to claimant Mandeep Singh, is re-computed, as herein given:-

1.	**Loss of earnings**	**Rs.7,56,000/-**
2.	**Pain and suffering**	**Rs.50,000/-**
3.	**Transportation charges**	**Rs.25,000/-**
4.	**Special diet**	**Rs.25,000/-**
5.	**Attendant charges**	**Rs.25,000/-**
7.	**Medical Bills**	**Rs.1,30,270/-**
	Total	**Rs.10,11,270/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.10,11,270-4,52,770=Rs.5,58,500/-**. On the enhanced amount of compensation, i.e. **Rs.5,58,500/-**, the claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the appeal, till realization of the enhanced amount of compensation.

Proceeding further, learned counsel for the insurance company has assiduously submitted that liability has been erroneously fastened upon the insurance company, as respondent No.1-Sanjeev Kumar was not holding valid and effective driving licence, at the time of accident in question. In this regard, learned counsel submits that learned Tribunal had not taken into consideration the verification report, which was submitted in evidence as Ex.R8 and therefore, it is submitted that at least, the insurance company ought to be absolved from the liability to pay the compensation, as worked upon. However, the aforesaid submission is not tenable.

Perusal of the record reveals that specific issue was framed by learned Tribunal, vis-a-vis, driver of the offending vehicle not holding valid and effective driving licence, at the time of accident. Onus to prove this issue was upon the insurance company. Harpal Singh, owner of the offending vehicle, had stepped into witness box as RW-1 and in his affidavit Ex.RW1/A, he has categorically stated about the employment of respondent No.1-Sanjeev Kumar s/o Bidhi Chand, as driver with him, about six years ago. He also further stated in the affidavit that at time of hiring respondent No.1 as driver, he had checked the driving licence of respondent No.1 and taken his driving test as well as imparted training. He was satisfied with respondent No.1 by showing his driving licence and his driving skills.

Though the said witness was subjected to lengthy cross-examination, but nothing material elicited out, to dislodge the version, as put forth by him, about the driving skills of respondent No.1. The driving licence of respondent No.1 has been proved by RW-1 Harpal Singh as Ex.R1. Qua the said driving licence, much emphasis has been laid by the insurance company, upon the driving licence verification report made by Dinesh Ch. Mudiar, who is the investigator of the insurance company. Therein, he stated about having obtained the verification of driving licence of Sanjeev Kumar and states that it was not issued by the DTO Nalbari.

However, it is significant to note that the investigator, as such, has not been examined by the insurance company. Only report made by the said investigator has been tendered into evidence. This in itself is not sufficient to discharge the onus upon the insurance company, to prove the driving licence to be not genuine.

Rather, from the testimony of RW-1 Harpal Singh, who is owner of the offending vehicle, it stands established that owner had taken sufficient caution before employing Sanjeev Kumar as driver. The insurance company could have summoned Sanjeev Kumar, on whose testimony, the things would have been straightened, vis-a-vis, holding of the driving licence, but however, no such steps have been taken by the insurance company. In the minimum, the insurance company ought to have examined the investigator and brought on record, the manner of any such report made by the concerned DTO, but no steps have been taken.

Learned counsel for the insurance company has raised the plea that RW-1 Harpal Singh, in cross-examination stated that he had not personally verified the genuineness of the driving licence and therefore, it is alleged that it was fake one. However, the aforesaid submission is not tenable.

In this regard, beneficial reference is made to ***Iffco Tokio General Insurance Company Ltd. vs. Geeta Devi and others, 2023(4) RCR (Civil) 854***, wherein, it was held that the insurance policy did not require the vehicle owner to undertake verification of the driving licence of the driver of the vehicle, by getting the same confirmed with the RTO. In this case, as evident from the testimony of RW-1 Harpal Singh, the owner had taken steps to be cautious enough to handover the vehicle to a person, who had the driving licence, which demonstrably is not fake one, on the face of it. Thus, there was no necessity, as such, for Harpal Singh, owner to make further enquiries as to its genuineness, while seeking verification report from the concerned DTO.

In fact, in the case in hand, as observed aforesaid, the insurance company had simply placed reliance upon the report made by the investigator, but on what basis it was so made, nothing as such, is coming on record. No steps have been taken to summon the record and verify about the issuance of the driving licence.

In the given circumstances, the insurance company, as such, has not discharged the onus, which was required and precisely, on this account, learned Tribunal has correctly fastened the liability upon the driver, owner and insurer of the offending truck, jointly and severally, to pay the compensation, as worked upon.

In the light of the aforesaid discussion, the appeal filed at the instance of the insurance company i.e. **FAO-1157-2015**, as such, is hereby dismissed. However, the appeal filed at the instance of the appellant-claimant i.e. **FAO-4442-2016** is hereby allowed.

February 25, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes/No