



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-4484-2013 (O&M)

Date of Decision: September 02, 2025

Ashok @ Chipa

...Appellant

VERSUS

Vishnu and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashish Gupta, Advocate
for the appellant.

Respondent No.1 ex-parte.

Service of respondent No.2 dispensed with.

Ms.Vandana Malhotra, Advocate
for respondent No.3.

ARCHANA PURI, J.

The appellant-claimant has filed the present appeal, thereby, questioning the adequacy of the compensation awarded to him by learned Motor Accident Claims Tribunal, on account of 'injuries' sustained by him, in a motor vehicular accident, more particularly, the deduction made to the extent of 50%, from the assessed compensation, made by learned Tribunal, on account of blameworthiness fastened upon the driver of the car, of which, the appellant was the occupant, at the relevant time of accident.

Suffice to consider, for the purposes of disposal of the present



appeal, that two vehicles were involved in the accident on 13.12.2009 i.e. one car bearing registration No.DL-6CG-3512 driven by Nitesh and another Turbo vehicle bearing registration No.HR-39A-7328 driven by respondent No.1-Vishnu.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about driver of both the aforesaid vehicles, to have contributed towards taking place of the accident and held the present appellant-claimant Ashok @ Chipa to be entitled to 50% of the compensation amount.

Be it noted that none of the persons, upon whom, the liability has been fastened, have challenged the Award. Suffice to consider that appeal has been filed by the appellant-claimant, only for seeking enhancement of the compensation and also questioning about the deduction made upon the assessed compensation, which he alleged to be inadequate.

After making such observation of deduction to the extent of 50%, out of the total amount of compensation, learned Tribunal, on appraisal of the evidence, more particularly, MLRs Ex.P50 and Ex.P53 as well as the disability certificate Ex.P54 and the medical bills coming on record, had assessed the compensation, which is reproduced in tabular form, as herein given:-

Mental and physical agony	Rs.15,000/-
Disability	Rs.1,25,000/-
Medical bills	Rs.3,12,316/-
Special diet, transportation and attendant charges	Rs.10,000/-
Total	Rs.4,62,316/-

However, considering the apportionment of blameworthiness, at



the behest of driver of both the vehicles to the ratio of 50:50, deduction to the extent of 50% was made, out of the compensation assessed and thus, compensation awarded was Rs.2,31,200/-.

Being aggrieved, the appellant-claimant has filed the present appeal.

Upon notice, the insurance company had made appearance through counsel.

Counsel for the parties heard.

For the purposes of disposal of the present appeal and more particularly, when no appeal has been filed by the respondents, upon whom the liability, as such has been fastened, suffice to consider that so far as, present appellant is concerned, who was occupant of the car, he had no role to play in taking place of the accident. It is a case of composite negligence and no blameworthiness, as such, could be fastened upon the appellant, being co-passenger of the car in question. That being so, the deduction, as such, made by learned Tribunal, out of the assessed compensation, is palpably erroneous.

The owner and insurer of the car bearing registration No.DL-6CG-3512, have not been impleaded as a party in the present case. Since, there are two vehicles involved, therefore, it is case of composite negligence. In such cases, the claimant is entitled to sue, both or any one of the joint tortfeasors and to recover the entire compensation, as liability of the joint tortfeasors is joint and several. However, the apportionment of the compensation between tortfeasors, vis-a-vis, the claim is not permissible. The claimant can recover at his option, whole damages from either of the



tortfeasors. Considering the same, the ‘work on’ of the compensation made by learned Tribunal, was not required to be reduced, on account of contributory negligence, having fastened upon the driver of the car, which was involved in the accident.

Considering the same and also considering the kind of evidence, coming on record, the ‘work on’ of the compensation, also do call re-determination.

At the very outset, it is pertinent to mention that the Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be ‘**justly**’ determined. A person therefore is not only to be compensated for the injury suffered in the accident but also for the loss suffered, on account of the injury and his inability to lead the life he led, prior to the life altering event. The Courts must always strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his/her life, on account of his/her physical disability. The Courts should always remain mindful of the fact that though, the physical disability may be on the lower side but the functional disability, on account of injury sustained, can always be on higher side.

The extent of economic loss, arising from the disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Supreme Court in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*. In



Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77, it has been held by the Court that the '**just**' compensation is adequate compensation and the Award must be just that-'**no less and no more**'.

Now, adverting to the case in hand. It is the pleaded case of the appellant that he was 30 years old, at the time of accident and he was indulging into supply of building material/bricks and earning Rs.15,000/- per month. On account of accident in question, firstly, he was got admitted in Jaipur Golden Hospital, where he remained admitted from 14.12.2009 to 06.01.2010 and thereafter, remained admitted in PGI, Rohtak from 08.01.2010 to 13.01.2010 and had undergone treatment, on account of injuries sustained in the accident in question. Various witnesses have been examined to prove the bills of the expenditure incurred on his treatment.

Even, Dr.V.K.Singh, Consultant Surgeon had been examined as PW-7, who deposed about the admission of the claim in the hospital and prove of MLR Ex.P50. On the basis thereof, he stated that patient Ashok had suffered fracture of right clavicle and right chest injury with haemopneumothrax. He also deposed that there were fracture of multiple ribs on the right side and fracture of zygoma of right side. There was a chest tube placed on the right plural cavity. There were multiple stitched wounds on his right side of face, right ear and head. There was deep penetrating injury over the right side of his neck, which was packed. There was no movement on the right upper limb. Sensation of right upper limb was also absent. He also deposed about the patient, having been resuscitated and was operated on the same day with the help of plastic surgery team and he was



put on ventilator post operatively till 27.12.2009.

Furthermore, the said witness also deposed that an amount of Rs.2,85,998/- was charged by their hospital from patient Ashok vide bill Ex.P49.

The claimant himself has also deposed about the manner of sustaining of the injuries and furthermore of the treatment undergone by him. He also deposed that he was working as building material supplier and used to earn Rs.15,000/- per month.

Besides the aforesaid, Dr.Kumud Sharma, Deputy Civil Surgeon, Jhajjar has been examined as PW-9, who deposed about the patient Ashok having been examined by the board of doctors, of which she was the Chairman, for the assessment of disability. She proved the disability certificate, which is Ex.P54 and permanent disability was assessed to be 80%, on account of post-traumatic brachial plexus injury right with flail right shoulder, elbow, wrist joint with restriction of brachial plexus M.R.I.

The total of the expenditure has been meticulously worked upon by learned Tribunal, while taking into consideration the testimonies of various witnesses, who proved the bills. Rs.2,85,998/- was the bill of Jaipur Golden Hospital. Certain bills were though proved in evidence, but however, since they formed part of the final bill Ex.P49, they were correctly discarded by learned Tribunal. Also, considering all the medical bills i.e. Ex.P1 to Ex.P5, Ex.P31 to Ex.46, Ex.48 and Ex.49, which co-related to the treatment undergone by the claimant, the compensation, on account of the expenditure incurred on the treatment to the extent of **Rs.3,12,316/-** has been correctly taken by learned Tribunal.



However, the most important aspect, which calls for consideration is assessment of the disability. The disability certificate has been duly proved by PW-9 Dr.Kumud Sharma. The assessment of disability is of 80%. However, much emphasis has been laid upon by learned counsel for the insurance company, upon the cross-examination of PW-9, wherein, the said witness had stated that the patient can move and can do daily routine work, but with some hurdle because injured Ashok is unable to do routine work with right hand and that the patient can speak and can do mental work.

Definitely, taking into consideration this part of cross-examination, coupled with testimony of PW-7 Dr.V.K.Singh, who had stated about the kind of injuries suffered by the claimant, of course, the body functionality of the appellant-claimant is bound to be affected. The impact of the said injuries has to be seen and there is bound to be decrease in body functionality of the appellant-claimant. This has to be taken into consideration.

The appellant was working as supplier of building material. Definitely, on account of his having no movement of right hand, his capacity to carry on the business, is bound to be reduced. In any case, he could not be doing the writing work, relating to the transaction of the business and therefore, he has to remain dependent upon others also. Furthermore, his movement, for the kind of work, he indulged into is bound to be affected, on account of reduction of his body functionality. Considering this impact of the injuries sustained by him, in modest estimate, the permanent disability, as such, is taken to be 40%.

Though, the earnings are claimed to be Rs.15,000/- per month, but no



material, as such, has come on record to establish specifically about this extent of earnings. In any case, making some guess work, very proximate to the reality, his earnings are taken as Rs.10,000/- per month

Looking at age of the appellant-claimant to be 30 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, 40% has to be added, on the count of 'future prospects'. Thus, the earnings of the injured-appellant comes to be Rs.10,000+4000(40%)=Rs.14,000/- and annual earnings comes to be Rs.1,68,000/-.

In consonance with *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '17' and also multiplying the same with 40% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as **Rs.1,68,000x17x40/100=Rs.11,42,400/-**.

Looking at the kind of injuries and duration of his hospitalization, definitely, the appellant-claimant, must have been put on special diet for healing process and he must have used conveyance and on account of use of conveyance 'to and fro' to the hospital, substantial amount must have been spent by the family of the appellant-claimant. During the period of his hospitalization and after discharge from the hospital also, the appellant must have been looked after by at least one attendant as there was need for 'assisted' living. Further also, there is bound to be need for assisted living, at least for some period of time in future, till the appellant-claimant, could adept himself to be self-reliant. All these facts have to be taken into consideration.



However, with regard to all the three aspects i.e. special diet, transportation and attendant charges, the total compensation awarded by Tribunal is Rs.10,000/-, which needs to be bifurcated separately and compensation has to be awarded separately. Thus, on the count of ‘special diet’, ‘transportation’ and ‘attendant charges’, the compensation is now granted to the extent of **Rs.30,000/-**, **Rs.50,000/-** and **Rs.1,50,000/-**, respectively.

On the count of ‘pain and suffering’(Mental and physical agony), the compensation awarded by learned Tribunal is on lesser side. However, looking at the factual situation aforesaid and considering the kind of injuries sustained as well as the period of hospitalization, the appellant-claimant must have suffered pain and remained under traumatic state of mind. Thus, the compensation awarded, on this count, stands enhanced to **Rs.1,00,000/-**.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Medical Bills	Rs.3,12,316/-
2.	Loss of earnings	Rs.11,42,000/-
3.	Special diet	Rs.30,000/-
4.	Transportation	Rs.30,000/-
5.	Attendant charges and	Rs.1,50,000/-
6.	Pain and suffering	Rs.1,00,000/-
	Total	Rs.17,64,716/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.17,84,716-2,31,200=Rs.15,33,116/-**. On the enhanced amount of the compensation i.e.



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Rs.15,33,116/-, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Consequently, the present appeal is allowed and the appellant-claimant is held entitled to the entire amount of compensation, as assessed aforesaid and the impugned Award is modified to this extent only.

September 02, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No