



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

FAO-840-2013 (O&M)

Date of Decision: February 13, 2025

Krishan Chand

...Appellant

VERSUS

Dinesh Kumar and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vijay Lath, Advocate
for the appellant.

Mr.Vishwajeet Bedi and Mr.Rahul Judge, Advocates
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, seeking enhancement of the compensation awarded by learned Motor Accident Claims Tribunal, on account of injuries sustained by him, in a motor vehicular accident, which took place on 23.03.2011.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about the accident to have taken place, on account of rash and negligent driving of car bearing registration No.CH-03E-3533, driven by respondent No.1-Dinesh Kumar.

So far as, the factum and manner of taking place of the accident as well as the liability fastened upon the respondents is concerned, it is pertinent to mention that none of the respondents, who have been saddled



with the liability, have filed any appeal. Thus, there is no necessity to further dwell on the aforesaid aspects.

Be it noted that the present appeal has been filed by the appellant-claimant, only for seeking enhancement of the compensation.

It is the pleaded case of the appellant-claimant that he was 50 years old, at the time of accident and he was indulging in the business of dairy farming as well as sale and purchase of buffaloes and earning Rs.20000-25000/- per month. It was further asserted that the appellant-claimant had suffered permanent disability, on account of injuries sustained in the accident in question.

To so substantiate his claim, the appellant-claimant himself stepped into witness box as PW-1 and reiterated his claim on oath. Furthermore, PW-2 Dr.Baljinder Gupta, has been examined, who deposed about himself to be working as Orthopedic Surgeon at Gurdev Hospital in the year 2011 and he, on the basis of the record, deposed that right leg and abdomen of the claimant were operated upon at Gurdev Hospital. Rod and plate were inserted in the thigh and leg of the claimant. He proved the medical bills Ex.P3 to Ex.P118. Furthermore, PW-3 Ram Lakhan has deposed about working as attendant with the claimant from 01.11.2011 and is getting Rs.3000/- per month.

Also, PW-4 Dr.Balbir Kumar, Medical Officer, Civil Hospital, Anandpur Sahib, has deposed about having examined the claimant for the purpose of assessment of the disability and on the basis of the record, he proved the disability certificate Ex.P2, wherein, it is stated that the claimant had suffered 50% temporary disability.



Taking into consideration the aforesaid evidence, brought on record and also considering the bills Ex.P3 to Ex.P118, learned Tribunal had granted Rs.1,85,000/- as medical expenditure and the transportation charges were assessed as Rs.5,000/-. Another amount of Rs.20,000/- was granted, on the count of 'pain and suffering'. Besides the same, Rs.5,000/- was granted towards 'special diet' and attendant charges were granted to the extent of Rs.5,000/-. With regard to the disability also, lumpsum amount of Rs.1,00,000/- was granted. Thus, in total, the compensation awarded by learned Tribunal was to the extent of Rs.3,20,000/-.

Before proceeding further, it shall be appropriate to make beneficial reference to the decision rendered in *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, wherein, the Hon'ble Supreme Court held that the '**just**' compensation is adequate compensation and the Award must be just that-'**no less and no more**'. Thus, there ought to be a genuine attempt made on the part of the Courts, to award **just compensation**.

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

The Courts should be mindful of the fact that though, the physical disability may be on the lesser side, but the functional disability, on account of injury sustained, can always be on higher side. The test for determining the effect of permanent disability, on future earning capacity involves



following three steps, as was 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.”

In this backdrop, adverting to the case in hand. It is pertinent to mention that on account of accident in question, the appellant-claimant had sustained grievous injuries, for which he remained admitted in Gurdev Hospital. Even, PW-2 Dr.Baljinder Gupta, who was posted as Orthopedic Surgeon at Gurdev Hospital, at the relevant time, deposed about having extended treatment to the claimant and he also stated about having operated on the right leg of the claimant and that rod and plate were inserted in the right leg and further also stated that chances of recovery were very less, as infection had taken place in the wound. He proved the medical bills Ex.P3 to P118. Even, PW-4 Dr.Balbir Kumar, who had examined the claimant, being member of the board of doctors, which had assessed the disability and also deposed about having examined claimant and proved the disability



certificate Ex.P2. He also deposed that as per medical inputs, there was very less chance of improvement. He further deposed that knee of the claimant was totally damaged.

Besides the same, the disability certificate proved on record reveals that there was 50% disability, but the doctor had also recommended for re-assessment, after a period of six months, but it was not re-assessed, till the passing of the Award. However, during the pendency of the appeal, by filing an application for additional evidence, subsequent disability certificate obtained after re-assessment of the disability, has come on record as Annexure-PX. Perusal of the same reveals that Krishan Chand-claimant was having ***NC injury(R) Knee and severe O Atrocthus and Shreting INCNTR 50% Fifty Percent permanent (physical impairment/visual impairment/speed & impairment).***

It is pertinent to mention that the genuineness of the said disability certificate was not disputed by the insurance company. Considering the recitals of the subsequent disability certificate, it is also important to make reference to cross-examination of PW-4 Dr.Balbir Kumar, who had initially examined the claimant for the purpose of assessment of the disability. He had stated in the cross-examination that there were very less chance of recovery of the claimant. He also deposed that without assistance, the claimant could not walk. Even, PW-2 Dr.Baljinder Gupta, who had extended treatment to the claimant, had stated that chances of recovery were very less.

Considering the entire evidence, the disability of the claimant is assessed to be 50%, which is permanent in nature.



However, learned Tribunal had not assessed the extent of compensation, on account of disability. Learned Tribunal, without making the assessment of extent of disability, had only granted on this count as Rs.1,00,000/-. However, it is not to be so done.

The extent of compensation, has to be worked upon, while taking into consideration the extent of disability and the earnings in the hands of the claimant. It is the specific claim of the appellant-claimant that he was indulging in the dairy business and was doing sale and purchase of buffaloes. He has so categorically stated, while in the witness box. Nothing, as such, came in the cross-examination to dislodge his version and therefore, there is no reason coming forth, to not rely upon the testimony of the claimant. Considering the vocation followed by the appellant-claimant, in modest estimate, the earnings of the claimant, at the relevant time, very close to the proximate reality, are taken as Rs.4,000/- per month.

To this amount, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, the addition also ought to be made on the count of 'future prospects', which considering the age of the appellant, ought to be 25%. Thus, the earnings of the appellant-claimant comes to be Rs.4000+1000=Rs.5000/- per month, annual whereof, comes to be Rs.60,000/-.

Considering the disability to be 50%, the loss of earnings is taken as Rs.60000-30000=Rs.30,000/-.

Considering the age of appellant-claimant, as per *Sarla Verma's case (supra)*, the appropriate and suitable multiplier is '13' and thus, the compensation is worked upon as Rs.30000x13=Rs.3,90,000/-.



The appellant-claimant must have passed through lot of trauma, in view of the injuries sustained, which further developed infection and made him unable to follow his livelihood, at least for some period of time. Thus, on the count of 'pain and suffering', the amount stands enhanced from Rs.20,000/- to **Rs.75,000/-**.

On the count of 'transportation', the compensation of Rs.5,000/- 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 appellant-claimant and even, after discharge, various trips must have been made to the hospital, by the appellant for medical care. Considering the same, the compensation on the count of 'transportation' stands enhanced to **Rs.40,000/-** from Rs.5,000/-

Obviously, during the period of treatment and some time thereafter, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, the compensation is enhanced from Rs.5,000/- to **Rs.40,000/-**.

Even though, PW-3 Ram Lakhan has been examined, who had stated he was engaged as attendant, but however, his employment, as such, is not established. Even, the receipt of the salary is also not established. But anyhow, even if the testimony of PW-3 Ram Lakhan is not taken into consideration, but the fact remains that at least for some period of time, the appellant-claimant must have required constant help, to lead 'assisted living', till he could adept himself to be self-reliant. Even if, no one has been employed as attendant but definitely, the appellant-claimant must have been looked after by his family members, and it is quite obvious his family



members ought to have taken care by diverting their own time, from some 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.5000/- is too meagre, which calls for enhancement and thus, stands enhanced to **Rs.40,000/-**.

Besides the same, the appellant-claimant is bound to take, if not prosthetic, in the minimum, help of crutches to adept himself to become self-reliant, while walking. Thus, on the count of future medical expenses, an amount of **Rs.50,000/-** is granted.

Further, on account of medical bills, proved in evidence, qua treatment of the appellant-claimant, learned Tribunal has appropriately granted **Rs.1,85,000/-**.

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

1.	Loss of earnings	Rs.3,90,000/-
2.	Pain and suffering	Rs.75,000/-
3.	Transportation charges	Rs.40,000/-
4.	Special diet	Rs.40,000/-
5.	Attendant charges	Rs.40,000/-
6.	Future medical expenses	Rs.50,000/-
7.	Medical Bills	Rs.1,85,000/-
	Total	Rs.8,20,000/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.8,20,000-3,20,000=Rs.5,00,000/-**. On the enhanced amount of compensation, i.e.



FAO-840-2013

-9-

Rs.5,00,000/-, the appellant-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.

Accordingly, the impugned Award dated 31.08.2012 stands modified, to the extent, as indicated aforesaid. All the remaining terms, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid observations, the present appeal stands allowed.

February 13, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No