



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

FAO-7943-2014 (O&M)
Date of Decision: May 26, 2025

Jaswant Singh

...Appellant

VERSUS

Lekh Raj and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Kamldeep Kaur, Advocate for
Mr.Adarsh Jain, Advocate
for the appellant.

Mr.Pardeep Kumar, Advocate for
Mr.Pardeep Goyal, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, questioning the adequacy of the compensation awarded by learned Motor Accident Claims Tribunal, on account of injuries sustained by him, in a motor vehicular accident. He has also challenged the finding of insurance company having absolved from the liability to pay the compensation and the liability, only having been fastened upon respondents No.1 and 2.

Suffice to consider that the accident had taken place on 19.08.2008. In fact, the respondents, upon whom the liability was fastened, have not filed any appeal to assail the liability.



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On appraisal of the evidence, brought on record, learned Tribunal had assessed the medical expenditure, on the basis of the bills, proved in evidence to be Rs.5,07,791/-, wherefrom, an amount of Rs.34,960/- was deducted, on account of refund of the same, having made to the patient, at the time of his discharge. Besides the same, considering the extent of disability to be 72%, as per the disability certificate Ex.PW9/A, an amount of Rs.72,000/- was awarded, on this count. Another amount of Rs.10,000/- each was awarded, on the counts of '**pain and suffering**' and '**special diet**'. The loss of income of the appellant-claimant, while he remained admitted in the hospital was assessed as Rs.15,000/-. Thus, in total, the compensation awarded was Rs.5,79,831/-.

Considering the insurance policy Ex.R3, to be a '**Farmer's Package Policy**', having the validity period for 01.05.2008 to 30.04.2009, learned Tribunal considered the tractor-trolley, being laden with bricks, to be not used for agricultural purposes. Also, it held that driver was having driving licence for LMV, which was not meant for driving the tractor and as such, it was also concluded that respondent No.1 was not possessing valid and effective driving licence, for the purpose of driving the tractor. Consequently, the liability was only fastened upon respondents No.1 and 2, in the capacity of being driver and owner of the offending vehicle and the insurance company was absolved from liability.

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

Learned counsel for the parties heard.

The statutory provisions of the Motor Vehicles Act, which is a



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 from 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 three steps, as laid down in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343***, which were reiterated further 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.”

Considering the principles aforesaid, now adverting to the case in hand. Appellant-claimant himself stepped into witness box as PW-14 and in his affidavit Ex.PW14/A, he has categorically narrated about the manner of taking place of the accident and injuries sustained by him, as a result whereof, he was rushed to Central Hospital, Faridabad. Further also, he had categorically stated that he had good health and physique and he was working on the shop of M/s Babu Lal Rajender Kumar and used to earn Rs.6000/- per month. Furthermore, he had also asserted about having additional income of Rs.4,000/- per month qua agricultural work, but however, relating to the same, there is no satisfactory evidence, brought on record. Suffice to consider that Rajender s/o Babu Lal had also been examined as PW-10. He had deposed about Jaswant Singh-appellant to be working with him as driver on his car and he used to pay Rs.6,000/- per month. Considering the testimony of the appellant as well as the said witness, the earnings of appellant-claimant are taken as Rs.6,000/- per month.

The disability certificate of the appellant-claimant has been proved by PW-9 Dr.Vikas Ahuja, Medical Officer, General Hospital, Kuruksehtra. It specifically mentions the case of the appellant-claimant to be as case of ***old operated case (Rt) leg for fracture both bone leg (Rt) with stiff ankle and knee with shortening (Rt) L.L with deformity.***

Duuring the course of arguments, much emphasis has been laid upon the disability to be not permanent. In fact, learned counsel for the insurance company has made reference to the cross-examination of PW-9



Dr. Vikas Ahuja, who had proved the disability certificate. It is pointed that this witness has admitted a suggestion to be correct that in the certificate Ex.PW9/A, there is no mention made that the disability was permanent. However, this is palpably erroneous. The perusal of the disability certificate reveals that the disability has been assessed as 72% and it is stated to be permanent. There is no observation made with regard to the condition to be likely to improve and re-assessment was also not recommended. It mentions about shortening of leg also. Thus, the extent and kind of disability, as such, stands duly established.

One has to keep in mind the extent of disability and the impact of the same, upon the earning capacity of the appellant-claimant. This extent of permanent disability having suffered and that too of his leg, when he is following the vocation of driver, it is bound to have huge impact upon his earning capacity and it is also bound to prevent or restrict him from following his source of livelihood as driver. His body functionality ought to have been badly affected, thereby reducing the capacity to work and besides the same, also it essential to note that people generally avoid employing a person with this kind of disability to work as driver.

Considering all the aforesaid factors, the earnings of the appellant-claimant, for the 'work on' of the compensation, is taken as Rs.6,000/- per month. Even though, the appellant-claimant had asserted his age to be 25 years, at the relevant time, but however, it is pertinent to mention that while appearing as witness as PW-14 on 28.11.2013, the appellant-claimant has asserted himself to be 31 years old. Thus, on the date of accident i.e. 09.08.2008, the appellant-claimant is established to be 26



years old.

Considering the age of the appellant-claimant, on the count of 'future prospects', addition to the extent of 40% is made, as per the principle enunciated in *Pranay Sethi's case*, and thus, the earnings of the appellant-claimant now comes to be Rs.6000+2400=Rs.8400/-. As per *Sarla Verma's case*, '17' is the appropriate multiplier and considering the permanent disability to be 72%, the loss of earnings of the appellant-claimant, is assessed as $\text{Rs.}8400 \times 12 \times 17 \times 72 / 100 = \text{Rs.}12,33,792/-$.

Appellant-claimant Jaswant 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 and obviously, during the period of treatment and some time thereafter, the claimant must have been put on special rich diet, for the healing process. Considering the same, Rs.10,000/- each awarded, on the counts of 'pain and suffering' and 'special diet', now stands enhanced to **Rs.20,000/-** each.

However, learned Tribunal has given amiss to the counts of 'transportation' and 'attendant charges'. In view of the injuries sustained by the appellant-claimant, various rounds must have been made 'to and fro' to the hospital to take care of the claimant and even, after discharge from hospital, such trips are bound to be made by the claimant for medical treatment. Furthermore, with the kind of injuries the claimant had suffered, he ought to have required constant help. Some additional help is bound to be there, be it by the family members or some other person, employed for

National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009

Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77



nursing. Considering the same, on the counts of ‘transportation’ and ‘attendant charges’, **Rs.20,000/-** each is awarded.

As already observed aforesaid, on the count of ‘medical expenditure’, after deducting the amount of Rs.34,960/-, which was refunded to the appellant-claimant, the amount payable on the count of ‘medical expenditure’ has been appropriately worked as **Rs.4,72,831/-**.

Considering the aforesaid various counts, the compensation to be awarded to appellant-claimant Jaswant Singh, is re-computed, as herein given:-

1.	Loss of earnings	Rs.12,33,792/-
2.	Pain and suffering	Rs.20,000/-
3.	Special diet	Rs.20,000/-
4.	Transportation charges	Rs.20,000/-
5.	Attendant charges	Rs.20,000/-
7.	Medical Bills	Rs.4,72,831/-
	Total	Rs.17,86,623/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.17,86,623-5,77,831=Rs.12,08,792/-**. On the enhanced amount of compensation, i.e. **Rs.12,08,792/-**, 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.

Now, let us consider the question of liability of the respondents, vis-a-vis, the compensation, as worked upon aforesaid.

Respondents No.1 and 2, had tendered into evidence, the copy of the driving licence of respondent No.1-Lekh Raj, which is Ex.R1 and the



copy of the registration certificate Ex.R2 and closed the evidence. Respondent No.3-insurance company had tendered into evidence, the copy of the insurance policy Ex.R3.

Very true, as pointed out by learned counsel for the insurance company, it is 'Farmer's Package Policy' and the period of validity of the same was 01.05.2008 to midnight of 30.04.2009. The period of validity, as such, covers the date of accident. However, the contest is with regard to respondent No.1, not having valid and effective driving licence.

Close perusal of the driving licence reveals that Lekh Raj was authorised to drive LMV. Learned Tribunal had observed that the driving licence for LMV, was not meant for driving the tractor. In this regard, beneficial reference is made to Section 2(21) of the Motor Vehicles Act, 1988, which reads as under:-

'2(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms.'

A motor car has been specifically mentioned as falling under the heading Light Motor Vehicle (LMV), so as the tractor with an unladen weight not exceeding 7500 kilograms. Onus was upon the insurance company to further substantiate the unladen weight to be exceeding the permitted limit aforesaid. In this context, no evidence, has been led by the insurance company. The registration certificate of the vehicle, which has come on record, does not state about the unladen weight. In the light of the same, when the insurance company, as such, has not led evidence, it cannot



wriggle away from the liability to indemnify the insured.

Also, it is submitted that since it is the 'Farmer's Package Policy' and therefore, the vehicle in question, could only be used for the agricultural purposes, but it was not so, as bricks were carried in the tractor trolley and thus, the insurer had raised the plea of breach of condition of insurance policy. But, apart from the pleadings to this extent, no evidence was adduced to substantiate the violation of terms and conditions of the policy.

PW-12 Sumeri is the complainant, at whose instance, the criminal proceedings were initiated. In her cross-examination, it has come that the tractor trolley was loaded with bricks. However, besides the same, no other evidence, as such, has come on record. Merely because bricks were being carried, would not mean that the tractor was used for commercial purposes and consequently, there was breach of condition of policy, on the part of the insured. The mere fact of bricks being carried, does not prove hire or reward, as contemplated under the Motor Vehicles Act. It was mandatory for the insurer, not only to plead the breach but also to prove the same, by adducing positive evidence, in respect of the same. The breach of terms and conditions of the policy cannot be presumed. The burden was on the insurance company to prove that the vehicle was plied in breach of terms and conditions of the policy.

However, nothing as such, is coming on record, except about the bricks, being carried in the tractor trolley. It was required to be proved that the tractor was being used for other than the agricultural purposes and goods being carried were of other person, for his business activities. There is no



such material to prove the commercial use of the tractor. Precisely, on this account, the insurance company cannot be absolved from the liability to pay the compensation. Considering the same, the findings on the count of absolvment of liability of the insurance company, as such, is set aside and thus, the liability of respondent No.3-insurance company together with respondents No.1 and 2 i.e. driver and owner, is held to be joint and several, to pay the compensation, worked upon aforesaid.

Accordingly, the impugned Award stands modified, to the extent, as indicated aforesaid.

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

May 26, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No