IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

246-1 **CM-14728-CII-2023 in/and**
FAO-6800-2015 (O&M)
Date of Decision : 21.05.2025

Dayanand Gautam ....Appellant

VERSUS

Smt. Shareen Kaur and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Kumar Bamal, Advocate for the appellant.

Mr. Sachin Ohri, Advocate for respondent No.4.

ALKA SARIN, J. (Oral)

CM-14728-CII-2023

1. This is an application for disposal of the main appeal.

2. For the reasons stated in the application, the same is allowed. With the consent of learned counsel for the parties, the main appeal is taken on Board today itself.

CM-21227-CII-2015

3. For the reasons stated in the application, the same is allowed. The delay of 62 days in re-filing the present appeal is condoned.

FAO-6800-2015 (O&M)

4. Present appeal has been filed by the claimant aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') vide award dated 09.12.2014 whereby an amount of Rs.2,83,480/- was awarded as

compensation on account of the injuries suffered by him.

5. The parties are being referred to as claimant, driver/owner of the offending vehicle and Insurance Company for the sake of clarity.

6. The claim petition had been filed on account of injuries received by the claimant-appellant in an accident which took place on 26.01.2012. It was averred in the claim petition that on 26.01.2012 the claimant-appellant was travelling in a car bearing registration No.CH-01-AB-8997 while sitting on the front left side seat thereof. The said car was being driven by Purushotam Gautam, brother of the claimant-appellant. They were coming from Gurgaon after performing the marriage of the daughter of the claimant-appellant, namely, Priyanka. At about 8:15 am when they reached near Village Garhi Kalan, P.S. Gannaur, District Sonepat, due to heavy fog, the driver Purushotam Gautam, could not notice the vehicle bearing registration No.HR-38-Q-0338 (hereinafter referred to as 'the offending vehicle') which was wrongly and negligently parked in the middle of the road without any parking signal or light. Hence, the car being driven by Purushotam Gautam struck against the offending vehicle. All the occupants in the car being driven by Purushotam Gautam suffered multiple and grievous injuries. In this accident Purushotam Gautam and the son of the claimant-appellant, namely, Dev Gautam died on the spot. FIR No.43 dated 26.01.2012 under Sections 279, 337, 304-A Indian Penal Code, 1860 was registered as Police Station Gannaur.

7. On notice, respondent Nos.1 to 3 filed their joint written statement and raised various preliminary objections. It was averred in the written statement that the FIR has falsely been lodged against them. It was

further averred that the accident took place due to rash and negligent driving of Purushotam Gautam.

8. Respondent Nos.4 and 6 i.e. Bajaj Allianz General Insurance Company Ltd. filed a joint written statement, as both the vehicles were insured with the same Insurance Company, denying the factum of the accident and also the fact that the accident took place due to wrong parking of the offending vehicle. It was further stated that Purushotam Gautam was not holding a valid and effective driving licence to drive the car.

9. On the basis of pleadings of the parties, the following issues were framed :

1. Whether claimant received injuries in a motor vehicular accident which was caused due to negligence and wrong parking of vehicle No.HR-38-Q-0338 by Sukhwinder Singh since deceased ? OPP
2. Whether claimant is entitled to compensation on account of injuries received by him in a motor vehicle accident ? OPP
3. Whether the drivers of vehicle No. HR-38-Q-0338 and CH01-AB-8997 were not having valid driving licence at the time of accident ? OPR
4. Relief.

10. The Tribunal awarded the following compensation :

Sr. No.	**Heads**	**Compensation Awarded**
1	Medical expenses	₹94,480/-
2	For driver-cum-helper for 17 months at the rate of ₹7000/- per month	₹1,19,000/-

3	Loss of amenities	₹20,000/-
4	Loss of pain and suffering	₹25,000/-
5	Special diet	₹25,000/-
	Total Compensation	**Rs.2,83,480/-**
	Interest	**7.5% per annum**

11. Learned counsel for the claimant-appellant would contend that the compensation awarded by the Tribunal under the pecuniary and non-pecuniary heads are on the lower side. It is contended that the claimant-appellant, who was 56 years of age at the time of the accident, had sustained multiple grievous injuries including fractures on right side hip bone and his permanent disability has been assessed @ 40% vide Disability Certificate Ex.P2 proved on record by PW-6 Dr. Rajneesh Sood, Medical Officer, Department of Orthopaedics, Government Multi-Specialty Hospital, Sector 16, Chandigarh. Learned counsel would further contend the claimant-appellant remained admitted in the hospital w.e.f. 26.01.2012 to 04.02.2012 and then again from 08.11.2012 to 13.11.2012 and had undergone surgery for hip replacement due to which he remained bedridden for about 84 days, leading to a lot of pain and sufferings. Learned counsel would further contend that the claimant-appellant was working as Deputy District Attorney in the State of Haryana and after his retirement he wanted to practice as an Advocate but due to the accident he is not in a position to walk properly. Learned counsel would further contend that the claimant-appellant has spent Rs.10 lakhs for his treatment out of which his department has reimbursed only Rs.2,11,512/-. Learned counsel would further contend that the compensation awarded by the learned Tribunal under the pecuniary as well as non-pecuniary heads are on the lower side which deserves to be enhanced.

12. *Per contra*, learned counsel for respondent No.4-Insurance Company would contend that in the present case sufficient amount has already been awarded as compensation and there is no scope for further enhancement.

13. I have heard the learned counsel for the parties.

14. The present is an unfortunate case where two members of the family i.e. son and brother of the claimant-appellant, namely, Dev Gautam and Purushotam Gautam, died in the accident and the claimant-appellant and his wife sustained grievous injuries. The unfortunate accident occurred when the claimant-appellant was returning after performing the marriage of his daughter. One claim petition being MACT No.116 of 2016 was filed by the legal representatives of Purushotam Gautam (since deceased) before the Motor Accident Claims Tribunal, Panipat. A connected appeal being FAO-3852-2017 has arisen out of the award dated 23.09.2016 passed by the Tribunal at Panipat. In the said appeal, vide the order of even date, the finding regarding the contributory/composite negligence stands set aside. Even in the present case, since the claim petition has arisen out of the same accident, the finding qua composite negligence is accordingly set aside. In any case it would not make a difference in the present case since the Insurance Company of both the vehicles is Bajaj Allianz General Insurance Co. Ltd.

15. Further, in order to prove his case the claimant-appellant stepped into the witness box as PW-1 and further examined Dr. Rajneesh Sood, Medical Officer, Department of Orthopaedics, GMCH, Sector 16, Chandigarh as PW-6. In his statement before the Tribunal, PW-6 Dr.

Rajneesh Sood, testified that on 17.02.2014 the claimant-appellant was examined by the Medical Board. X-ray of the right thigh showed total hip replacement (right hip) with implant in situ; movements of the hip were up to 90 degree flexion; his permanent physical disability was assessed to be 40% vide the Disability Certificate Ex.PW2. This witness further testified that the treatment/medicines would continue and that the claimant-appellant would not be able to live a normal life as he was living prior to the accident. Thus, keeping in view the above testimony of PW-6 Dr. Rajneesh Sood and the fact that the claimant-appellant suffered permanent physical disability @ 40% qua his right hip, this Court deems it appropriate to assess his bodily disability to the extent of 20%.

16. 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."*

17. In the present case, the claimant-appellant had stepped into the witness-box as PW1 and had stated that due to the accident he would not be able to practice as a lawyer after retirement. A perusal of the cross-examination would reveal that no suggestion was put by the respondents *qua* the same. Since there is no suggestion given *qua* this fact, hence it goes

unrebutted that the future prospects of the claimant-appellant to practice as a lawyer would be effected. Therefore, in view of the law laid down in the case of **Pappu Deo Yadav** *(supra)* and keeping in view the permanent disability suffered by the injured claimant-appellant, a multiplier method is applicable in the present case. The claimant-appellant was admittedly working as a Deputy District Attorney in the State of Haryana and as per the evidence on record he was drawing a salary of ₹43,634/- per month. However, he is stated to have retired from service on 30.11.2013 i.e. after about 22 months of his accident and he is admittedly drawing a pension. Though the claimant-appellant did not suffer any loss of income till his retirement from service however, since he wanted to practice as an Advocate after retirement, and due to his disability as a result of the accident he has certainly lost his future avenue of professional practice. Thus, the claimant-appellant at the most would be entitled to the pecuniary loss as a highly skilled worker. Admittedly, the minimum wages at the relevant point of time for a highly skilled worker were ₹8,576/- per month and keeping in view the age of the claimant-appellant, a multiplier of '9' would be applicable alongwith addition of 15% towards loss of future prospects.

18. Coming to the non-pecuniary loss of the claimant-appellant, a sum of ₹94,480/- has been awarded by the Tribunal towards medical expenses and there is no scope for enhancement thereof and accordingly the same is maintained. Further, the Tribunal has awarded a sum of ₹1,19,000/- for a driver-cum-helper. As per the evidence on record the claimant-appellant remained hospitalized w.e.f. 26.01.2012 to 04.02.2012 and then from 08.11.2012 to 13.11.2012 i.e. for 15 days. The fact that he remained

bedridden for about 84 days and had employed PW-4 Ghanshyam as his driver-cum-helper since May 2012 to 31.10.2023, has also remained uncontroverted and accordingly the claimant-appellant is also entitled to be compensated for that period of 17 months and thus the compensation of ₹1,19,000/- as awarded by the Tribunal for driver-cum-helper does not warrant any interference and same is also maintained. The amount of ₹25,000/- awarded by the Tribunal under the head pain and suffering is on the lower side and the same is enhanced to ₹2,00,000/-. The amount of 25,000/- granted towards special diet is also maintained. The amount of ₹20,000/- awarded towards loss of amenities of life is certainly on the lower side keeping in view the disability of the claimant-appellant and the same is enhanced to ₹1,00,000/-. After deducting the amount as reimbursed by the Department of the claimant-appellant, he is entitled to the remaining amount of ₹94,480/- and the Tribunal has rightly awarded the same. Hence, the amount of ₹94,480/- awarded by the Tribunal towards medical expenses is maintained. Accordingly, the reworked compensation is as under :

Sr. No.	**Heads**	**Compensation Awarded**
1	Annual income	[₹8,576 x 12] = ₹1,02,912/-
2	Loss of annual Income on account of 20% functional disability	₹20,582 [₹1,02,912 – 82,330]
3	Future prospects @ 15%	[₹20,582 + 3,087] = ₹23,669/-
4	Multiplier of 9	[₹23,669 x 9] = ₹2,13,021/-
5	Pain and suffering	₹2,00,000/-
6	Loss of amenities of life	₹1,00,000/-
7	Special Diet	₹25,000/-
7	Driver-cum-helper as assessed by the Tribunal	₹,1,19,000/-
8	Medical Bills as assessed by the Tribunal	₹94,480/-
	Total compensation	**₹ 7,51,501 /-**

19. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

20. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [2025 INSC 361 : Civil Appeal No.4299 of 2025 arising out of SLP (C) No.4484 of 2020 decided on 18.03.2025]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account of the claimant within six weeks from today. The particulars of the bank account alongwith the requisite documents in support thereof shall be furnished by the claimants to the Insurance company within a period of two weeks from the date of this order and needful shall be done by the Insurance Company after verification thereof within four weeks thereafter alongwith up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

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

(ALKA SARIN)
JUDGE

21.05.2025
jk

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