

**IN THE HIGH CO URT OF PUNJAB AND HARYANA AT CHANDIGARH****234****FAO-8240-2017 (O&M)
XOBJC-67-CII-2018 (O&M)
Date of Decision : 07.02.2025**

United India Insurance Co. Ltd.

... Appellant

Versus

Buta Singh and Others

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harsh Aggarwal, Advocate for the appellant.

Mr. Sandeep Kotla, Advocate
for respondent No.1/cross-objectors.Ms. Omkala Yadav, Advocate for
Ms. Suman Sagar, Advocate for respondent Nos.2 and 3.**ALKA SARIN, J. (Oral)**

1. The present appeal (FAO-8240-2017) has been filed by the appellant-Insurance Company and the cross-objections (XOBJC-67-CII-2018) have been filed by the claimant-respondent No.1 aggrieved by the award dated 05.09.2017 passed by the Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'Tribunal'). The parties are being referred to as Insurance Company, claimant and owner and driver for the sake of clarity.

2. Brief facts relevant to the present *lis* are that the accident in the present case took place on 10.11.2015 when Buta Singh (claimant) was riding on a motorcycle Hero Honda bearing registration No.HR-24-7527 which was being driven by Kala Singh (deceased) and was going towards the fields at Kukranwali where they had taken a piece of land on contract for

cultivation. Kala Singh was riding the motorcycle at a moderate speed and was wearing a helmet and following all the traffic rules while claimant (Buta Singh) was a pillion rider. At about 07.30 am, when they crossed the waterworks of the village and were going towards Dariyapur, a Cruiser Jeep bearing registration No.HR-56A-9425 being driven by its driver at a high speed, rashly and negligently, came from the opposite side and struck against the motorcycle, which resulted in the death of Kala Singh and injuries to claimant. Two claim petitions were filed - one by the legal representatives of Kala Singh and one by the claimant for the injuries received by him. Both the claim petitions were disposed off vide the impugned award dated 05.09.2017. The present appeal (FAO-8240-2017) arises out of the claim petition filed by the claimant (Buta Singh). The Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Medical expenses	Rs.87,000/-
2	Transportation	Rs.5,000/-
3	Special Diet	Rs.5,000/-
4	Services of attendant	Rs.5,000/-
5	Loss of earning during the period of treatment	Rs.48,000/-
6	On account of disability and loss of enjoyment of amenities of life	Rs.74,000/-
7	Damages for pain and suffering	Rs.10,000/-
	Total Compensation	₹2,34,000/-
	Interest	7.5% per annum

3. Learned counsel for the Insurance Company has referred to Ex.R8, which is the Medico Legal Report of the claimant, wherein it has

been noted by the doctor that there was an alcoholic smell present in the breath and he was grossly intoxicated. It is further the contention of the learned counsel that since both the claimant (Buta Singh) and the deceased (Kala Singh) were intoxicated, it would be a case of contributory negligence. It is further the contention that the income of the claimant has wrongly been assessed as Rs.8,000/- per month and that the compensation granted by the Tribunal is on the higher side and there is no scope for any further enhancement.

4. *Per contra* the learned counsel for the claimant (Buta Singh) would contend that it has nowhere come in evidence as to the level of alcohol present in the blood of claimant (Buta Singh) or the deceased (Kala Singh). Learned counsel has referred to Section 185 of the Motor Vehicles Act, 1988 which states that if a person driving or attempting to drive a motor vehicle has in his blood alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyzer or in any other laboratory test, he would be held to be under the influence of liquor and not otherwise. In the absence of any evidence regarding the alcohol content in the blood, no conclusion can be drawn as to whether the claimant (Kala Singh) and the deceased (Buta Singh) were intoxicated or not. It has further been contended that moreover the claimant was not the rider of the motorcycle and hence there would be no question of contributory negligence in the present case. Learned counsel for the claimant would further contend that the claimant was 24 years of age at the time of accident and was working as a mason. It is further the contention that as a result of the accident, the claimant had

suffered head injury with closed fracture left femur with both bones left leg (tibia and fibula) and was operated upon with nailing on 16.11.2015 for fracture of femur and on 20.11.2015 for fracture of both bones left leg by nailing and was discharged on 26.11.2015 with the advice of follow up treatment in OPD. It has further been contended that due to the accident the claimant had also suffered loss of hearing of left ear for which he remained under treatment at Civil Hospital, Hisar. Further, the amount awarded under the heads of transportation, special diet, attendant charges, loss of amenities of life and pain and suffering is also on the lower side and that no amount has been awarded towards loss of marriage prospects.

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

6. In the present case the argument raised by the learned counsel for the Insurance Company that it was a case of contributory negligence deserves to be rejected. Section 185 of the Motor Vehicles Act, 1988 reads as under :

“ 185. Driving by a drunken person or by a person under the influence of drugs - Whoever, while driving, or attempting to drive, a motor vehicle, -

(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or in any other test including a laboratory test, or

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle,

shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine of ten thousand rupees, or with both; and for a second or subsequent offence, with imprisonment for term which may extend to two years, or with fine of fifteen thousand rupees, or with both."

There is an observation made under the head 'General condition of Patient' by the treating doctor (Ex.R8) wherein it had been stated that the patient was semi-conscious and there was alcoholic smell present in his breath and he was grossly intoxicated. However, there is no evidence on the record regarding any laboratory test or a breath analyzer having been used to measure the alcohol content in the breath of the Kala Singh (deceased) as well as the claimant. Even otherwise, the claimant was a pillion rider. In the absence of any evidence, it cannot be held that the deceased (Kala Singh) and the claimant (Buta Singh) were intoxicated at the time of the accident. Hence, the said argument of the learned counsel for the Insurance Company stands rejected.

7. The argument of the learned counsel for the Insurance Company that the income of the claimant has wrongly been assessed as ₹8000/- per month deserves to be accepted. Minimum wages at the time of the accident i.e. 10.11.2015 were ₹5,886/- per month. However, the same was increased on 01.01.2016 to ₹7,976/- per month. Further Hon'ble the Supreme Court in the case of **Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav [2021 (4) RCR (Civil) 492]** has held as under :

“ 10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. (2013)

10 SCC 695 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3 rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/. As an amount of Rs.10,99,700/ is already paid towards the loss of dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/. Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors. (2018) SCC Online SC 1546 =

(2018) 18 SCC 130 the appellants are also entitled for parental consortium of Rs.40,000/- each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr.(2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record.”

Keeping in view the above-noted judgment and the fact that the minimum wages were increased on 01.01.2016 to ₹7,976/- per month, this Court deems it appropriate to assess the income of the claimant as ₹7,000/- per month.

8. In the present case, the claimant stepped into the witness-box as PW-5 and deposed that in the accident he suffered multiple serious and grievous injuries and remained admitted in different hospitals. He also examined Dr. Pankush Arora, Orthopaedic Surgeon, Punjabi Sabha Hospital, Bhattu Road, Fatehabad as PW3 who stated that the claimant was admitted in the hospital on 10.11.2015 with a history of roadside accident as he was having a head injury with closed fracture left femur with both bones left leg (tibia and fibula). He further deposed that the claimant was operated with nailing on 16.11.2015 for fracture of femur and on 20.11.2015 for fracture of both bones left leg by nailing and that he was discharged on 26.11.2015. He

proved on record the discharge card as Ex.P3. The claimant also examined Dr. O.P. Dharniwal, SMO, General Hospital, Fatehabad who deposed that claimant had come in the hospital for assessment of his disability and on his clinical examination he was found having ENT problems for which he was referred to Civil Hospital, Hisar. He proved on record the disability certificate on account of loss of hearing of left ear as Ex.P1, whereby the disability of the claimant was assessed to the extent of 23% by Dr. Vimal Jain, ENT Surgeon, General Hospital, Hisar, which certificate was further countersigned by Dr. Sangeeta Abrol, Chairman of the Board. Dr. O.P. Dharniwal also proved on record the disability certificate as Ex.P2 qua the disability on account of ortho injuries vide which the disability of the claimant was assessed to the extent of 20% on account of pain left hip and knee while walking with decreased range of motion of knee and hip joints. The doctor further deposed that the claimant has suffered total 37% disability of whole of the body on account of both the disabilities. PW-2 Dr. Pawan Kumar, Orthopaedic Surgeon, General Hospital, Fatehabad also corroborated the version of Dr. O.P. Dharniwal and stated that the nature of disability suffered by the claimant is permanent and functional. The claimant in the present case was working as a mason and due to the disability suffered by him, he would not be in a position to work as a mason and hence this Court deems it fit to assess the disability of the claimant to the extent of 37% permanent in nature.

9. 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).

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."

10. The claimant was working as a mason and with the decreased hearing and loss of mobility in one leg the claimant would affect his ability to work. In view of the law laid down in the case of **Pappu Deo Yadav** (supra), the Tribunal should have applied a multiplier method keeping in view the functional disability of the claimant by assessing his income according to the minimum wages prevalent at the relevant point of time. At the time of the accident the claimant was 24 years of age and hence a multiplier of '18' would be applicable and an addition of 40% is also to be made towards loss of future prospects.

11. Further, the Tribunal has awarded an amount of Rs.5000/- towards attendant charges, which is on the lower side inasmuch as the claimant was admitted in hospital on 10.11.2015 and was discharged on 26.11.2015 and was also operated upon twice during that period. In view thereof, the claimant must have required attendant and hence, this Court

deems it appropriate to award attendant charges to the claimant for a period of one month i.e. Rs.7,000/- as assessed above.

12. Further, the compensation awarded by the Tribunal under the heads of transportation charges, special diet, loss of amenities of life and under the head pain and suffering is also on the lower side. The claimant had suffered head injury with closed fracture left femur with both bones left leg (tibia and fibula) and suffered a permanent disability to the extent of 37%. In view thereof, this Court deems it appropriate to award an amount of Rs.20,000/- towards transportation charges; Rs.25,000/- towards special diet; Rs.3,00,000/- towards loss of amenities of life; Rs.2,50,000/- towards pain and suffering. The claimant is also awarded an amount of Rs.5,00,000/- towards loss of marriage prospects. The medical expenses of Rs.87,000/- as awarded by the Tribunal are maintained.

13. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.7,000/-
2	Annual Income	[Rs.7,000 x 12] = Rs.84,000/-
3	Loss of annual Income on account of 37% permanent disability	Rs.31,080/-
4	Future prospects @ 40%	[Rs.31,080 + 12,432] = Rs.43,512/-
5	Loss of income after applying multiplier ‘18’	[Rs.43,512 x 18] = Rs.7,83,216/-
6	Loss of Amenities of life	Rs.3,00,000/-
7	Pain and suffering	Rs.2,50,000/-
8	Special Diet	Rs.25,000/-
9	Transportation charges	Rs.20,000/-

10	Attendant charges	Rs.7,000/-
11	Loss of marriage prospects	Rs.5,00,000/-
12	Medical expenses as awarded by the Tribunal	Rs.87,000/-
	Total Compensation	Rs.19,72,216/-

14. 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.

15. In view of the above discussion, the impugned award passed by the Tribunal stands modified and appeal (FAO-8240-2017) filed by the Insurance Company and the cross-objections (XOBJC-67-CII-2018) filed by the claimant-respondent No.1 are disposed off accordingly. Pending applications, if any, also stand disposed off.

07.02.2025

jk

(ALKA SARIN)

JUDGE

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