



FAO-8634-2017 (O&M)

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

FAO-8634-2017 (O&M)

Date of Reserve: 14/11/2025

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Bhim Singh

.....Appellant

Vs.

Vashishth Tiwari & ors.

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

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

Mr. Atul Yadav, Advocate
for respondent Nos. 1 and 2.

Mr. Gaurav, Advocate for Mr. Sanjeev Goyal, Advocate
for respondent No. 3.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 15.07.2017 filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Gurugram (Haryana) (for short, 'the Tribunal') for enhancement of compensation granted to the appellant/claimant to the tune of Rs.20,88,000/- (i.e 60% of the awarded amount), on account of injuries suffered by him in a Motor Vehicular Accident, occurred on 06.03.2016 by holding contributory negligent and challenging the contributory negligence determined to the ratio of 60:40.

Brief Facts

2. Brief facts of the case are that on 6.3.2016, claimant alongwith one
Bhim Singh were travelling in canter vehicle, No HR-60C-0414. At about 8.30 P.M



when the canter reached near Bilaspur Chowki, one closed body truck bearing registration No HR-550-7567 was parked on the road without Indicator. Due to the focus light of vehicles coming from the opposite side, the parked vehicle could not be seen and vehicle No.HR-60C-0414 hit into the same. As a result, of the accident, petitioner suffered grievous injuries on his person including serious injury on forehead and both legs. FIR No.86 dated 7.3.2016 was registered under Sections 279, 337 IPC in this regard.

3. Upon notice of the claim petition, respondents appeared and denied the factum of compensation.

4. From the pleadings of the parties, the following issues were framed by the learned Tribunal :-

“1. Whether the accident dated 6.3.2016 took place due to rash and negligent driving of vehicle No.HR-55U-7567 by respondent No.1, resulting into injuries to petitioner? OPP.

2) Whether claimant is entitled to receive any compensation. If so what amount and from whom? OPP.

3) Whether respondent No.1 was not having valid and effective driving licence on the date of accident. If so its effect? OPR(3)

4) Whether there was violation of terms and conditions of insurance policy by respondents No. 1&2. If so its effect? OPR(3)

5) Relief.”

5. After taking into consideration the pleadings and the evidence on record, learned Tribunal awarded compensation to the claimant. However, learned Tribunal held the accident as a case of contributory negligence in the ratio 60% on the offending vehicle and 40% on the other vehicle involved in the accident.



Hence, the present appeal is filed challenging contributory negligence of the appellant to the extent of 40% and also on the ground that the compensation awarded to the appellant is on the lower side.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the claimant-appellant contends that the compensation assessed by the learned Tribunal is on the lower side and deserves to be enhanced. He further contends that the finding of contributory negligence is misconceived, unsupported by evidence and is liable to be reversed. He, thus prays that the present appeal be allowed.

7. Per contra, learned counsel for respondents however, vehemently argues on the lines of the award. They, therefore prays for dismissal of the appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. Before proceeding further, it is relevant to reproduce the relevant portion of the award, which reads as under:-

“Issues No.1 and 2:

Both these issues are inter-connected and inter-linked, therefore, these are taken up together for discussion.

10 The onus to prove these issues was upon the claimant. In order to prove these issues, Smt. Sunita Bhargava, learned counsel for the claimant has argued that claimant has proved by examining himself as PW1; Dr. Ashish Kumar, Medanta Hospital as PW3; Sandeep Kumar, Criminal Ahimad as PW7 and Bijender, eye witness as PW11 and producing documents ie copies of MLR Ex.P3, discharge summary Ex. P4 that the claimant suffered injuries in the accident caused on 6.3.2016 by rash and negligent



act of parking the offending vehicle on the road by respondent No. 1.

11 On the other hand. Sh. V.K.Chauhan, learned counsel for respondents No. 12 and Sh. Deepak Gupta, learned counsel for respondent No.3 have argued that no such accident was caused by the offending vehicle due to rash and negligent driving by its driver I.e respondent No.1. Learned counsel for respondent No.3 further argued that rather the alleged accident occurred due to rash and negligent driving of vehicle No.HR-60C-0414 by its driver, in which the petitioner was travelling, as it hit the stationary truck in question from behind.

While arguing on this point, Smt. Sunita Bhargava, learned has not counsel for the claimant contended that respondent No. stepped into the witness box to depose that he had taken precautionary measures while parking his vehicle on the road and that the accident occurred because of contributory negligence of the driver of the canter vehicle, in which petitioner was allegedly travelling. Thus, plea of contributory negligence is not tenable.

12. The claimant has examined PW7 Sandeep Kumar, Criminal Ahlmad in the court of Ms. Mohini, JMJC, Gurugram, who on the basis of record of case titled as 'State Vs. Vashisht Tiwari bearing FIR No.86 dated 7.3.2016 u/s 283, 337 & 338 IPC, P.S Bilaspur, stated that charge has been framed against the accused and the case is fixed for prosecution evidence. The claimant also produced on record copy of MLR EX.P3).



On the other hand, respondents have not led any evidence. Respondent No. 1 himself has not appeared in the witness box to refute the allegations against him as set up in the claim petition. More so respondent No. 1 has made no complaint to higher authorities regarding his false implication in this case. It is not in dispute that respondent No. 1 is facing trial for the accident in question.

13 It has been held by our own Hon'ble High Court in case Sudama Devi and others Versus Kewal Ram and others, 2008 (2) RCR (Civil) 72 (P&H) that the driver (against whom criminal case was registered) could certainly approach the higher police authorities that he had been falsely implicated in the criminal case and that the accident did not take place on account of his rash or negligent act. It was further held that mere silence for a long time in itself is sufficient to prove that he was negligent in driving the vehicle. Identical law was laid down by our Hon'ble High Court in case Ram Sarup and others Vs. Om Parkash and others, (2008-1) PLR 461.

Further, involvement of truck No.HR-550-7567 in the accident is proved from the statement of claimant Bhim Singh (PW1) and eye witness Bijender (PW11), who by way of affidavits Ex.PW1/A and Ex.PW11/A deposed that the accident took place due to rash and negligent act of parking the offending truck No.HR-550-7567 on the road without any indication.

15. In such like cases, rash and negligent driving of offending vehicle is not to be proved beyond shadow of reasonable doubt



like criminal cases but on the basis of preponderance of probabilities as respetration of FIR and trial of the accused in a criminal Court, are sufficient to arrive at a conclusion that the accident had taken place because of his negligence. Such a law was laid down by our own Hon'ble High Court in case Lakhu Singh Versus Uday Singh, 2008 (1) RCR (Civil) 805, Identical law was laid down by our own Hon'ble High Court in case Girdhari Lal Vs. Radhey Shyam and Others, 1993 (2) Punjab Law Reporter, 109 (P&H) that where the driver of the offending vehicle was facing trial for rash and negligence, it was safe to hold that the accident took place due to his rash and negligent act.

10. After hearing learned counsel for the parties and perusal of evidence on record, I am of the considered view that the accident took place due to contributory negligence of respondent No.1 as well as the driver of canter vehicle No.HR-60C-0414 From perusal of the statement of PW1 Bhim Singh and PW11 Bijender it is evident that the offending truck was parked on the road without any indication or parking lights on. However, in their statements, both these witnesses admitted that the canter in which they were travelling, hit the parked truck from behind. PW1 has stated that he had seen the parked truck from a distance of 15 meters and the driver of canter had applied brakes but it skidded whereas PW11 has stated that the driver of vehicle, in which they were travelling, had not applied the brakes.



17. *The driver of the offending vehicle has not appeared in the witness box to state about the manner of accident or parking of the truck on the road without any indication. Thus, it can well be held that respondent No.1 was negligent while parking the truck in question on the road without parking lights. Moreover, driver of canter No.MR-60C-0414 has not been examined to prove mode and manner of accident explaining the allegation of parking of the truck without lights on the road. From the statements of Bhim Singh(PW 1) & Bijender(PW11) it is clear that the canter hit the stationary truck from behind. PW1 stated having seen the parked truck from a distance of 15 meters and the driver of canter applied brakes but it skidded, which goes to show that the canter was being run at an excessive speed without taking due care of other traffic on the road. Meaning thereby, the accident could have been avoided if the driver of canter had been a little cautious.*

18 *In these circumstances, the drivers of both the vehicles should be held responsible to have contributed to the accident. Similar matter had gone before the Hon'ble Punjab & Haryana High Court in case Subhash Chand and others Vs. Satya Rani and others, 2014(5) RCR (Civil) 265 (P&H) wherein tractor driver suddenly applied brake and scooterist rammed into the tractor from behind, the deceased was 20 years aged. It was held that since claimant himself had contributed to the accident, therefore 50% of the amount as assessed is abated.*



19. In view of above discussion it can safely be held that accident took place on 6.3.2016 was because of rash and negligent driving of respondent No.1 while driving truck bearing registration No.HR-55U-7567 as well as contributory negligence of driver of canter vehicle No.HR-60C-0414 resulting into injuries to Bhim Singh. Negligence between respondent No 1 (driver of truck No.HR-55U-7567) and the driver of canter No.HR-60C-0414 is apportioned in the ratio of 60:40 Both these issues are accordingly decided in favour of the claimant and against the respondents.

10. So far as the contention of the appellant/claimant that the finding of contributory negligence attributed, is misconceived and unsupported by evidence is concerned, this Court finds substantial merit in the said contention.

11. A perusal of the record reveals that learned Tribunal has proceeded on erroneous premise. The finding of contributory negligence has been returned primarily on the basis of statements of PW-1 Bhim Singh and PW-11 Bijender who stated that the offending vehicle was standing in the middle of the road and on the. The evidence of these witnesses, in fact, clearly establishes that the offending truck was parked on the road without any warning indication or parking lights. It is further evident from their testimony that the canter in which the claimant was travelling collided with the stationary truck from behind. PW-1/claimant (Bhim Singh) stated that he had noticed the parked truck from a distance of about 15 metres and that the driver of the canter applied brakes, but the vehicle skidded. PW-11 (Bijender), on the other hand, stated that the driver of the vehicle in which they were travelling did not apply brakes. On the basis of these statements, the learned Tribunal concluded that the drivers of both vehicles were equally negligent



and, therefore, attributed contributory negligence in the ratio of 60:40. The aforesaid approach is legally untenable. The doctrine of contributory negligence requires a specific inquiry into the conduct of the person and the manner in which his own act or omission contributed to the occurrence of the accident. Contributory negligence cannot be inferred vicariously from the alleged negligence of the driver of the vehicle in which the claimant was travelling.

12. Even assuming that the drivers of both the offending vehicle and the canter were negligent, the present case would fall within the realm of composite negligence. The claimant, being a third-party passenger, cannot be held responsible for or attributed with any contributory negligence.

13. In cases of composite negligence, the claimant is entitled to recover the entire compensation from any one of the joint tortfeasors, and there exists no legal basis for reducing the compensation on account of apportionment of negligence between the drivers. The legal position in this regard stands settled by the Hon'ble Supreme Court in **T.O. Anthony v. Karvarnan**, (2008) 3 SCC 748 wherein it was held as under:

“6.Composite negligence refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages, and the injured has the option of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and



partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence. ”

14. It is trite law that where contributory negligence is sought to be attributed to a rider in a motor accident claim, the burden squarely lies upon the party alleging such negligence to establish, by cogent and reliable evidence, that some act or omission on the part of the rider contributed to the occurrence of the accident. In the absence of such proof, no finding of contributory negligence can be sustained against a rider merely on account of the manner in which the vehicle was driven.

15. A further perusal of the award reveals that the driver of the offending vehicle did not step into the witness box to depose regarding the manner in which the accident occurred. The insurance company also failed to lead any evidence to demonstrate that the driver of the vehicle in which claimant was travelling was negligent in any manner.

16. This Court is, therefore, of the considered view that the learned Tribunal committed a manifest error in granting the compensation in the ratio of 60% on the ground of alleged contributory negligence. The insurer, upon whom the burden squarely rested, led no evidence to establish even remote negligence attributable to the driver of the vehicle in which claimant was travelling. Consequently, the finding of contributory negligence is unsustainable and is liable



to be set aside, restoring the entitlement of the appellant/claimant to the full measure of compensation as determined in accordance with law.

SETTLED LAW ON COMPENSATION

17. Hon'ble Supreme Court has settled the law regarding grant of compensation with respect to the disability. The Apex Court in the case of **Raj Kumar Vs. Ajay Kumar and Another (2011) 1 Supreme Court Cases 343**, has held as under:-

General principles relating to compensation in injury cases

5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C.K. Subramonia Iyer v. T. Kunhikuttan Nair, AIR 1970 Supreme Court 376, R.D. Hattangadi v. Pest Control (India) Ltd., 1995 (1) SCC 551 and Baker v. Willoughby, 1970 AC 467).



6. *The heads under which compensation is awarded in personal injury cases are the following :*

Pecuniary damages (Special Damages)

(i) *Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.*

(ii) *Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :*

(a) *Loss of earning during the period of treatment;*

(b) *Loss of future earnings on account of permanent disability.*

(iii) *Future medical expenses. Non-pecuniary damages (General Damages)*

(iv) *Damages for pain, suffering and trauma as a consequence of the injuries.*

(v) *Loss of amenities (and/or loss of prospects of marriage).*

(vi) *Loss of expectation of life (shortening of normal longevity).*

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

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19. We may now summarise the principles discussed above :



(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

20. The assessment of loss of future earnings is explained below with reference to the following

Illustration 'A' : *The injured, a workman, was aged 30 years and earning Rs. 3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence,*



because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

- a) Annual income before the accident : Rs. 36,000/-.*
- b) Loss of future earning per annum
(15% of the prior annual income) : Rs. 5400/-.*
- c) Multiplier applicable with reference to age : 17*
- d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-*

Illustration 'B' : *The injured was a driver aged 30 years, earning Rs. 3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows :*

- a) Annual income prior to the accident : Rs. 36,000/- .*
- b) Loss of future earning per annum
(75% of the prior annual income) : Rs. 27000/-.*
- c) Multiplier applicable with reference to age : 17*
- d) Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-*

Illustration 'C' : *The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows :*



- a) Minimum annual income he would have got if had been employed as an Engineer : Rs. 60,000/-
- b) Loss of future earning per annum (70% of the expected annual income) : Rs. 42000/-
- c) Multiplier applicable (25 years) : 18
- d) Loss of future earnings : (42000 x 18) : Rs. 7,56,000/-

[Note : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actuals taken from the decision in Arvind Kumar Mishra (supra)].

18. Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi & Ors.** [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

“Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively.

The principle of revisiting the said heads is an acceptable



principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

19. Hon’ble Supreme Court in the case of **Erudhaya Priya Vs. State Express Tran. Corpn. Ltd. 2020 ACJ 2159**, has held as under:-

“ 7. There are three aspects which are required to be examined by us:

(a) the application of multiplier of '17' instead of '18';

The aforesaid increase of multiplier is sought on the basis of age of the appellant as 23 years relying on the judgment in National Insurance Company Limited v. Pranay Sethi and Others, 2017 ACJ 2700 (SC). In para 46 of the said judgment, the Constitution Bench effectively affirmed the multiplier method to be used as mentioned in the table in the case of Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC) . In the age group of 15-25 years, the multiplier has to be '18' along with factoring in the extent of disability.

The aforesaid position is not really disputed by learned counsel for the respondent State Corporation and, thus, we come to the conclusion that the multiplier to be applied in the case of the appellant has to be '18' and not '17'.

(b) Loss of earning capacity of the appellant with permanent disability of 31.1%



In respect of the aforesaid, the appellant has claimed compensation on what is stated to be the settled principle set out in Jagdish v. Mohan & Others, 2018 ACJ 1011 (SC) and Sandeep Khanuja v. Atul Dande & Another, 2017 ACJ 979 (SC). We extract below the principle set out in the Jagdish (supra) in para 8:

"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (i) Pain, suffering and trauma resulting from the accident;*
- (ii) Loss of income including future income;*
- (iii) The inability of the victim to lead a normal life together with its amenities;*
- (iv) Medical expenses including those that the victim may be required to undertake in future; and*
- (v) Loss of expectation of life."*

[emphasis supplied]

The aforesaid principle has also been emphasized in an earlier judgment, i.e. the Sandeep Khanuja case (supra) opining that the multiplier method was logically sound and legally well established to quantify the loss of income as a result of death or permanent disability suffered in an accident.

In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries had been set out as under:

"Nature of injury:



- (i) *compound fracture shaft left humerus*
- (ii) *fracture both bones left forearm*
- (iii) *compound fracture both bones right forearm*
- (iv) *fracture 3rd, 4th & 5th metacarpals right hand*
- (v) *subtrochanteric fracture right femur*
- (vi) *fracture shaft femur*
- (vii) *fracture both bones left leg*

We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 13 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.

We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case (supra), more specifically para 61(iii), considering the age of the appellant, would be 50% of the actual salary in the present case.

(c) The third and the last aspect is the interest rate claimed as 12%

In respect of the aforesaid, the appellant has watered down the interest rate during the course of hearing to 9% in view of the judicial pronouncements including in the Jagdish’s case (supra). On this aspect, once again, there was no serious dispute raised by the learned counsel for the respondent once the claim was confined to 9% in line with the interest rates applied by this Court.

CONCLUSION

8. The result of the aforesaid is that relying on the settled principles, the calculation of compensation by the appellant, as set out in para 5 of the synopsis, would have to be adopted as follows:

<i>Heads</i>	<i>Awarded</i>
<i>Loss of earning power (Rs.14,648 x 12 x 31.1/100</i>	<i>Rs. 9,81,978/-</i>
<i>Future prospects (50 per cent addition)</i>	<i>Rs.4,90,989/-</i>
<i>Medical expenses including transport charges, nourishment, etc.</i>	<i>Rs.18,46,864/-</i>
<i>Loss of matrimonial prospects</i>	<i>Rs.5,00,000/-</i>
<i>Loss of comfort, loss of amenities and mental agony</i>	<i>Rs.1,50,000/-</i>
<i>Pain and suffering</i>	<i>Rs.2,00,000/-</i>
<i>Total</i>	<i>Rs.41,69,831/-</i>

The appellant would, thus, be entitled to the compensation of Rs. 41,69,831/- as claimed along with simple interest at the rate of 9% per annum from the date of application till the date of payment.



20. So far as the compensation awarded to the claimant Bhim Singh on account of permanent disability is concerned, the findings recorded by the Tribunal warrant interference.

21. The claimant (PW-1), in his affidavit Ex. PW1/A, asserted that he is totally bedridden, has suffered 100% disability, and would remain confined to bed for the rest of his life. However, these assertions are not substantiated by the medical evidence on record.

22. PW-9 Dr. Pankaj Aggarwal, Senior Medical Officer, General Hospital, Gurugram, a member of the Medical Board, deposed that the claimant suffered amputation of the left lower limb at the knee level and that the permanent disability was assessed at 75%, as reflected in disability certificate Ex. P-13. In his cross-examination, PW-9 categorically admitted that the disability assessed was in relation to the affected limb and not qua the whole body.

23. Further, PW-6 Amit Godara, HR Executive of Gati Kintetsu Express Pvt. Ltd., stated in his cross-examination that the claimant did not suffer any loss of salary from March 2016 onwards and continues to be in service with the said company. This evidence materially contradicts the claimant's plea of total incapacity.

24. The evidence on record, therefore, establishes that the claimant has suffered 75% permanent physical disability in respect of the left lower limb and not total disablement of the body as claimed.

25. It is trite law that, for the purposes of awarding compensation under the Motor Vehicles Act, 1988, the medical assessment of permanent disability is not decisive. What is required to be assessed is the functional disability, namely, the extent to which the injury has impaired the earning capacity of the claimant.

The Hon'ble Supreme Court in *Jitendra v. Sadiya*, 2025 INSC 166, has reiterated



that functional disability, and not the percentage of permanent physical disability, governs the determination of just compensation. The relevant portion of the same is reproduced as under:-

9. Yet dissatisfied, the Claimant-Appellant is now before us. The significant points of challenge are as follows:

a. As per the certificate issued by PW2, he has suffered 60% permanent disability, leading to 100% functional disability as he is unable to undertake his occupation as a labourer.

b. His income should be ascertained more than Rs.5000/-, as the minimum wage itself was Rs.6,850/- in 2016.

10. We have heard the learned counsel for the Appellant. We are unable to agree with the view taken by the Tribunal and High Court on the income of the Appellant and the functional disability suffered by him. At the outset, we must refer to the exposition of this Court in [Gurpreet Kaur and Ors. v. United India Insurance Company Ltd. and Ors.1](#), wherein it was stated the notifications under the [Minimum Wages Act](#) can be a guiding factor in cases where there is no evidence available to evaluate monthly income.

11. Adverting to the facts at hand, the minimum wage prevalent in the area for unskilled workers was Rs.6850/-, annexed as Annexure P1. In view of the above exposition of this Court, we are inclined to accept this submission of the Appellant.

On the aspect of his functional disability, this Court recognises that due



would be significantly hampered. Therefore, in the interest of justice, we deem it appropriate to increase the percentage of functional disability to 80%.”

26. In the present case, the disability is limb-specific and the claimant continues to be gainfully employed without any loss of salary. Nevertheless, having regard to the nature of injury, amputation of the left lower limb at the knee level and the inevitable impact on mobility, efficiency, and future earning prospects, the functional disability cannot be assessed at a negligible level.

27. Considering the totality of the circumstances, this Court finds that the assessment of functional disability at 30% does not adequately reflect the impairment suffered by the claimant. At the same time, equating the functional disability with the limb disability would be excessive and unwarranted in the facts of the case.

28. Accordingly, in order to balance the competing considerations and to secure the ends of justice, the functional disability of the claimant is reassessed at 50% for the purposes of computation of compensation.

29. A perusal of the award further reveals that no amount of compensation has been awarded by the learned Tribunal for future prospects and future medical treatment.

30. So far as compensation towards pain and suffering is concerned, the Hon’ble Apex Court in **K.S Muralidhar Vs. R. Subbulakshmi and another**, 2024 INSC 886 held as under:-

“12. It is to be noted that both the Tribunal and the High Court have taken the disability suffered by the claimant-appellant to be at 100%. We find no ground to take a different view.

13. While acknowledging that ‘pain and suffering’, as a concept escapes definition, we may only refer to certain authorities,



scholarly as also judicial wherein attempts have been made to set down the contours thereof.

13.1 The entry recording the term 'pain and suffering' in P. Ramanatha Iyer's Advanced Law Lexicon[9] reads as under:-

***"Pain and suffering.** The term 'Pain and suffering' mean physical discomfort and distress and include mental and emotional trauma for which damages can be recovered in an accident claim.*

This expression has become almost a term of art, used without making fine distinction between pain and suffering. Pain and suffering which a person undergoes cannot be measured in terms of money by any mathematical calculation. Hence the Court awards a sum which is in the nature of a conventional award [Mediana, The (1900) AC 113, 116]"

13.2 Eric Cassell[10], an American Physician and Bioethicist, defines 'pain' not only as a sensation but also 'as experience embedded in beliefs about causes and diseases and their consequences', and 'suffering' as 'the state of severe distress associated with events that threaten the intactness of person'.

13.3 In a recent article[11] published in the journal of the International Association for the Study of Pain, it has been recorded that there is no consensus on what exactly the concept of pain-related suffering includes, and it is often not precisely operationalised in empirical studies. The authors in their systematic review analysed 111 articles across a variety of disciplines such as bioethics, medical ethics, psycho-oncology, anaesthesiology, philosophy, sociology etc., we may refer to few of them:

13.3.1 Eugene V. Boisaubin[12], who is currently a Professor at the University of Texas, at Houston, in a 1989 article defined it as "Suffering is experienced by individual and arises from threats to the integrity of the individual as a complex social and psychological entity."

13.3.2 Andrew Edgar, who is currently a Reader Emeritus in Philosophy at Cardiff University at UK has defined, in a 2007 article suffering as an "experience of life never getting better, revealing in the sufferer only vulnerability, futility, and impotence."

13.3.3 Arthur W. Frank[13], Professor Emeritus, Department of Sociology, University of Calgary in his well-known article "Can We Research Suffering?", published in 2001, observed



that "at the core of suffering is the sense that something is irreparably wrong with our lives, and wrong is the negation of what could have been right. Suffering resists definition because it is the reality of what is not."

13.3.4 Daryl Pullman[14] who currently serves as University research Professor, Bioethics at the Memorial University of Newfoundland, Canada in his 2002 article defined suffering as the "product of [physical], psychological, economic, or other factors that frustrate an individual in the pursuit of significant life projects."

13.4 The Judicial Studies Board, now known as the Judicial College in the United Kingdom, produced guidelines in 1992 to produce greater consistency of awards and make the judicial scale of values more easily accessible. They have been deduced from a study of past cases, examining the range of awards therein. The latest edition of these guidelines was published in 2021[15]. They record the difficulty of computing 'pain and suffering' as under :-

*[15 See : **Hassam and Anr. v. Rabot and Anr. (2024) UKSC 11]***

"It is widely accepted that making of an award of general damages for pain and suffering is a somewhat artificial task. It involves the Judge seeking to convert the pain and suffering of a given claimant into a monetary award which he or she considers to be reasonable by way of compensation. That is a difficult task and one which has historically led to judges making widely varying awards of damages in respect of relatively comparable injuries a result which not only offends the principle of equality before law but results in unnecessary appeals and the incurring of additional cost, apart altogether from the burden that such appeals place on the Court's own scarce resources."

*13.5 In determining non-pecuniary damages, the artificial nature of computing compensation has been highlighted in **Heil v. Rankin [2001] QB 272**, as referred to in **Attorney General of St. Helena v. AB & Ors. Privy Council Appeal No. 0034 of 2018** as under:-*

*"23. This principle of 'full compensation' applies to pecuniary and non-pecuniary damage alike. But, as Dickson J indicated in the passage cited from his judgment in **Andrews v. Grand & Toy Alberta Ltd, 83 DLR (3d) 452, 475-476**, this statement immediately raises a problem in a situation where what is in issue is what the appropriate level of 'full compensation' for non-pecuniary injury is when the compensation*



*has to be expressed in pecuniary terms. There is no simple formula for converting the pain and suffering, the loss of function, the loss of amenity and disability which an injured person has sustained, into monetary terms. Any process of conversion must be essentially artificial. Lord Pearce expressed it well in **H West & Son Ltd v. Shephard [1964] AC 326, 364** when he said:*

*'The **court** has to perform the difficult and artificial task of converting into monetary damages the physical injury and deprivation and pain and to give judgment for what it considers to be a reasonable sum. It does not look beyond the judgment to the spending of the damages.'*

*24. The last part of this statement is undoubtedly right. The injured person may not even be in a position to enjoy the damages he receives because of the injury which he has sustained. Lord Clyde recognised this in **Wells v. Wells [1999] 1 AC 345, 394H** when he said: 'One clear principle is that what the successful plaintiff will in the event actually do with the award is irrelevant.'*

13.6 In the context of the United States, the most important piece of legal literature regarding 'pain and suffering' is an article titled Valuing Life and Limb in Tort: Scheduling Pain and Suffering, published in the year 1989. Relevant extracts thereof read as under :

"Pain and suffering and other intangible or non-economic losses are even more problematic. Physical pain and attendant suffering have for centuries being recognised as legitimate elements of damages, and "modern" tort law has seen a marked expansion of the rights to recover for forms of mental anguish. Some Courts have even permitted recovery for emotional trauma unaccompanied by physical injury, including derivative losses stemming from injuries to family members. The precise elements of compensable non-economic loss vary by jurisdiction. Pain and suffering may be used as a catch-all category for the jury's consideration of all non-pecuniary losses in a case of a nonfatal injury, subsuming other qualitative categories such as mental anguish and humiliation. More commonly, though, other non-economic elements - such as "loss of enjoyment of life" are accorded independent standing ..."



Another important observation is that:

"Whatever the categories of non-economic damages allowed in a given jurisdiction, the law provides no objective benchmarks valuing them. As one commentator notes, 'Courts have usually been content to say that pain and suffering damages should amount to 'fair compensation', or a 'reasonable amount', 'without any definite guide'."

13.7 Consideration of the above, underlines that while each discipline has its own conception of the meaning of pain/suffering, within its confines, the commonality that emerges is that a person's understanding of oneself is shaken or compromised at its very root at the hands of consistent suffering. In the present facts, it is unquestionable that the sense of something being irreparably wrong in life, as spoken by Frank (supra); vulnerability and futility, as spoken by Edgar, is present and such a feeling will be present for the remainder of his natural life.

14. In respect of 'pain and suffering' in cases where disability suffered is at 100%, we may notice a few decisions of this Court:-

*14.1 In **R.D Hattangadi v. Pest Control (India) (P) Ltd. (1995) 1 SCC 551**. It was observed :*

"17. The claim under Sl. No. 16 for 'pain and suffering' and for loss of amenities of life under Sl. No. 17, are claims for non-pecuniary loss. The appellant has claimed lump sum amount of Rs.3,00,000 each under the two heads. The High Court has allowed Rs.1,00,000 against the claims of Rs.6,00,000. When compensation is to be awarded for 'pain and suffering' and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. The amount of compensation for non-pecuniary loss is not easy to determine but the award must reflect that different circumstances have been taken into consideration. According to us, as the appellant was an advocate having good practice in different courts and as because of the accident he has been crippled and can move only on wheelchair, the High Court should have allowed an amount of Rs.1,50,000 in respect of claim for 'pain and suffering' and Rs.1,50,000 in respect of loss of amenities of life. We direct payment of Rs.3,00,000



(Rupees three lakhs only) against the claim of Rs.6,00,000 under the heads "pain and suffering" and "Loss of amenities of life".

(Emphasis Supplied)

14.2 This Judgment was recently referred to by this Court in **Sidram v. United India Insurance Company Ltd. (2023) 3 SCC 439** reference was also made to **Karnataka SRTC v. Mahadeva Shetty (2003) 7 SCC 197** (irrespective of the percentage of disability incurred, the observations are instructive), wherein it was observed :

"18. A person not only suffers injuries on account of accident but also suffers in mind and body on account of the accident through out his life and a feeling is developed that his no more a normal man and cannot enjoy the amenities of life as another normal person can. While fixing compensation for pain and suffering as also for loss of amenities, features like his age, marital status and unusual deprivation he has undertaken in his life have to be reckoned."

14.3 In **Kajal v. Jagdish Chand (2020) 4 SCC 413** considering the facts of the case, i.e., 100% disability, child being bedridden for life, her mental age being that of a nine-month-old for life - a vegetative existence, held that "even after taking a conservative view of the matter an amount payable for the 'pain and suffering' of this child should be at least Rs.15,00,000/-."

14.4 In **Ayush v. Reliance General Insurance (2022) 7 SCC 738** relying on *Kajal* (supra) the amount awarded in 'pain and suffering' was enhanced to Rs.10,00,000. The child who had suffered the accident was five years old and the **Court** noted in paragraph 2 that :

"As per the discharge certificate, the appellant is not able to move both his legs and had complete sensory loss in the legs, urinary incontinence, bowel constipation and bed sores. The appellant was aged about 5 years as on the date of the accident, hence has lost his childhood and is dependent on others for his routine work."

14.5 In *Lalan* (supra) cited by the claimant-appellant, the Tribunal awarded Rs.30,000/- which was enhanced to Rs.40,000/- by the High **Court**. Considering the fact that the appellant therein has suffered extensive brain injury awarded compensation under 'pain and suffering' to the tune of Rs.3,00,000/-.



15. Keeping in view the above-referred judgment, the injuries suffered, the 'pain and suffering' caused, and the life-long nature of the disability afflicted upon the claimant-appellant, and the statement of the Doctor as reproduced above, we find the request of the claimant-appellant to be justified and as such, **award Rs.15,00,000/-** under the head 'pain and suffering', fully conscious of the fact that the prayer of the claimant-appellant for enhancement of compensation was 22 (2022) 7 SCC 738 15| SLP (C) NO. 18337 OF 2021 by a sum of Rs. 10,00,000/-, we find the compensation to be just, fair and reasonable at the amount so awarded.

43. Further, the Hon'ble Supreme Court in the case of **Baby Sakshi Greola Vs. Manzoor Ahmad Simon and anothers, 2025(1) RCR (Civil) 238**, where the injured was a female child aged 7 years and had suffered grievous injuries, learned Tribunal awarded Rs.50,000/-towards pain and suffering, but the same was enhanced by the Hon'ble High Court to Rs. 12,00,000/-. When the matter reached to the Hon'ble Apex Court, the same was enhanced to Rs. 15,00,000/-.

44. In view of the settled law by Hon'ble Apex Court, since in the present case as well, the disability is 100% by applying the same parameters a compensation of Rs.15 lakhs is hereby awarded to the appellant-claimant towards pain and sufferings.

31. In view of the above referred to judgment and considering that appellant/claimant has suffered 75% physical disability as depicted from Ex P13 and that he remained admitted in hospital for almost 01 month and facts and circumstances of the present case, this Court deems it appropriate to grant compensation of **three lakhs** under the heads of pain and suffering.

32. A perusal of the award further reveals that nothing has been awarded for attendant charges, loss of amenities of life, medical expenses for future

treatment. Moreover, the amount awarded for transportation charges, special diet is on the lower side and the same is liable to be enhanced. Therefore, the award requires indulgence of this Court.

CONCLUSION

33. In view of the above, the present appeal is allowed and award dated 15.07.2017 is modified. Accordingly, as per the settled principles of law as laid down by Hon’ble Supreme Court as mentioned above, the appellant-claimant is held entitled to the enhanced amount of compensation as calculated below:-

Income	Rs.30000/- per month
Loss of Future Prospect 40%	Rs.12000/-(30000X40%)
Annual Income	Rs.5,04,000/- (42000 X12)
Loss of future earning on account of 50% disability	Rs.2,52,000/- (50% of 504000)
Multiplier of 15	Rs.37,80,000/- (252000X15)
Medical Expenses	Rs.17,64,657/-
Pain and suffering	Rs.3,00,000/-
Attendant Charges	Rs.1,00,000/-
Transportation Charges	Rs.50,000/-
Loss of amenities of life	Rs.1,00,000/-
Special Diet	Rs.30,000/-
Loss of earning during period of treatment	Rs.40,000/-
Medical expenses for future treatment	Rs.60,000/-
Total compensation awarded:-	Rs.62,24,657/-

Deduction:-	
Amount awarded by Tribunal	Rs.20,88,000/-
Enhanced amount of compensation	Rs.41,36,657/- (6224657- 2088000)

34. So far as the interest part is concerned, as held by Hon’ble Supreme Court in *Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma* 2019 ACJ 3176 and *R.Valli and Others VS. Tamil Nadu State Transport Corporation* (2022) 5 Supreme Court Cases 107, the appellant/claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

35. Respondent No.3-Insurance Company is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the account of the appellant/claimant. The appellant/claimant is directed to furnish his bank account details to the Tribunal.

36. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

18.12.2025
Gaurav Arora

Whether speaking/non-speaking : Yes
Whether reportable : Yes