



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2081-2019 (O&M)

SATPAL

.....Appellant

vs.

SORABH (SINCE DECEASED) THROUGH HIS ISHWANTI &
ORS.

.....Respondents

Reserved on:- 23.01.2026

Pronounced on:- 26.02.2026

Uploaded on:- 06.03.2026

Whether only the operative part of the judgment is pronounced?

NO

Whether full judgment is pronounced?

YES

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. Kulvir Narwal, Advocate
for the appellant.Mr. Vikas Mohan Gupta, Advocate
Ms. Tani Aggarwal, Advocate
for respondent No.3-Insurance Company.**SUDEEPTI SHARMA, J.**

1. The present appeal has been filed by the appellant-claimant against the award dated 03.12.2018 passed in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal'), wherein the claim petition filed by the claimant-appellant was allowed and respondent No.3-Insurance company was held liable to pay compensation. The award is challenged on the ground that contributory negligence was wrongly attributed at the ratio of 25% upon appellant-claimant and 75% upon



respondent No.1-Sourabh (since deceased), as well as quantum of compensation which is on the lower side.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 2.5.2013 he was going from Bahadurgarh towards Jhajjar on a motor-cycle bearing registration No.HR-13G/4805. When he reached near Sarai Mor, Bahadurgarh on Jhajjar-Bahadurgarh road, in the mean-time a motor-cycle Marka Bajaj Pulser (applied for) (here-in-after referred to as the “offending vehicle”) being driven at a very high speed and in a rash and negligent manner by respondent No.1-Sorabh (since deceased) came there from opposite side and after coming on wrong side of the road struck into the motor-cycle of the claimant. As a result thereof, the claimant sustained multiple grievous injuries and was taken to Post Graduate Institute of Medical Sciences (PGIMS), Rohtak where he was medicolegally examined but due to critical condition, he was shifted to Sri Balaji Action Medical Institute, New Delhi where he remained admitted from 2.5.2013 to 5.5.2013 and thereafter, he remained admitted in Medanta Hospital from 5.5.2013 to 18.5.2013 and 2.7.2013 to 6.7.2013. After being discharged, he visited the hospital for follow up treatment. As he did not recover from the injuries, the claimant was again got admitted in Medanta Hospital on 19.7.2013 and remained admitted upto 29.7.2013 and thereafter, from 6.3.2015 to 9.3.2015. During said period multiple operations were done. He had spent more than Rs.20,00,000/- on his treatment. With these averments, he claimed Rs.80,00,000/- as compensation from the respondents, respondent No.1 being owner, respondent No.2 being driver and respondent No.3 being insurer of the offending vehicle. It is pertinent to mention here that



respondent No.1 died in the alleged accident and a petition filed by his mother under Section 163-A of the Motor Vehicles Act was partly allowed by this Tribunal on 2.7.2016.

3. Upon notice of the claim petition, respondents appeared and contested the claim petition by filing their separate written replies denying the factum of accident/compensation.

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

“(1) Whether the accident in question occurred due to rash and negligent driving of vehicle i.e. motor-cycle bearing Chassis No.MD2AII CZ7CCD53708 and Engine No.DHZCCD53205 by respondent No.1 Sourabh (since deceased)? OPP

(2) If issue No.1 is proved, whether claimant Satpal had sustained injuries in the above-said accident, if so to what amount of compensation and from whom he is entitled to? OPP

(3) Whether there was wilful violation of the terms and conditions of the insurance policy, if so to what effect? OPR3

(4) Relief.”

5. Thereafter, both the parties led their evidence in support of their respective pleadings.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimant. However, the learned Tribunal held that accident occurred due to contributory negligence of both the claimant and respondent No.1-Sorabh (since deceased) in the ratio of 25:75. Hence, the present appeal.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:**

7. Learned counsel for the appellant–claimant contends that the learned Tribunal has committed error in law and on facts in holding that the accident in question occurred due to contributory negligence on the part of appellant-claimant and respondent No.1-Sorabh (since deceased). And appellant is held entitled to compensation to the ratio of 75% only. He contends that the said finding is perverse, arbitrary, and not borne out from the evidence available on record.

8. He further contends that the learned Tribunal has erred in not applying multiplier method while calculating the compensation. Furthermore, he contends that learned Tribunal has not awarded compensation for the loss of future income, attendant charges, future medical treatment, transportation and special diet. He further contends that compensation awarded for pain and suffering, disability is on lower side and deserves to be enhanced as per the settled law. He, therefore, prays that the present appeal be allowed.

9. Per contra, learned counsel for respondent No.3-Insurance Company contends that the accident in question took place due to sole negligence on the part of appellant-claimant and learned Tribunal has erred in holding the accident as a contributory negligence. He further contends that compensation awarded by the learned Tribunal is on higher side and deserves to be reduced as per the settled law. Therefore, he prays that the present appeal be dismissed.

10. I have heard learned counsel for the appellant and perused the whole case file with his able assistance.

11. The relevant portion of the award is reproduced as under:-

***“ISSUE No.1***

11. In order to prove the factum of accident, involvement of the offending vehicle in said accident and the fact that it was respondent No.1 who was at fault for the same, the claimant himself appeared as PW6 and tendered in evidence his affidavit Ex.PW6/A deposing all the facts as mentioned in the petition. The claimant further examined his wife Santosh, the alleged eye witness to the accident as PW8. She tendered in evidence her affidavit Ex.PW8/A deposing that on 2.5.2013 she alongwith her husband was going from Bahadurgarh towards Jhajjar on the motorcycle bearing registration No.HR-13G/4805. The claimant was driving the motor-cycle and she was pillion rider and that at about 1.00 p.m. when they reached near Sarai Mor, Bahadurgarh on Jhajjar-Bahadurgarh road, in the mean-time, their motor-cycle was hit by the offending vehicle which came there from opposite side being driven at a very high speed and in a rash and negligent manner by its driver. As a result thereof, her husband sustained multiple grievous injuries including fracture in both legs, shoulder, chest and mouth and cut in tongue etc.

12. Copies of FIR and report under Section 173 Cr.P.C. have also been placed on the file as Ex.P77 and Ex.P101 respectively. Perusal of the same would show that the claimant was facing trial with regard to the present accident. Thereafter, he was acquitted in said case vide judgment dated 21.5.2015 Ex.P78 from the court of Ms.Jyoti Birbian, learned Sub Divisional Judicial Magistrate, Bahadurgarh.

13. On the other hand, no evidence has been led by the respondents on this issue.



14. At the very outset, learned counsel for the respondents have taken the plea of the maintainability of the petition. Though, no specific issue has been framed but since it is a question of law, it would be appropriate if this contentious issue is adjudicated upon under issue No.1.

15. Initiating his arguments, learned counsel for the respondents vehemently argued that the present claim petition is nothing, but an abuse of the process of the law. The FIR was registered against the present claimant and the whole case of the respondents was that the accident had taken place on account of the fault of the claimant. Despite the fact that the claimant has been acquitted in the criminal case, it would not shift the burden upon the shoulder of the present respondent No.1 deceased Sorabh that he was negligent in causing the accident. The plea of the claimant that he could not agitate the fact of his responsibility for causing the accident because of prolonged treatment and specifically on account of cutting of the tongue, is not sustainable in the eyes of law. His wife was the pillion rider alongwith the claimant and was an educated lady and could have been alleged false implication of her husband in the criminal case. Further elaborating his arguments, they tried to derive the benefit from the fact that the mother of respondent No.1 had filed the claim petition under Section 163-A of the Motor Vehicles Act and in that petition no plea of the prolonged treatment and cutting of tongue was taken by the claimant and it shows that he was rightly charge-sheeted for causing the death of respondent No.1 Sorabh on account of his own rash and negligent driving.



16. *Opposing the contentions, learned counsel for the claimant vehemently argued that there is no bar on the filings of the present claim petition despite the fact that earlier claim petition filed against the present claimant was under Section 163-A and not under Section 166 of the Motor Vehicles Act. Mere lodging of the FIR or facing of trial is not sufficient to conclude that the claimant was negligent in causing the accident. On account of the serious injuries sustained by the claimant, could not approach the police and acquittal in the criminal case would come to his rescue to the effect that he was not rash and negligent in his driving. Further more, the Tribunal has to assess the negligence on the basis of the evidence coming before it and not merely on the basis of the FIR as settled by the various Hon'ble High Courts and Hon'ble Supreme Courts.*

17. *There is no dispute about the accident having taken place. It is further admitted that in the said accident respondent No.1 Sorabh expired and his mother filed the claim petition which was allowed by the undersigned vide award dated 2.7.2016 Ex.P102. That petition was under Section 163-A of the Motor Vehicles Act. It is further not disputed that that the FIR pertaining to the accident Ex.P77 was lodged against the present claimant and in that criminal case, he has already been acquitted vide judgment dated 21.5.2015 Ex.P78. It is further evidently crystal clear that the claimant sustained serious injuries including the cut of the tongue and remained under treatment in various hospital.*

18. *In the light of admitted facts, first point for determination is whether the second claim petition is maintainable with regard to the accident in which the rashness and negligence was attributed to respondent*



No.1 deceased Sorabh. In this context my opinion is in affirmative. At the time of deciding the claim petition, the contents of the FIR are not to be looked into but the evidence coming before this court is to be seen in order to adjudge the cause and responsibility of the accident.

19. In order to prove rashness and negligence on the part of respondent No.1 deceased Sorabh, there are the statements of two witnesses namely PW6 Satpal claimant and his wife PW8 Santosh. Both of them have spoken in tune with each other and attributed the cause of accident on account of the rash and negligent driving of respondent No.1 Sorabh deceased. It is pertinent to mention here that PW8 Santosh was accompanying and was pillion rider on the motor-cycle being driven by the present claimant. Meaning thereby she was the eye witness to the occurrence. During the cross-examination, nothing has come on the record which could shake credibility of these two witnesses.

20. With regard to the lodging of FIR, it would be suffice to say that the present claimant has already been acquitted in the absence of incriminating evidence vide judgment dated 21.5.2015 and that FIR would not come in the way of deciding the present claim petition. It is the evidence coming before this Tribunal which has to be scrutinized minutely as held by Hon'ble Apex Court in T.O.Anthony Versus Karvarnan and others, Appeal (civil) No.1082 of 2008 decided on 1.2.2008.

21. Nextly, learned counsel for the respondents have forcefully contended that the delay in filing the present claim petition has not been duly explained and moreover, in the written statement filed in the earlier claim petition no such plea was taken by the present claimant. Even this contention is totally mis-conceived. As discussed earlier, the claimant had sustained



multiple grievous injuries and remained under treatment in various hospitals for a very long time. In such a scenario, it cannot be expected from a common man particularly his wife to approach the higher authority for the cancellation of the FIR or for the redressal of their grievances. The nature of accident and injuries suffered by the claimant would lead to an irresistible conclusion that the primary duty of the family members of the claimant was to save his life by all means and not to rush to the police to dispute the FIR.

22. With regard to the said plea not being taken in the earlier written statement filed by the claimant in the earlier claim petition, it would be suffice to say that contents of para No.24 of the written statement Ex.R2 are very relevant and it is reproduced as below:

“That para No.24 of the petition is wrong, hence denied. The petitioner has mentioned the false story to grab the compensation. No accident took place due to rash and negligent driving of respondent No.1. In fact, Saurabh since deceased was driving his motor-cycle at a very high speed and in a zig zag manner and he could not control the speed of the motor-cycle and he struck it against the motor-cycle of the answering respondent and cause the accident. But to grab the compensation a false case has been lodged by the complainant against the respondent No.1 and motor-cycle bearing No.HR-13G/4805. If anyhow, this Hon’ble Tribunal comes to conclusion that motor-cycle bearing No.13G/4805 is involved in this accident, in that case respondent No.2 is having a valid driving licence and vehicle is insured with respondent



No.3 i.e. Bharti Axa General Insurance company Ltd. so claim may kindly be passed against respondent No.3 only.

23. If glanced through, it would reveal from the aforesaid paragraph that the claimant had taken a specific plea that the deceased Sorabh respondent No.1 was negligent and had caused the accident but a false claim petition was filed in order to grab the compensation from him. What else defence could have been taken by the claimant when he specifically alleged that the accident had taken place on account of rash and negligent driving of deceased Sorabh on whose behalf the earlier claim petition was filed by his mother.

24. Now coming to the decision of the earlier claim petition vide judgment dated 2.7.2016 Ex.P102, it is pertinent to mention here that the earlier claim petition filed by the mother of respondent No.1 deceased Sorabh was under Section 163-A of the Motor Vehicles Act and the question of rash and negligent driving was not to be adjudicated upon in that petition. Section 163-A of the Motor Vehicles Act, stipulates and deals with the amount of compensation only on account of use of the vehicle and the Tribunal is not supposed to give the findings with regard to the rash and negligent driving. The present claim petition is under Section 166 of the Motor Vehicles Act and it deals with the different aspect and the rashness and negligence is sine qua none for deciding the petition under Section 166 of the Motor Vehicles Act. From the overwhelming evidence adduced by the claimant in the form of his own evidence and that of his wife who is eye witness to the occurrence, it can be conclusively said that the accident took place on account of rash and negligent



driving of the offending vehicle by respondent No.1 deceased Sorabh.

25. At the last learned counsel for the respondents have taken the plea of the contributory negligence. From the site plan Ex.R10, it can reasonably be gathered that both the motor-cycles were coming from the opposite direction. Point A has been shown the place where the accident had taken place and the place B has been shown where the motor-cycles were lying after the accident. Since the vehicles were coming from the opposite side it was incumbent upon the drivers of both the vehicles to be vigilant and they could have easily avoided the accident if one of the motor-cyclist turned his vehicle towards other side of the road. In the given circumstances, both, the claimant and respondent No.1 deceased Sorabh, are held at fault for the accident in the ratio of 25 : 75. This issue stands disposed of accordingly.”

11. A bare perusal of the impugned award reveals that the learned Tribunal has fallen into error in holding that the accident in question was the outcome of contributory negligence, apportioning liability in the ratio of 25% upon the appellant–claimant and 75% upon respondent No.1-Sourabh (since deceased), driver of the offending vehicle.

12. It emerges from the record that in order to establish rashness and negligence on the part of respondent No.1-Sourabh (since deceased), the appellant-claimant examined himself as PW6 and his wife Santosh as PW8. Both witnesses have deposed in a consistent and cogent manner, unequivocally attributing the occurrence to the rash and negligent driving of respondent No.1-Sourabh (since deceased). Significantly, PW8 Santosh was travelling as a pillion rider on the motorcycle driven by the



claimant, therefore, was natural and ocular witness to the occurrence. Their testimonies have withstood the test of cross-examination, and nothing material has been elicited so as to impeach their credibility or to cast any doubt upon their version of events.

13. Despite such unimpeached ocular evidence, the learned Tribunal proceeded to record finding of contributory negligence primarily on the basis of the site plan (Ex. R10). It is not in dispute that the site plan was prepared subsequent to the occurrence. A site plan, drawn *post facto*, can at best be a corroborative piece of evidence; it cannot override direct and trustworthy eyewitness testimony unless it demonstrably contradicts the same. The learned Tribunal appears to have inferred contributory negligence merely from the fact that the motorcycles were coming from opposite directions and that the point of impact was shown in the middle of the road.

14. It is a matter of common experience that in a sudden and emergent situation, drivers instinctively attempt to avert a collision, often swerving their vehicles in different directions. The eventual resting positions of the vehicles, as depicted in a site plan prepared later, cannot by themselves furnish a safe basis to attribute negligence to both drivers. Even otherwise, a careful perusal of Ex.R10 does not disclose any circumstance from which negligence on the part of the appellant-claimant can be reasonably inferred.

15. It is trite that the burden to establish contributory negligence squarely lies upon the party alleging it. The defence must be substantiated by cogent and affirmative evidence; it cannot rest on conjectures or surmises. The Hon'ble Supreme Court in *Jiju Kuruvila v. Kunjamma*



Mohan, 2013(9) SCC 166 has categorically held that in the absence of direct or corroborative evidence, it would be impermissible to presume that drivers of both vehicles were equally negligent. The said principle was reiterated in *Kumari Kiran v. Sajjan Singh, 2015(1) SCC 339*, wherein it was observed that negligence cannot be inferred merely on the basis of a head-on collision or on hypothetical considerations in the absence of substantive proof.

16. In the case at hand, there is no evidence whatsoever on record to establish any act or omission on the part of the appellant-claimant amounting to negligence, much less contributory negligence. The respondent No.3-Insurance Company have failed to discharge the onus cast upon them. The finding of the learned Tribunal attributing 25% contributory negligence to the appellant-claimant is thus unsustainable in law and on facts.

17. Accordingly, the said finding is set aside. The accident is held to have occurred solely on account of the rash and negligent driving of respondent No.1-Sourabh (since deceased), and the appellant-claimant cannot be saddled with any part of the liability.

18. A perusal of the impugned award leaves no manner of doubt that the claimant-appellant has suffered permanent disability to the extent of 65.44%, as evidenced by disability certificate Ex. P4. The record demonstrates that the injuries sustained in the accident were grave and life-altering in nature, including head injury with diffuse axonal injury (DAI), right-sided mild hemiparesis, mild dysarthria, upper motor neuron (UMN) bladder involvement, and borderline intellectual functioning, in addition to multiple fractures of both legs and the forearm. The medical



evidence clearly establishes that the said injuries have resulted in substantial and enduring functional impairment.

19. The record further reveals that the appellant-claimant remained hospitalised for a considerable duration. He was initially admitted at Sri Balaji Action Medical Institute, New Delhi from 02.05.2013 to 05.05.2013, and thereafter at Medanta Hospital, Gurgaon from 05.05.2013 to 18.05.2013, again from 02.07.2013 to 06.07.2013, and from 19.07.2013 to 29.07.2013. During the course of treatment, he underwent multiple surgical procedures including application of an external fixator around the left knee, open reduction and internal fixation (ORIF) of the left forearm bones, tongue debridement and primary closure, and pan endoscopy. He was subsequently re-admitted from 06.03.2015 to 09.03.2015 for removal of implants. The prolonged hospitalisation, repeated surgical interventions, and extended treatment spanning nearly three years reflect the severity of trauma endured by the appellant-claimant.

20. However, despite the aforesaid material on record, the learned Tribunal committed manifest error in not applying the multiplier method while assessing compensation under the head of loss of earning capacity.

21. It is now well settled that in cases involving permanent disability affecting earning capacity, compensation must be assessed by applying the multiplier method so as to ensure just and fair compensation in terms of Section 168 of the Motor Vehicles Act.

22. It has come on record that the appellant-claimant was engaged in agriculture and dairy farming and asserted monthly income of ₹30,000/-. Admittedly, no documentary evidence was adduced to



substantiate the said income. In such circumstances, it is permissible for the Court to take recourse to minimum wages notifications as a guiding factor. At the same time, it is equally settled that minimum wages cannot be applied in a rigid or mechanical manner. In **Chandra @ Chanda @ Chandraram v. Mukesh Kumar Yadav & Ors., (2022) 1 SCC 198**, the Hon'ble Supreme Court held that a reasonable degree of estimation or informed guesswork, having regard to the nature of avocation and surrounding circumstances, is permissible while determining income in motor accident cases where strict proof is unavailable.

23. Having regard to the rural background of the appellant-claimant, his engagement in agricultural and dairy activities, and in the absence of documentary proof, this Court deems it appropriate, in the interest of justice, to assess his monthly income at **₹6,000/-**.

24. It is further apparent that the compensation awarded under the head of pain and suffering is wholly inadequate and does not commensurate with the gravity of injuries, prolonged hospitalisation, repeated surgeries, and the permanent neurological and physical disability suffered by the appellant-claimant. The award of ₹1,00,000/- under this head fails to reflect the magnitude of trauma, physical agony, mental distress, and loss of amenities of life endured by him.

25. The Hon'ble Apex Court in the case of '**KS Muralidhar versus R Subbulakshmi and another 2024 INSC 886**' highlighted the intangible but devastating consequence of pain and suffering. The relevant portion of the same is reproduce as under:-

“15. Keeping in view the above-referred judgments, 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 by a sum of Rs. 10,00,000/-, we find the compensation to be just, fair and reasonable at the amount so awarded.”

26. Therefore, in view of the above judgment and facts and circumstances of the present case, this Court deems it appropriate to grant compensation of **Rs.5,00,000/-** under the head of pain and suffering.

27. A perusal of award further reveals that learned Tribunal has rightly awarded compensation to the tune of Rs.12,00,000/- for medical expenses and rightly awarded compensation to the tune of Rs.2,00,000/- under the head of disability.

28. Further, the hon'ble Supreme Court in the case of **Kavin vs. P. Seremani Devi 2025 INSC 1028**, has held that compensation for permanent disability is distinct from loss of future income.

29. The relevant extract of the same is reproduced as under:-

“13. The Claims Tribunal further granted an amount of Rs. 3 lacs towards permanent disability suffered by the claimant. This was after taking into consideration the 100% disability suffered by the claimant. The High Court however set aside the grant of compensation under this head by observing that as compensation towards loss of income had been granted, further amount of Rs. 3 lacs towards permanent disability was not admissible. We do not find any basis whatsoever for this approach of the High Court. The grant of

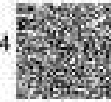


*compensation for loss of future income is a distinct head from the one under which compensation is granted for permanent disability. In the light of the fact that the claimant suffered 100% permanent disability and was living in a vegetative state, the High Court was not justified in setting aside the grant of compensation under this head. **In our view, considering** the nature of disability suffered by the claimant, he would be entitled to amount of Rs. 5 lacs under this head.”*

30. In view of the above, the compensation awarded for permanent disability is rightly awarded.

31. A perusal of award further reveals that no amount has been awarded towards future prospects despite the appellant-claimant having suffered substantial disability affecting his earning capacity for the remainder of his life. The learned Tribunal has also failed to award compensation under distinct heads such as transportation charges, special diet, and attendant charges, though the record clearly indicates prolonged treatment and repeated hospital admissions, necessarily entailing such expenditure.

32. In view of the foregoing discussion, the compensation awarded by the learned Tribunal warrants recalculation by appropriately determining the loss of earning capacity through application of the multiplier method, adding future prospects in accordance with settled principles of law, and awarding just and reasonable amounts under the loss of amenities, transportation, special diet, and attendant charges. The claimant-appellant is thus entitled to enhancement of compensation to



ensure that the award satisfies the mandate of “just compensation” as envisaged under the Motor Vehicles Act.

SETTLED LAW ON COMPENSATION

33. 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 : (5400×17) : 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 : (27000×17) : 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 : (42000×18) : 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)].

7. 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.”

8. 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.

RELIEF

34. In view of the above, the present appeal is allowed and award dated 03.12.2018 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:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Income	Rs.6,000/-
2	Loss of future prospects (25%)	Rs.1,500/- (25% of Rs.6000/-)
3	Annual Income	Rs.90,000/- (Rs.7500/- X 12)
4	Loss of future earning on account of 65% disability	Rs.58,500/- (Rs.90000/- X 65%)
5	Multiplier of 14	Rs.8,19,000/- (Rs.58500 X 14)
6	Medical Expenses	Rs.12,00,000/-
7	Pain and suffering	Rs.5,00,000/-
8	Attendant Charges	Rs.2,00,000/-
9	Transportation Charges	Rs.70,000/-
10	Loss of amenities of life	Rs.1,00,000/-
11	Future medical expenses	Rs.1,00,000/-
12	Special Diet	Rs.70,000/-
13	Disability	Rs.2,00,000/-
14	Total compensation awarded:-	Rs.32,59,000/-
15	Deduction:- Amount awarded by Tribunal 75% due to contributory negligence	Rs.13,50,000/-
16	Enhanced amount of compensation (bereft of contributory negligence)	of Rs. 19,09,000/- of (32,59,000- 13,50,000)

35. 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 amount so calculated shall carry an interest @ 9% per annum from the date of filing of the claim petition, till the date of realization.



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

37. Pending miscellaneous applications are also disposed of.

26.02.2026

Ayub

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No