IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No.2148 of 2023 (O&M)

TARUN KUMAR (MINOR) TH. HIS MOTHER MAMTA RANI
...Appellant

Vs

LAKSHMI NARAYAN AND ANR. ...Respondents

2. FAO No.2154 of 2023 (O&M)

BUTA RAM (DECEASED) TH. HIS LRS. ...Appellant(s)

Vs

LAKSHMI NARAYAN AND ANR. ...Respondents

1	The date when the judgment was reserved	24.03.2026
2	The date when the judgment is pronounced	12.05.2026
3	The date when the judgment is uploaded on the website	12.05.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof.	Not applicable

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Ishan Cooner, Advocate and
Mr. J.S. Cooner, Advocate
for the appellant(s).

Mr. Abhinav Singla, Advocate
for respondent No.2/Insurance Company.

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HARKESH MANUJA, J.

1. By way of present two appeals, the appellant(s)/claimant(s) seek enhancement of compensation awarded vide a common award dated 18.01.2023 passed by the learned Motor Accident Claims Tribunal, Ambala (for short, "the Tribunal"), arising out of the same accident dated 03.11.2018, whereby compensation to the tune of Rs. 62,600/- and Rs. 3,03,000/- respectively, along with interest @ 7% per annum from the date of filing of claim petition(s) till

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realization, was awarded to the appellant(s)/claimant(s) on account of injuries suffered by Tarun Kumar (minor) and Buta Singh.

2. Since both the appeals arise out of the same accident and involve common questions of fact and law, the same are being decided together by this common judgment.

3. As sole issue for determination in present appeals is confined to quantum of compensation awarded by the Tribunal, a detailed narration of facts of the case is not reproduced herein for the sake of brevity.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR THE APPELLANTS/CLAIMANTS

4. Learned counsel for the appellant(s)/claimant(s) contended that the compensation awarded by the learned Tribunal was wholly inadequate and contrary to settled principles governing assessment of compensation in injury cases. It was argued that in case of Tarun Kumar (minor), the learned Tribunal failed to appreciate that the claimant was a school-going child aged 11½ years who suffered fracture in left leg and amputation of middle finger of right hand. He also submitted that the compensation awarded towards pain and suffering, special diet, transportation and loss of studies was extremely meager.

In the appeal filed by Buta Singh, learned counsel stated that Tribunal erred in assessing monthly income of the claimant @ Rs. 7,600/- per month despite the unrebutted evidence that he was running refrigeration repair work. It was further argued that the Tribunal wrongly reduced permanent disability from 10% to 5% without cogent basis and failed to award future prospects while computing loss of future earning capacity. Lastly, he argued that the rate of interest granted by the Tribunal was on the lower side, therefore, he prayed that the award of the Tribunal be suitably modified in accordance with law.

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ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR RESPONDENT No.2/INSURANCE COMPANY.

5. Per contra, learned counsel representing the respondent No. 2/Insurance Company, neither refuted the factum of accident nor even the negligence of the offending vehicle, however submitted that in the facts and circumstances of the present case, the compensation assessed by the learned Tribunal called for no interference.

DISCUSSION AND REASONING

6. I have heard learned counsel for the parties and perused the paper-book of the case. I find substance in the arguments advanced by the learned counsel for the appellants/claimants.

7. Before determining the quantum of compensation, it is essential to draw guidance from the principles laid down in similar cases by the Hon'ble Apex Court. In ***"Raj Kumar vs. Ajay Kumar and Ors."*** reported as ***(2011) 1 SCC 343*** the Court laid down the heads under which compensation is to be awarded for personal injuries.

> *"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.*

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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, the compensation will 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".*

<u>ASSESSMENT OF COMPENSATION (TARUN KUMAR)</u>

8. In the present case, it is not disputed that at the time of accident, the claimant was a minor child aged about 11½ years and suffered fracture of right leg besides amputation of middle finger of his right hand. He remained under treatment at PGI, Chandigarh and had to undergo prolonged treatment and hospitalization. The injuries suffered by a child at such a tender age undoubtedly have long-lasting physical, emotional and psychological repercussions affecting his studies, enjoyment of life and future prospects. The Hon'ble Supreme Court in <u>*"Master Mallikarjun v. Divisional Manager, The National Insurance Company Limited*</u>' reported as <u>*2014 (14) SCC 396,*</u> held that in cases relating to disability suffered by any child, the approach of the Court should be to award just, fair and reasonable compensation keeping in view the pain, shock, frustration, deprivation of ordinary pursuits and the possibility of the child facing inconvenience and hardship throughout life. The Apex Court further observed that compensation in such cases cannot be assessed merely on pecuniary parameters and adequate

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amount deserves to be awarded under non-pecuniary heads. Relevant paras thereof are extracted hereunder:-

> *"8. It is unfortunate that both the Tribunal and the High Court have not properly appreciated the medical evidence available in the case. The age of the child and deformities on his body resulting in disability, have not been duly taken note of. As held by this Court in* ***R.D. Hattangadi v. M/s. Pest Control (India) Pvt. Ltd. and Others, 1995 (1) SCC 551****, while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs. 15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there*

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> *shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.*
>
> *12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs. 3 lakhs; upto 60%, Rs. 4 lakhs; upto 90%, Rs. 5 lakhs and above 90%, it should be Rs. 6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents."*

8.1 The sum and substance of the proposition laid down by the Hon'ble Apex Court in the above decision is that the damages so awarded should be adequate and some money that would put the party, who has suffered, in the same position if he had not suffered on account of his wrong. The compensation is therefore required to be paid for prospective pecuniary loss, i.e, future loss of income/dependency suffered on account of the wrongful act. However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to such loss. Loss of a child, life or a limb can never be eliminated or ameliorated completely. Pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognizes that payment should also be made for non-pecuniary losses on account of loss of happiness, pain, suffering and expectancy of life, etc, particularly, when the Act provides for payment of "just compensation".

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8.2 Applying the aforesaid principles to the facts of the present case and considering the nature of injuries suffered by the minor claimant, this Court is of the considered opinion that the compensation awarded by the learned Tribunal under the heads of pain and suffering, loss of amenities, loss of studies and future inconvenience is wholly inadequate and deserves suitable enhancement. In the present case, no permanent disability was proved on record. However, the appellant-Tarun Kumar aged 11½ years at the time of accident remained hospitalized for a period of about 15 days and, as a consequence thereof, not only suffered pain and trauma but also caused considerable inconvenience and financial loss to his parents during the period of treatment and recovery. Accordingly, the appellant is held entitled to compensation under the following heads:-

S.No.	Nature	Amount (in Rs.)
1.	Medical Expenses	32,600/-
2.	Pain and Suffering	50,000/-
3.	Special diet and transportation	25,000/-
4.	Attendant Charges	25,000/-
5.	Loss of studies and amenities	50,000/-
6.	Future inconvenience/disfigurement	1,00,000/-
	Total Compensation	**2,82,600/-**
	Amount Awarded by the Tribunal	**62,600/-**
	Enhanced Amount	**2,20,000/-**

<u>ASSESSMENT UNDER "LOSS OF INCOME" (BUTA SINGH)</u>

9. A perusal of the record reveals that the appellant/claimant was 39 years of age at the time of accident and claimed to be earning Rs. 35,000/- per month by working as a mechanic and running a shop in the name and style of Ravi Refrigeration Work at Durga Nagar, Ambala. However, no documentary evidence in support of the said income was produced on record. The learned Tribunal

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assessed the monthly income of the appellant @ Rs. 7,600/- per month by treating him as a casual labourer, which does not appear to be in consonance with the settled principles of law. Even otherwise, it stands duly proved that the appellant sustained grievous injuries in the accident, on account of which he remained hospitalized and incapacitated for a considerable period, rendering him unable to attend his avocation. In such circumstances, the absence of documentary proof could not have been a ground to deny just compensation, particularly when the nature of injuries and period of treatment clearly establish loss of earning during the period of rehabilitation. In this situation observations made by the Hon'ble Apex Court in ***"Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav & Ors."***, reported as ***(2022) 1 SCC 198,*** to the effect that in the absence of proof of income, the minimum wage notification can be a yardstick but at the same time cannot be absolute one to fix the income of the deceased and some guesswork is required to be done to assess the income. Relevant excerpt thereof is reproduced hereunder:-

> *"…….In the absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In the absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs. 15,000/- per month……"*

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9.1 In view of the aforesaid discussion and also while keeping into account the facts and circumstances of the present case, this Court is of the considered opinion that the notional income of the appellant/claimant is assessed @ 9,900/- per month (Rs. 330 per day). Now, as per the record available, Buta Singh remained admitted in PGI Chandigarh till 06.11.2018. Thereafter, he again got admitted in Mehndiratta Hospital, Ambala City for the period from 21.12.2018 to 26.12.2018. Thus, the appellant/claimant remained hospitalized for a total period of 10 days, and as such loss of income suffered by him during the said period is assessed as Rs. 3,300 (Rs. 330 x 10). Further, evidently the motor vehicular accident in the present case took place on 22.09.2006 and the appellant/claimant must have been bed-ridden for 2 months due to fracture of right scapula, shaft femur as well as distal phalanx of middle finger, after the accident. Thus, it would be safe to assume that the appellant suffered loss of income for 2 months due to reduced working capacity. Therefore, after considering facts and circumstances of the present case, loss of income for the said period is conservatively assessed @ Rs.19,800/- (330 x 60).

9.2 Furthermore, though as per the medical evidence available on record, the appellant/claimant suffered 10% disability, the same arose out of a fracture of right scapula, shaft femur as well as distal phalanx of middle finger. In the facts and circumstances of the present case, it would be just and fair if the future loss of income/functional disability is assessed @ 5%, keeping in view the nature of work being performed by the appellant; the resultant severe restriction on his mobility and earning capacity, and the settled principle that functional disability may differ from the medical disability depending upon the avocation of the injured. Additionally, the Hon'ble Supreme Court, in the case of ***"Pappu Deo Yadav v.***

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Naresh Kumar" reported as ***2020 INSC 553*** held that in cases where a claimant suffers disability due to a motor vehicle accident, compensation may be awarded not only for the future loss of income but also towards future prospects.

9.4 A perusal of the record in the case in hand shows that the age of appellant/claimant at the time of accident was more than 39 years of age. The computation of future prospects is to be done as per the law laid down by a Constitution Bench of the Hon'ble Supreme Court in ***"National Insurance Co. Ltd. v. Pranay Sethi"*** reported as ***(2017) 16 SCC 680*** para 59.3, which records the conclusion in this regard, reads as under:-

> *"59.3 While determining income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should read as actual salary less tax."*

9.5 In view of the above discussion, the appellant/claimant in addition to the loss of future earnings, shall also be entitled to compensation for loss of future prospects @ 40%. Therefore, the income of the appellant/claimant after adding future prospects be taken as Rs. 13,860/- (9,900 + 3,960) per month for the purpose of calculation of compensation. Accordingly, this Court finds that the compensation payable for the functional disability to the extent of 5% is assessed @ Rs. 1,24,740/- (13,860 x 12 x 15 x 5/100).

ASSESSMENT UNDER "MEDICAL EXPENSES/HOSPITALIZATION"

10. In the present case, appellant/claimant suffered fracture of right scapula, shaft femur as well as distal phalanx of middle finger. Even though the appellant

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could produce bills amounting to Rs. 3,01,114/- only but keeping in mind the cost factor prevalent at the time of motor vehicular accident and the follow-up treatment besides need of medicines during rehabilitation period, the compensation under this head needs to be reassessed. The aforesaid view finds force from the fact that due to shock and mental agony on account of accident, a person cannot be presumed to be vigilant enough to collect all the bills for claim/reimbursement purposes, thus, compensation under this head is assessed as Rs. 5,00,000/-.

ON THE ASPECT OF PAIN AND SUFFERINGS

11. For assessing just compensation under the head of pain and sufferings, reference may be drawn to the decision of the Hon'ble Supreme Court in ***K. Murlidhar vs. R. Subbulakshmi & Anr., 2024 INSC 886,*** wherein it was held that the award of compensation under non-pecuniary heads must be reasonable and commensurate with gravity of the injuries suffered; the extent of disability; the duration of hospitalization, and the mental and physical agony endured by the claimant. Relevant portion of the same is reproduced 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."*

11.1 In light of the settled legal position enunciated by the Hon'ble Supreme Court in ***Muralidhar's*** case (supra), and having due regard to the peculiar

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facts and circumstances of the present case, it is evident from the documentary evidence duly proved on record that the appellant/claimant sustained fracture of right scapula, shaft femur as well as distal phalanx of middle finger. Thus, this Court is of the opinion that an amount of Rs. 2,00,000/- is awarded under the head of pain and sufferings.

ASSESSMENT UNDER OTHER 'PECUNIARY HEADS'

12. In view of the nature of injuries sustained by the appellant/claimant, particularly the fracture of right scapula, shaft femur as well as distal phalanx of middle finger and consequent surgical intervention followed by prolonged post-operative care, it can reasonably be inferred that he remained confined to bed for a period of about 2 months and would have definitely gone for his post-operative care. However, learned Tribunal failed to grant adequate compensation under the head of special diet, conveyance charges and attendant charges. Therefore, compensation granted under these heads is reassessed @ Rs.1,00,000/.

CONCLUSION

13. In view of what has been discussed hereinabove, the appellant/claimant shall be entitled for the grant of compensation in the following manner:-

S.No.	Nature	Amount (in Rs.)
1.	Loss of Income (Rs. 3,300+ Rs. 19,800 + Rs. 1,24,740)	1,47,840/-
2.	Medical Expenses/Hospitalization	5,00,000/-
3.	Compensation under other pecuniary head	1,00,000/-
4.	Compensation under pain and sufferings	2,00,000/-
	Total Compensation	**9,47,840/-**

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	Amount Awarded by the Tribunal	3,03,000/-
	Enhanced Compensation	6,44,840/-

14. The grant of interest @ 7% per annum is not equitable and just in view of the observations made by the Hon'ble Supreme Court in ***"Smt. Supe Dei and others vs. National Insurance Company Limited and other,*** reported as ***(2009) (4) SCC 513*** approved in a subsequent judgment titled as ***"Puttamma and others vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443,*** thus, the interest is enhanced to 9% per annum on the amount of compensation re-assessed from the date of institution of claim petition till its realization. In case the said amount is not paid within three months, the same shall be payable thereafter along with 12% interest from the expiry of period of three months from today. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

15. In view of the foregoing discussion, the present appeal preferred at the instance of appellants/claimants stand allowed. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

May 12, 2026
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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