



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4582-2010 (O&M)

MANJU AND ORS.

.....Appellants

vs.

SUNIL KUMAR & ORS.

.....Respondents

Reserved on:- 10.02.2026

Pronounced on:- 24.03.2026

Uploaded on:- 01.04.2026

Whether only the operative part of the judgment is pronounced?

NO

Whether full judgment is pronounced?

YES

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kulvir Narwal, Advocate
for the appellants.

Ms. Anju Bansal, Advocate
for Mr. Sourabh Goel, Advocate
for respondent No.1.

Mr. Sachin Ohri, Advocate
for respondent No.3.

SUDEEPTI SHARMA, J.

1. The present appeal has been filed by the appellants-claimants against the award dated 15.03.2010 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 claimants-appellants was allowed and respondents were held liable to pay compensation, jointly and severally. The award is challenged on the ground that contributory negligence was wrongly



attributed at the ratio of 50% upon deceased-Rishi Pal and 50% upon respondent No.1-driver of the offending vehicle and the quantum of compensation awarded by the Tribunal, which is on the lower side.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that on 11.05.2009, deceased Rishi Pal was coming from Kharkhoda side to Rohtak while driving a Santro Car at a moderate speed, on correct side of the road, with due care and following the traffic rules. At about 12.30 am in the night, when he crossed Village Sisana, a Dumper bearing registration No. HR-46B/9465 (here-in-after to be referred as the offending Dumper) loaded with sand, was parked on the road in the line of traffic, unattended. The tail lamps were not switched on nor any reflector or any other indicator was on. All of a sudden, the Santro car driven by Rishipal, since deceased, struck into the said stationary Dumper from behind and squeezed under it and caught fire. The sand also fell on the car. At the same time, Davender son of Balbir Singh and Ramesh son of Dharam Singh, both residents of Village Bahiyapur Ladhot also came there in a jeep and they witnessed the occurrence. They identified the driver of Santro Car as Rishipal son of Om Parkash of their village. They tried to save him, but due to the fire and squeezing of car, they could not save him and he died at the spot due to burn injuries. The driver of the offending Dumper fled away from the spot. Due to the fire, the left side rear tyres of Dumper were also burnt. The matter was reported to the police by Devanand and on the basis of his statement, a case FIR No.190 dated 12.5.2009, under sections 283 and 304-A IPC was registered at Police Station, Kharkhoda against Dumper No. HR-46B/9465. After investigation, the police challaned Sunil Kumar,



respondent No.1 for his negligence. It has been averred by the petitioners that at the time of his death, Rishi Pal was 34 years of age and was employed as Driver-cum-fireman in Delhi Fire Services. He was getting Rs.19,699/- per month as salary. He was also doing agricultural work and was earning Rs.10,000/- per month from this occupation. The petitioners have suffered great mental shock due to the untimely death of Rishi Pal. They were dependent on the income of deceased and there is no other source of income. The deceased was having sound health and physique. They have been badly affected financially and otherwise in every aspect of life due to the pre-mature death of deceased. Their life has become darkened. The petitioner No.1 has become widow in the young age and she has also been deprived of the marital bliss. Petitioners No.2 and 3 have suffered loss of proper upbringing.

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 causing the death of Rishi Pal son of Om Parkash took place due to the rash and negligent driving of respondent No.1 while driving Dumper bearing registration No. HR-46B- 9465 on 12.5.2009? OPP.

2. If issue No.1 is proved in affirmative, to what amount of compensation and from whom, the petitioners are entitled to receive? OPP.

3. Whether the respondent No.1 was not holding a valid and effective driving licence a on the date of accident? OPR-3

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 deceased-Rishi Pal and respondent No.1-driver of the offending vehicle in the ratio of 50:50. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES:

7. Learned counsel for the appellants-claimants 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 both the deceased-Rishi Pal and respondent No.1-driver of the offending vehicle (Dumper). 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 amount of compensation awarded by the learned Tribunal is on the lower side by not taking into consideration the gross salary of the deceased and the overall income of the deceased. Furthermore, he contends that learned Tribunal has not awarded compensation for the loss of estate and meager amount has been awarded under the heads of funeral expenses and loss of consortium. He, therefore, prays that the present appeal be allowed and the enhanced amount of compensation be disbursed to the appellants No.1 to 3 (widow and children of the deceased), **in equal share, as desired by appellant Nos. 4 and 5 (parents of the deceased) in equal shares.**



9. Per contra, learned counsel for respondent No.3-Insurance Company however, vehemently argues that the award has rightly been passed and the amount of compensation, as assessed by the learned Tribunal has rightly been granted. Therefore, he prays for dismissal of the appeal.

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

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

“ISSUES No. 1

12. To discharge the onus of aforesaid issue, the petitioners have examined Devanand, eye witness as PW2, who tendered into evidence his affidavit Exhibit PW2/A and also tendered the copy of FIR Exhibit P4. In his affidavit, Devanand has sworn that the driver of Santro Car was driving the car at a moderate speed, on correct side of the road and with due care. A Dumper No. HR-46B/9465 loaded with sand was stationed/parked on the road, unattended in the line of traffic and its tale lights were not switched on nor any reflector or any other indicator was applied. All of a sudden, the said Santro car struck into the stationary dumper from behind. Resultantly, Santro car was squeezed under the Dumper and caught fire. The sand also fell on the car. Due to the fire, the deceased was trapped and they were unable to save him and he died at the spot. Due to the fire the left side rear tyres of the Dumper were also burnt.

13. On the other hand, to rebut the case of the petitioner, Shri Sunil Kumar driver of offending Dumper while appearing in the witness box as RW1 tendered into evidence his affidavit Exhibit RW1/A wherein he sworn that the tyre of the dumper was punctured and he parked the dumper on road side in kacha portion and switched on the indicators and also



put indicators on the road. The driver of Santro car i.e deceased was under the influence of liquor and he was driving the car in a rash and negligent manner, without following the traffic rules, with high speed and he struck the car into the back side of the dumper. Due to consumption of liquor, he could not come out of the car and ultimately, he expired due to burn injuries. He is not at fault in any manner for causing the accident. He also swore that a false case has been registered against him in collusion with the police.

14. In view of the aforesaid evidence, learned counsel for the petitioners submitted that eye witness Devanand PW2 has sworn that the offending Dumper was parked on the road unattended and that too without switching on the tale lamps and also without putting any reflector or indicator on the road in the night, coupled with this fact, perusal of FIR Exhibit P4 shows that due to the negligence on the part of driver of offending Dumper, the accident in question has taken place as he parked his vehicle on the road unattended and without switching on the tale lights.

15. However, Shri Yogesh Sharma, learned counsel for respondent No.3 submitted that even if it is presumed that the driver of offending Dumper had parked his vehicle on the road without switching on the tale lights or without putting any indicator, the deceased should have also been vigilant while driving on the road because he struck his car in the back side of the dumper. He, therefore, submitted that there was contributory negligence on the part of deceased Rishi Pal while driving his car. In support of his contention, he has referred to the authority of Hon'ble Supreme Court of India titled Raj Rani and Others Versus Oriental Insurance Company Limited and others,



IV(2009) ACC 910(SC) wherein it has been observed that where there is collision between the truck and car and the truck was standing in the middle of the road and parking lights were not on, some amount of negligence on part of driver of car(deceased) can not be ruled out.

16. The aforesaid contention of learned counsel for respondent No.3 carries weight because even if the allegations of the petitioners against respondent No.1 are taken to be true, it becomes a case of contributory negligence on the part of Rishipal, since deceased, because when the Dumper was standing on the road side, it was also the duty of the driver of approaching vehicle to be vigilant as to what is there on the road. In Raj Rani's case (Supra), the truck was standing in the middle of the road even without parking lights on and in those circumstances, the Hon'ble Supreme Court observed that some amount of negligence on the part of driver of the car(deceased) can not be ruled out. Similar is the position in the case in hand because despite the fact that the offending Dumper was standing on the road side, Rishipal, since deceased, should have been quite vigilant to avoid the vehicle already parked on the main road. Hence, in these circumstances, I am of the considered opinion that it is a case of contributory negligence equally of both the drivers i.e of offending dumper as well as the deceased Rishipal.

17. Om Parkash, father of deceased while appearing in the witness box as PW3 has tendered into evidence the copy of Post Mortem Report Exhibit P5. Even otherwise also, the factum of death of Rishipal in the accident in question is not disputed by the respondents.



18. Hence, in view of the above discussion, it is held that the accident in question causing the death of Rishi Pal son of Om Parkash was the result of contributory negligence on the part of driver of offending Dumper as well as the deceased himself. Hence, issue No.1 is decided partly in favour of the petitioners and partly against the respondents.”

12. A perusal of the impugned award reveals that the learned Tribunal has committed a manifest error in holding that the accident in question occurred on account of contributory negligence in the ratio of 50:50 between the deceased-Rishi Pal and respondent No.1, the driver of the offending vehicle.

13. It is not in dispute that the accident occurred at about 12:30 a.m., i.e., during late night hours when visibility is considerably reduced and a heightened duty of care is cast upon a person who leaves a vehicle stationed on a public road. The First Information Report (Ex. P4), lodged promptly on the very next day, unequivocally attributes the occurrence of the accident to the offending vehicle having been parked on the road without any reflectors, indicators, parking lights or warning signals. The FIR, being a contemporaneous document, lends strong corroboration to the version put forth by the claimants.

14. The appellants examined PW-2 Devanand Singh, eye-witness to the occurrence, who categorically deposed that the offending vehicle was stationed in the middle of the road without any lighting or warning mechanism, thereby creating a hazardous obstruction, and that the vehicle driven by the deceased collided with the same. Despite detailed cross-examination, nothing material could be elicited to discredit his testimony,



which remained consistent, cogent and reliable, and thus inspires full confidence of this Court.

15. Per contra, respondent No.1, while appearing as RW-1, admitted the factum of accident but attempted to attribute negligence to the deceased. However, his testimony is self-serving and suffers from material infirmities. Significantly, he failed to substantiate his plea of false implication by demonstrating that he had taken any contemporaneous steps before any competent authority. This omission materially weakens his defence and renders his version unworthy of reliance.

16. It is a settled principle of law that parking a vehicle on a public road without taking adequate precautions, particularly during night hours, such as switching on parking lights or placing reflectors or warning indicators, in itself constitutes actionable negligence, as it creates a latent and dangerous obstruction for other road users. At this stage, reliance can be placed upon the recent judgment of the Hon'ble Supreme Court in **Sushma vs. Nitin Ganapati Rangole & Ors., 2024 SCC OnLine SC 2584**, wherein it has been held as under:

*“16. **Having considered the submissions** advanced by learned counsel for the parties and after going through the impugned judgements passed by the High Court and the Tribunal as well as upon appreciating the material placed on record, we feel that the contentious finding whereby, the driver of the car, namely, Saiprasad Karande (deceased) was held jointly responsible for causing the accident along with the driver/owner of the offending truck leading to the claims of the passenger-Sushma & dependants of the deceased-passengers being deducted by 50% on the*



principle of contributory negligence is perverse on the face of the record.

26. We shall briefly refer to the statutory provisions applicable to the situation at hand.

27. A highway or a road is a public place as defined in Section 2(34) of the Act: -

"2(34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;"

28. Section 121 of the Act provides that the driver of a motor vehicle shall make such signals and, on such occasions, as may be prescribed by the Central Government.

29. Section 122 of the Act provides that no person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any "public place" in such a position or in such a condition or in such circumstances so as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.

30. Section 126 of the Act provides that no person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place.

31. Section 127(2) of the Act provides that where any abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the public place, or its physical appearance is causing the impediment to the traffic, its immediate removal from the public place by



a towing service may be authorised by a police officer having jurisdiction.

32. Regulation 15 of the Rules of Road Regulation, 1989 which were prevailing on the date of the incident provides that every driver of a motor vehicle shall park the vehicle in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users. It casts a duty on the drivers of a motor vehicle stating that the vehicle shall not be parked at or near a road crossing or in a main road.

33. These legal provisions leave no room for doubt that the person in control of the offending truck acted in sheer violation of law while abandoning the vehicle in the middle of the road and that too without taking precautionary measures like switching on the parking lights, reflectors or any other appropriate steps to warn the other vehicles travelling on the highway. Had the accident taken place during the daytime or if the place of accident was well illuminated, then perhaps, the car driver could have been held equally responsible for the accident by applying the rule of last opportunity. But the fact remains that there was no illumination at the accident site either natural or artificial. Since the offending truck was left abandoned in the middle of the road in clear violation of the applicable rules and regulations, the burden to prove that the placement of the said vehicle as such was beyond human control and that appropriate precautionary measures taken while leaving the vehicle in that position were essentially on the person in control of the offending truck. However, no evidence was led by the person having control over the said truck in this regard. Thus, the entire



responsibility for the negligence leading to the accident was of the truck owner/driver.

34. In view of the above discussion, the view expressed by the High Court that if the driver of the car had been vigilant and would have driven the vehicle carefully by following the traffic rules, the accident may have been avoided is presumptuous on the face of the record as the same is based purely on conjectures and surmises. Nothing on record indicates that the car was being driven at an excessively high speed or that the driver failed to follow the traffic rules. The High Court recorded an incongruous finding that if the offending truck had not been parked on the highway, the accident would not have happened even if the car was being driven at a very high speed. Therefore, the reasoning of the High Court on the issue of contributory negligence is riddled with inherent contradictions and is paradoxical.

35. The Courts below erred in concluding that it is a case of contributory negligence, because in order to establish contributory negligence, some act or omission which materially contributed to the accident or damage should be attributed to the person against whom it is alleged.

*36. In the case of **Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak**, (2002) 6 SCC 455, this Court while referring to a decision of the High Court of Australia in **Astley v. Austrust Ltd.**, (1999) 73 ALJR 403, went on to hold that: -*

"... where, by his negligence, if one party places another in a situation of danger which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which,



with the benefit of hindsight is shown not to have been the best way out of the difficulty."

37. In the very same judgment, this Court also referred to and approved the view taken in **Swadling v. Cooper, 1931 AC 1**, as below: -

"Mere failure to avoid the collision by taking some extra ordinary precaution, does not in itself constitute negligence."

(emphasis supplied)

40. On a holistic analysis of the material available on record, it is established beyond the pale of doubt that the offending truck was parked in the middle of the road without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic. This omission by the person in control of the said truck was in clear violation of law. The accident took place on a highway where the permissible speed limits are fairly high. In such a situation, it would be imprudent to hold that the driver of a vehicle, travelling through the highway in the dead of the night in pitch dark conditions, would be able to make out a stationary vehicle lying in the middle of the road within a reasonable distance so as to apply the brakes and avoid the collision. The situation would be compounded by the headlights of the vehicles coming from the opposite direction and make the viewing of the stationary vehicle even more difficult. Thus, the conclusion drawn by the Courts below that the driver of the car could have averted the accident by applying the brakes and hence, he was equally negligent and contributed to the accident on the application of principle of last opportunity is *ex-facie* perverse and cannot be sustained. Hence, it is a fit case warranting



exercise of this Court's powers under Article 136 of the Constitution of India to interfere with the concurrent finding of facts.”

17. The aforesaid judgment clearly enunciates that leaving a vehicle unattended on a public road without adequate warning measures amounts to negligence.

18. It is further noteworthy that although the respondents had raised a plea of contributory negligence, the learned Tribunal did not frame any specific issue in that regard. In the absence of a specific issue, the parties were deprived of an opportunity to lead evidence on the said aspect. The Hon’ble Supreme Court in **M. Nithya & Ors. vs. SBI General Insurance Co. Ltd., arising out of SLP (Civil) No. 833–834 of 2023**, has categorically held that in the absence of an issue on contributory negligence, the Tribunal or the appellate court cannot return a finding so as to reduce compensation on that ground.

19. Even otherwise, the doctrine of contributory negligence requires a clear, specific and affirmative finding, supported by cogent evidence, that the conduct of the deceased contributed to the occurrence of the accident. Negligence cannot be presumed merely on conjectures or on the basis that the vehicle struck another vehicle from behind. There is no evidence on record to establish that the deceased was driving in a rash or negligent manner or at an excessive speed.

20. The reasoning adopted by the learned Tribunal that the deceased ought to have been more vigilant is based on surmises and conjectures, and fails to take into account the crucial circumstance that an unattended and unmarked stationary vehicle on a public road at night constitutes a serious hazard, if not a trap, for an unsuspecting driver.



21. In view of the aforesaid discussion, and in light of the settled principles of law laid down by the Hon'ble Supreme Court in **Sushma vs. Nitin Ganapati Rangole & Ors. (supra)** and **M. Nithya & Ors. v. SBI General Insurance Co. Ltd. (supra)**, this Court is of the considered opinion that the finding recorded by the learned Tribunal attributing contributory negligence to the deceased is perverse, erroneous and unsustainable in the eyes of law. The evidence on record conclusively establishes that the accident occurred solely due to the negligence of respondent No.1, who had left the offending vehicle parked on the road without any signal, indicator or warning, thereby creating a dangerous obstruction for road users.

22. Accordingly, the impugned finding on contributory negligence is set aside.

23. So far as, enhancement of compensation is concerned same has been dealt with after taking into account settled law on compensation.

SETTLED LAW ON COMPENSATION

24. 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)].

25. 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. ”

26. 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:

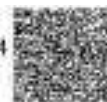
"8. In assessing the compensation payable the settled principles need to be borne in mind. A victim who suffers a permanent or temporary disability occasioned by an accident is entitled to the award of compensation. The award of compensation must cover among others, the following aspects:

- (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</i>	<i>Rs.4,90,989/-</i>



<i>addition)</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.

27. A perusal of the impugned award reveals that the deceased Rishi Pal was 39 years of age at the time of the accident, therefore, the tribunal has rightly assessed the age of the deceased as 39 years. Furthermore, the learned tribunal has rightly applied the multiplier of 15 as per the settled law.

28. A further perusal of the impugned award reveals that the deceased was stated to be earning Rs.19,699/- per month (rounded off Rs.19,700/-) and was stated to be employed under Delhi Fire Services at Moti Nagar, New Delhi. To substantiate the same, salary certificate (Ex.P-2) was placed on record but the learned Tribunal has erred by taking the net salary of the deceased as Rs.17,690/- by deducting the allowances from the gross salary of the deceased.

29. It is pertinent to mention here that the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Nalini and others, 2024 SCC Online SC 2252**, held that house rent allowance, uniform maintenance reimbursement, transport subsidy and other such allowances



which being received by the deceased should included while assessing the amount of compensation.

30. The relevant extract of **Nalini's case (Supra)** is reproduced as under:-

*"2. The aforesaid aspect is no longer res integra inasmuch as a three Judges Bench of this Court in **Vijay Kumar Rastogi v. Uttar Pradesh State Roadways Transport Corporation, 2018 SCC Online SC 193** has clearly held as follows:*

*"11. Strikingly, the High Court noted the taxable income disclosed in tax return of the appellant for the relevant period as Rs. 77,480/- (rounded off) and tax deduction of Rs. 4,496/-, yet proceeded to hold that the net income of the appellant has been rightly taken into consideration by the Tribunal. It is unfathomable that the High Court, despite having accepted the claim of the appellant founded on his tax return for the relevant period, disclosing the taxable income of the appellant as Rs. 77,480/- (rounded off) and deduction of tax of Rs. 4,496/- could have affirmed the conclusion of the Tribunal that the net annual income of the appellant was Rs. 44,511/-. It ought to have reckoned the taxable income for computing the head towards loss of income. This, **in our opinion, is** the manifest error committed by the High Court. The appellant is justified in relying upon the decisions of this Court which have taken the view that loss of taxable earning should be reckoned for the purpose of determining just compensation as enunciated in **National***

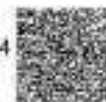


Insurance Co. Ltd. v. Indira Srivastava, (2008) 2 SCC 763, which has been followed in Oriental Insurance Company Limited v. Jashuben, (2008) 4 SCC 162, and Kavita v. Deepak, (2012) 8 SCC 604. It has been held that the "income" should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax, although some elements thereof may, or may not be taxable due to the exemption conferred thereupon under the statute."

31. Therefore, in view of the above judgment, the learned Tribunal has erred in calculating the monthly income of the deceased as Rs.17,690/- per month, instead of Rs.19,700/- per month as per the settled law.

32. A further perusal of the award reveals that the learned Tribunal has rightly deducted 1/4th towards personal and living expenses. Furthermore, learned tribunal has rightly awarded 50% towards future prospect.

33. A further perusal of the award reveals that no amount has been granted under heads of loss of estate. Furthermore, the learned Tribunal has awarded meager amount under the heads of funeral expenses and loss of consortium, which are not in consonance with the settled law. Therefore, the impugned award warrants interference and indulgence of this Court.



RELIEF

34. In view of the above, the present appeal is allowed and award dated 15.03.2010 is modified. Accordingly, as per the settled principles of law as laid down by Hon’ble Supreme Court as mentioned above, the appellants No.1 to 3 are held entitled to the enhanced amount of compensation as calculated below:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Compensation Awarded</i>
1	Monthly Income	Rs.19,700/-
2	Future prospects @ 50%	Rs.9,850/- (50% of 19700)
3	Deduction towards personal expenditure 1/4	Rs.7,387/- (29,550 X 1/4)
4	Total Income	Rs.22,163/- (29,550-7,387)
5	Multiplier	15
6	Annual Dependency	Rs.39,89,340/- (22163 X 12 X 15)
7	Loss of Estate	Rs.15,000/-
8	Funeral Expenses	Rs.15,000/-
9	Loss of Consortium Parental : 2 x 40,000 Spousal : 1 x 40,000 Filial : 2 x 40,000	Rs.2,00,000/-
10	Total	Rs.42,19,340/-
11	<i>Deduction:-</i> <i>Amount awarded by Tribunal</i> <i>50% due to contributory</i> <i>negligence</i>	Rs.17,91,000/-
12	<i>Enhanced amount of</i> <i>compensation (bereft of</i> <i>contributory negligence)</i>	Rs.24,28,340/- (42,19,340-17,91,000)

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 Tribunal is directed to disburse the same to the appellants No.1 to 3 in their bank account as per ratio settled in award dated 15.03.2010, **in equal share, as desired by appellant Nos. 4 and 5 (parents of the deceased) in equal shares.** The appellants No.1 to 3 are directed to furnish their bank account details to the Tribunal.

37. Pending miscellaneous applications are also disposed of.

24.03.2026

Ayub

(SUDEEPTI SHARMA)
JUDGE

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