2026:PHHC:052557

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4374-2014 (O&M)

BALJEET **….Appellant**

Vs.

KAILASH & OTHERS **…Respondents**

1	*The date when the judgment was reserved*	*06.03.2026*
2	*The date when the judgment is pronounced*	*07.04.2026*
3	*The date when the judgment is uploaded on the website*	*07.04.2026*
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. Ravinder Hooda, Advocate
for the appellant.

Ms. Vandana Malhotra, Advocate (thr. V.C.) and
Ms. Manvi Verma, Advocate,
for respondent No. 3-Insurance Company.

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HARKESH MANUJA, J.

1. The present appeal is preferred by the claimant-appellant against the award dated 18.02.2014 passed by the learned Motor Accident Claims Tribunal, Jind (for short, " the Tribunal"), whereby compensation to the tune

of Rs. 1,42,500/- was awarded on account of injuries sustained by the appellant in a motor vehicular accident, along with interest @ 7% per annum, after holding that the appellant himself was contributory negligent to the extent of 50%.

FACTS

2. Briefly stating, the case of the appellant was that on 12.11.2012, while he was proceeding on his motorcycle from Safidon to Kalwa, the offending truck bearing registration No. HR-61-6408, being driven by respondent No.1 in a rash and negligent manner, suddenly applied brakes without any indication near Kailashpati brick kiln. As a result thereof, the appellant's motorcycle struck against the rear portion of the truck, causing him to fall and sustain multiple grievous injuries.

3. The Tribunal, held that the accident occurred due to rash and negligent driving of respondent No.1, simultaneously attributed 50% contributory negligence to the appellant on the ground that he failed to maintain a safe distance from the vehicle ahead.

4. Being aggrieved against the aforesaid award dated 18.02.2014; the present appeal has been preferred by the appellant/claimant for enhancement of compensation as well as for setting aside the award of the Tribunal to the extent of Contributory Negligence.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR THE APPELLANT/CLAIMANT

5. Learned counsel for the appellant/claimant contended that the impugned award passed by the learned Tribunal was contrary to the facts on record and settled principles of law, particularly to the extent whereby the appellant was held contributory negligent to the extent of 50%. It was submitted that the said finding was wholly perverse and unsustainable, as the evidence on record clearly established that the accident occurred solely due to the rash and negligent driving of respondent No.1, who abruptly applied brakes without any signal or indication. He further argued that the compensation awarded by the learned Tribunal was grossly inadequate and assessed without properly appreciating the nature of injuries, period of hospitalization, and the permanent disability suffered by the appellant. The amount awarded under the various heads such as pain and suffering, special diet, attendant charges and loss of earning capacity were meager and not in consonance with settled law. Learned counsel also submitted that the learned Tribunal erred in not awarding any amount towards loss of income during the period of treatment and awarded a nominal sum towards future loss of earning despite the appellant having suffered permanent disability affecting his functional capacity. On these premises, it was prayed that the finding of contributory negligence be set aside, the compensation awarded be suitably enhanced, and the impugned award be modified in the interest of justice.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR RESPONDENT No. 3/INSURANCE COMPANY.

6. Per contra, learned counsel for respondent No. 3/Insurance Company argued that the learned Tribunal rightly recorded the finding regarding contributory negligence on the part of the appellant and that the amount of compensation awarded by the learned Tribunal was just and fair in the facts and circumstances of the present case.

DISCUSSION AND REASONING

7. I have heard learned counsel for the parties and perused the paper-book of the case.

CONTRIBUTORY NEGLIGENCE

8. The finding recorded by the learned Tribunal with regard to the contributory negligence on the part of the appellant was not sustainable in the eyes of law. It is an admitted and established position on record that the offending truck, driven by respondent No.1, was brought to a sudden halt by applying brakes abruptly without any signal or indication. The version put-forth by the appellant stood duly corroborated by the testimony of PW2 (Subhash), an eye-witness to the occurrence, whose deposition remained consistent and unshaken during cross-examination.

8.1 It is a settled proposition of law that the driver of a heavy vehicle is under a heightened duty of care while using a public road. The act of applying sudden brakes without any indication constitutes clear negligence. In ***Municipal Corporation of Greater Bombay vs. Laxman Iyer, 2003 (8) SCC 731***, it has been observed that negligence is required to be determined in the backdrop of attending circumstances, and a mere rear-end collision does not ipso facto lead to an inference of negligence on the part of the vehicle coming from behind.

8.2 In the present case, the learned Tribunal has attributed contributory negligence to the appellant merely on the presumption that he failed to maintain a safe distance from the vehicle ahead. However, there is no cogent evidence on record to establish that the appellant was driving at an excessive speed or that he had sufficient opportunity to avert the accident. On the contrary, the sudden and un-signalled braking by respondent No.1 was the proximate and effective cause of the accident.

It is further pertinent to note that respondent No.1 failed to step into the witness box to rebut the evidence led by the appellant, thereby inviting an adverse inference against him in terms of Section 114 Illustration (g) of the Indian Evidence Act. In view of the aforesaid facts and settled legal position, the finding of contributory negligence to the extent of 50% attributed to the appellant cannot be sustained and is hereby set aside. It is accordingly held that the accident in question occurred solely due to the rash and negligent driving of respondent No.1.

QUANTUM OF COMPENSATION

9. 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.*
>
> *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".*

ASSESSMENT UNDER "LOSS OF INCOME"

10. A perusal of the record reveals that the appellant/claimant is working as an agriculturist besides running a dairy. However, no documentary evidence was produced on record to prove the same. 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 established loss of earning during the period of rehabilitation. In this situation observations made by the Hon'ble Apex Court in ***"Kubra Bibi vs. Oriental Insurance Co. Ltd.",*** reported as ***2023 (3) Apex Court Judgments (SC) 23,*** to the effect that in the absence of definite proof of income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector and the notional income is required to be taken into consideration to help the cause of the appellant. Relevant para from this judgment is reproduced hereunder:-

> *"7. In a matter of the present nature where the compensation is sought and even in absence of definite proof of the income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration. The fact that the deceased had three dependents to be cared for and had claimed that he was working as a mechanic, the amount payable to an unskilled labour, cannot be the basis and in that circumstance when he was a skilled person, the daily income at Rs. 200 per day in any event could have been taken even if the income from jeep transport business was discarded for want of documents. More so in a circumstance, where the MACT had referred to the evidence available on record and then arrived at its conclusion, the re-appreciation of the evidence by the High Court is without being sensitive to nature of lis before it."*

10.1 Furthermore, the nature of proceedings in Motor Accident Claims, being summary in nature, evidence in *stricto sensu* is not required. The Hon'ble Supreme Court in case of ***"Chandra @ Chanda @ Chandraram vs. Mukesh Kumar Yadav & Ors."***, reported as ***(2022) 1 SCC 198,*** held 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……"

10.2 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 @ Rs. 5,880/- per month (Rs. 196 per day). Now, as per the record available, the appellant/claimant remained in hospital from 13.11.2012 to 22.11.2012 i.e. 10 days and as such loss of income suffered by him during the said period is assessed as Rs. 1,960/- (Rs. 196 x 10). Further, evidently the motor vehicular accident in the present case took place on 12.11.2012 and the appellant/claimant must have been bed-ridden for 3 months due to fracture of both bones in right leg with nailing and restriction of right ankle and head injury, after the accident. Thus, it would be safe to assume that the appellant suffered loss of income for 3 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. 17,640/- (196 x 90). Furthermore, though the appellant/claimant suffered 5% disability which has been established by the Disability Certificate placed on record as Ex.P5, yet it being a case of fracture of both bones of right leg with nailing and restriction of right ankle it would be just and fair if the future loss of income/functional disability is assessed @ 3%, 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. 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.

10.3 A perusal of record shows that the age of appellant/claimant at the time of accident was less than 50 years. 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."*

10.4 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 @ 30%. Therefore, the income of the appellant/claimant after adding future prospects be taken as Rs. 7,644/- (5,880 + 1,764) 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 3% is assessed @ Rs. 35,773.92/- (7,664 x 12 x 13 x 3/100).

ASSESSMENT UNDER "MEDICAL EXPENSES/HOSPITALIZATION"

11. In the present case, the appellant/claimant suffered disability to the extent of 5%, which has been established through the disability certificate (Ex.P5). Furthermore, Jatin, Data Operator of Sri Balaji Action Medical Institute, Delhi also proved on record medical bills and receipts Ex.PM2 and Ex.P3 which show that the appellant/claimant paid an amount of Rs. 2,44,692/- on his treatment. Therefore, keeping in mind the cost factor prevalent at the time of motor vehicular accident and the treatment besides need of medicines during rehabilitation period, the compensation under this head is required 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, though, total bills proved are for Rs.2,44,692/- yet in the humble opinion of this Court, compensation under this head is assessed as Rs. 3,00,000/-.

ON THE ASPECT OF PAIN AND SUFFERINGS

12. 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 the gravity of 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."*

12.1 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 facts and circumstances of the present case, it is evident from the documentary evidence duly proved on record that the appellant/claimant sustained grievous injuries, namely fracture of both bones in right leg with nailing and restriction of right ankle and head injury. More than that, disability certificate placed on record established that the appellant/claimant was found to be having 5% permanent disability. 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'

13. Admittedly, the injured was bed ridden for 3 months as he suffered knee fracture and went 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

14. 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. 1,960+ Rs. 17,640 + Rs. 35,773.92)	55,373.92/- (rounded off to 55,375/-
2.	Medical Expenses/Hospitalization	3,00,000/-
3.	Compensation under other pecuniary head	1,00,000/-
4.	Compensation under pain and sufferings	2,00,000/-
	Total Compensation	**6,55,375/-**
	Amount Awarded by the Tribunal	**1,42,500/-**
	Enhanced Amount	**5,12,875/-**

15. 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 awarded to the claimants 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.

16. In view of the aforesaid modification, the present appeal stands disposed of. Pending miscellaneous application(s), if any, shall also stand disposed of.

April 07, 2026 **(HARKESH MANUJA)**
sonika **JUDGE**

(i) Whether reasoned/speaking? Yes

(ii) Whether reportable? Yes