



FAO-4057-2017

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

FAO-4057-2017 (O&M)

Chander Shekhar

.....Appellant

VS.

Binder Singh and ors.

.....Respondents

Date of Reserve: 06.03.2026

Date of Pronouncement: 23.03.2026

Uploaded on:- 24.03.2026

Whether only the operative part of the judgment is pronounced? ***No***
Whether full judgment is pronounced? ***Yes***

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Gaurav, Advocate for Mr. Rajbir Singh, Advocate,
for the appellant.

Mr. Satpal Dhamija, Advocate and
Mr. Vipul Sharma, Advocate, for respondent No. 2.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 26.08.2016 passed by the learned Motor Accident Claims Tribunal, Sangrur in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Tribunal') for enhancement of compensation granted to the claimant to the tune of Rs.1,70,000/-(rounded off) (i.e half of Rs.3,39,660/- on account of contributory negligence of the claimant) along with interest @ 7.5% per annum, on account of injuries suffered by him in a Motor Vehicular Accident, occurred on 26.08.2012 as well as making appellant liable for contributory negligence.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 26.08.2012, the claimant along with his friends Sunil Mittal, Sunny was going from Bhawanigarh to Sangrur on



scooter. Sunny was driving the scooter on normal speed and on correct side. In the morning, at about 4.00 AM, when they reached near canal drain of village Ghabdan, lights of a vehicle, coming from opposite direction, reflected in the eyes of Sunny, as a result of which they could not see a Canter bearing registration No.RJ-18GA-0574 wrongly parked in the middle of the road by respondent No.1, without any indicator on, as a result of which their scooter struck into the Canter and all the occupants of scooter fell down on the road and the claimant received multiple grievous and his leg was fractured. The claimant contacted his father telephonically, who reached at the spot within few minutes. His father removed him to Rajindra Hospital, but keeping in view his serious condition, he was referred to Amar Hospital, Patiala. On next day, DDR No.26 of 27.8.12 was lodged in Police Station Sadar, Sangrur. It has been alleged that the claimant suffered injuries due to negligent act of the respondent No. 1.

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

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

“1. Whether Chander Shekhar received injuries in a motor vehicle accident which took place on 26.8.2012 on account of rash and negligent driving of Canter bearing registration No.RJ-18GA-0574 which was being driven by respondent No.1 on 26.7.2013?OPP

2. If issue No.1 is proved, whether the claimant is entitled to compensation, if so, to what extent and from whom? OPP

3. Whether the respondent No.1 was not holding valid and effective driving license at the time of accident, if so its effect?OPR

4. Relief.”



5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal has awarded compensation to the claimant/appellant. However, 50% of the compensation was awarded to the appellant/claimant on account of his contributory negligence. Hence the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

6. Learned counsel for the appellant–claimant contends that the learned Tribunal has erred in law and on facts in holding that the accident occurred due to contributory negligence on the part of the appellant, who was admittedly only a pillion rider. He further submits that the offending vehicle was improperly parked on the road during night hours without any indication, reflector, or parking lights, thereby creating a hazardous obstruction. In such circumstances, the entire liability ought to have been fastened upon respondent No. 1–driver of the offending vehicle.

7. Learned counsel for the appellant further argued that the compensation awarded by the learned Tribunal is inadequate and does not commensurate with the nature of injuries, disability, and other consequential losses suffered by the claimant.

8. On the strength of these submissions, learned counsel prays that the present appeal be allowed and the impugned award be suitably modified.

9. Per contra, learned counsel for respondent No. 2, however, vehemently argues that the award has rightly been passed towards contributory negligence 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 record of this case.



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

“ISSUE NO.1

9 In order to prove this issue, AWI Chander Shekhar claimant tendered his affidavit Ex. AW1/A, adjuring, therein, the averments contained in the claim petition to the effect that on 26.8.2012, he along with his friends Sunil Mittal, Sunny was going from Bhawanigarh to Sangrur on scooter. Sunny was driving the scooter on normal speed and on correct side. In the morning, at about 4.00 AM, when they reached near canal drain of village Ghabdan, lights of a vehicle, coming from opposite direction, reflected in the eyes of Sunny as a result of which they could not see a Canter bearing registration No.RJ-18GA-0574 wrongly parked in the middle of the road by the respondent No.1, without any indicator on as a result of which their scooter struck into the Canter and all the occupants of scooter fell down on the road and the claimant received multiple grievous and his was fractured. The claimant contacted his father telephonically, who reached at the spot within few minutes. His father removed him to Rajindra Hospital, but keeping in view his serious condition, he was referred to Amar Hospital. Patiala.

10 AW2 Ashok Kumar, father of the claimant, also tendered his affidavit Ex.AW2/A, adjuring, therein, likewise and corroborated the testimony of AWI. He proved copy of DDR Ex. AW2/B which was recorded at his instance in Rajindra Hospital on 27.8.12.

11. Both the PWs, in their cross examination, have deposed that the canter was parked in the middle of the road without parking



lights on as a result of which the accident had taken place. In their cross examinations, they both have admitted that it was on the side of the road and not in the middle. This version of their cross examinations is also supported by DDR Ex.AW2/B, which is the first version of the claimant side, available on the file. Rather father of the claimant mentioned in his statement that the accident had taken place suddenly and there appears to be no fault on the part of anybody. Now in this case, specific allegations have been made hat the accident had taken place which is because of wrong parking of canter on the road by the respondent No.1. It has also been deposed that parking lights were also not on at that time.

12 *The alleged accident took place at 4.00 AM in the morning, in the month of August when there was darkness all around. Though father of the claimant has mentioned in the DDR that there appears to be no fault on the part of anybody, but one fact is clear that canter was parked without its parking lights on, on the road which clearly establishes the careless and negligence on the part of the respondent No.1, but the entire negligence cannot be said to be of the respondent No.1. The claimant himself admitted that he could not see the parked canter on the road as some light of a vehicle flashed into his eyes but this version cannot exonerate him of his part of negligence because if a person drives a vehicle on the road, he can easily see a parked vehicle if lights of his vehicle are on. Since the head light of the scooter was on, so it cannot be said that the claimant was not at fault at the time of driving his scooter and the respondent No.1 can not be blamed for the accident. The negligence*



appears to be contributory, as such this issue is decided accordingly that the accident has taken place due to negligence of both the claimant and the respondent No.1.”

12. A careful perusal of the impugned award reveals that the learned Tribunal has fallen into a manifest error in concluding that the accident occurred on account of contributory negligence attributable to both the claimant–appellant and respondent No.1 (driver-cum-owner of the offending vehicle).

13. From the record, it stands unequivocally established that the appellant was not driving the scooter; rather, he was merely a pillion rider. This material fact has not been disputed. The claimant/appellant, while appearing as AW-1, categorically deposed that the offending Canter bearing registration No. RJ-18GA-0574 was parked on the road during the early hours of the morning without any parking lights, indicator, or warning indicators. His testimony remained unshaken and uncontroverted.

14. The learned Tribunal appears to have inferred contributory negligence, *inter alia*, from the circumstance that the scooter was carrying more than one pillion rider. While it is true that carrying more than one pillion rider may amount to a violation of the provisions of the Motor Vehicles Act, it is trite law that a mere statutory violation does not *ipso facto* establish negligence unless it is further demonstrated, by cogent and reliable evidence, that such violation had a direct causal nexus with the occurrence of the accident.

15. In the present case, respondent(s) has led no evidence whatsoever to establish that the presence of two pillion riders in any manner contributed to the accident. There is a complete absence of proof showing that such alleged violation impaired the control, balance, or visibility of the vehicle so as to cause or



contributory negligence rests on conjectures and surmises and cannot be sustained in law.

16. Significantly, respondent No.1 chose not to appear before the learned Tribunal and was proceeded against ex parte. Consequently, the version put forth by the claimant remained unrebutted. The Tribunal, therefore, erred in drawing adverse inferences against the claimant in the absence of any rebuttal evidence from the respondent side.

17. It is further well settled that contributory negligence cannot ordinarily be attributed to a pillion rider unless there is specific evidence demonstrating that some act or omission on the part of the pillion rider contributed to the occurrence of the accident. The burden to establish such negligence squarely lies on the party asserting it. In the present case, there is not even an iota of evidence to discharge this burden.

18. In view of the foregoing discussion, the findings recorded by the learned Tribunal on the issue of contributory negligence are contrary to the evidence on record and settled principles of law, and are thus unsustainable. The same are hereby set aside. It is accordingly held that the accident in question occurred solely due to the negligent act of respondent No.1, driver-cum-owner of the offending vehicle, who is held entirely liable for the same.

19. Adverting now to the compensation as awarded by learned Tribunal, the same is decided as under:-

SETTLED LAW ON COMPENSATION

20. 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)].

21. 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.”

22. 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:

Heads	Awarded
Loss of earning power (Rs.14,648 x 12 x 31.1/100	Rs. 9,81,978/-



<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.

23. A bare perusal of the record reveals that the claimant/appellant was stated to be 22 years at the time of the accident and due to the accident, he suffered various multiple and grievous injuries. As per the medical evidence on record, his leg was fractured because of which he incurred great pain and agony. He had placed on record the medical bills (Ex A1 to A 131) pertaining to the treatment undertaken for the injuries sustained in the accident, vide which substantial amount was spent for his treatment. .

24. Keeping in view the nature of injuries suffered by the claimant/appellant and the period of treatment undergone, this Court is of the considered view that the amount awarded by the learned Tribunal under the head of pain and suffering, special diet and transportation charges is on the lower side, therefore, this Court in the interest of justice deems it fit to award **Rs.1,00,000/-** in lumpsum over and above in addition to the amount already awarded by the learned Tribunal. However, the appellant is also entitled to the remaining 50% amount i.e Rs.1,70,000/- out of the awarded amount Rs.3,40,000/-, as the finding of contributory negligence of the learned Tribunal is set aside by this Court.



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25. In view of the above, the present appeal is allowed. The award dated 26.08.2016 is modified to the extent mentioned above.

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

27. Respondent 2-Insurance Company is directed to deposit the enhanced amount of compensation (Rs.2,70,000/-) along with interest with the learned Tribunal within a period of two months from the date of receipt of copy of this judgment. The learned Tribunal is directed to disburse the enhanced amount of compensation along with interest in the account of the claimant/appellant. The claimant/appellant is directed to furnish his bank account details to the Tribunal.

28. However, needless to say, respondent No. 2-Insurance Company is granted liberty to recover the said amount of compensation from the insured i.e owner-cum driver, as per award dated 26.08.2016.

29. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

23.03.2026

Gaurav Arora

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes