

HARKESH MANUJA, J.

CM-19809-CII-2013 in FAO-4691-2013

This is an application seeking condonation of delay of 168 days in filing the appeal.

Notice of the application was issued vide order dated 21.01.2014. However, no reply has been filed.

Learned counsel appearing on behalf of respondents No. 1 & 4 does not oppose to the prayer made in the application. Even no reply has been filed to the same.

Upon hearing learned counsel for the parties and considering the averments made in the application, which is duly supported by an affidavit, the same is allowed. The delay of 168 days in filing the present appeal is hereby condoned.

MAIN APPEAL(S)

Both the appeals bearing FAO Nos. 4691 & 798 of 2013 arise out of a common award dated 30.10.2012 passed by the learned Motor Accident Claims Tribunal, Gurgaon **(for brevity, “the Tribunal”)**, and are, therefore, being decided together by this common judgment. One appeal bearing FAO No. 4691 of 2013 has been preferred by the claimant/appellant seeking enhancement of compensation awarded, whereas, the second appeal bearing FAO No. 798 of 2013 has been preferred by the Insurance Company, assailing the quantum of compensation on the ground that the amount awarded by the learned Tribunal is excessive and liable to be reduced, on

account of injuries suffered by Laxman Singh in a motor vehicular accident which occurred on 22.09.2006.

[2] The learned Tribunal, vide the impugned award, granted a sum of Rs. 4,75,200/- as compensation, along with interest @ 8% per annum from the date of institution of the claim petition till its actual realization. Both the appeals, involving challenge to the quantum of compensation, are thus, taken up together for adjudication. Facts are being culled out from FAO-4691-2013 for reference.

FACTS

[3] The appellant, being injured filed a claim petition before the learned Tribunal praying for grant of compensation on account of injuries suffered by him in a motor vehicular accident which took place on 22.09.2006 while alleging rash and negligent driving of vehicle bearing registration No. HR-38J-8007 by respondent No.1/driver (Bharat Singh). On the basis of the pleadings of the parties, the learned Tribunal framed the necessary issues and, after appreciating oral as well as documentary evidence brought on record, passed the award dated 30.10.2012 granting compensation, as noticed in the preceding paragraph after holding the driver of the offending vehicle to be negligent in driving the same.

[4] Being aggrieved of the aforementioned award dated 30.10.2012 passed by the learned Tribunal, the appellant / claimant preferred **FAO-4691-2013** seeking enhancement of

compensation on the ground that the amount awarded by the learned Tribunal was wholly inadequate and not commensurate with the injuries suffered, the period of treatment, pain and suffering, medical expenses and other attendant losses. On the other hand, the Insurance Company filed **FAO-798-2013** challenging the quantum of compensation primarily on the ground that the learned Tribunal erred in awarding an excessive amount under various heads, thereby calling for reduction of the award.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR THE APPELLANT-CLAIMANT

[5] Learned counsel for the appellant/claimant contended that the compensation awarded by the learned Tribunal under the heads of pain and suffering, special diet and loss of amenities was on the lower side and not commensurate with the nature and extent of injuries suffered by the claimant. It was further submitted that the learned Tribunal erred in not granting any amount on account of permanent disability, which adversely affected the claimant's future prospects and promotional avenues. Learned counsel also argued that no compensation was awarded towards attendant charges and transportation expenses incurred during the course of treatment besides the rate of interest awarded by the learned Tribunal was inadequate and deserved to be enhanced.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR RESPONDENT No. 4-INSURNACE COMPANY.

[6] Learned counsel for the Insurance Company submitted that there was a delay of five days in lodging the FIR, which casted a serious doubt on the manner and occurrence of the alleged accident. It was contended that both the claimant and the eye-witness were police officials and were well conversant with the legal procedure, and therefore the unexplained delay in registration of the FIR indicated collusion and fabrication of the claim. Learned counsel further argued that the injuries in question were sustained during the period of labour unrest and not on account of the involvement of the offending vehicle. Furthermore, he submitted that the claimant, being a Government employee, was entitled to medical reimbursement and, thus, the compensation awarded by the learned Tribunal was excessive and liable to be reduced.

DISCUSSION AND REASONING

[7] I have heard learned counsel for the parties and perused the paper-book. I find force in the arguments advanced by the learned counsel for the appellant-claimant.

[8] 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”.

**ON THE ASPECT OF ENHANCEMENT OF COMPENSATION
ASSESSMENT UNDER “LOSS OF INCOME”**

[9] A perusal of the record reveals that the appellant-claimant was 31 years of age at the time of accident and earning Rs. 18,000/- per month while serving as a Constable in the

Haryana Police. Owing to the injuries sustained in the accident, the claimant remained under treatment for a considerable period and was unable to attend to his duties, thereby suffering loss of income during the period. The learned Tribunal, failed to award any compensation under this head on the ground that there was no material on record to show that the claimant had not been paid salary during the period of treatment. In this regard, it may be observed that even if the claimant continued to receive his salary, the fact remains that he was constrained to avail leave on account of the injuries suffered in the accident, which resulted in depletion of his earned leave to his detriment. The loss of leave, which otherwise could have been utilized by the claimant for his future needs, is a compensable loss. Therefore, the claimant is held entitled to compensation for the period he remained on leave during his treatment, to be computed on the basis of his monthly income i.e. Rs. 18,000/-.

[9.1] Now, as per the testimony of Dr. Neeraj Kumar (PW-7) and the discharge summaries Ex. P-144 to Ex. P-148, the appellant/claimant was initially admitted in Batra Hospital, Delhi on 22.09.2006 and remained hospitalized till 29.09.2006. The doctor opined that the surgical procedure could not be undertaken until the wound had sufficiently healed; consequently, the claimant was discharged and kept under regular follow-up as an outdoor patient, with instructions to visit the hospital after every three days for dressing and review.

Thereafter, he was re-admitted on 13.10.2006, when surgery was performed on 13/14.10.2006 for insertion of an intramedullary rod in his left leg, and he was discharged on 15.10.2006 with similar advice regarding periodic dressing. During the course of such follow-up, the wound developed an abscess on the third occasion of dressing, and the treatment for the said complication continued till 10.11.2006. Owing to the severity of the infection, the claimant was again admitted for intensive wound management and remained hospitalized up to 20.11.2006. Thus, the appellant/claimant remained hospitalized for a total of 22 days, and as such loss of income suffered by him during the said period is assessed as Rs. 13,200 (Rs. 600 x 22).

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 6 months due to compound fracture in left leg, after the accident. Thus, it would be safe to assume that the appellant suffered loss of income for 6 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. 1,08,000/- (600 x 180).

[9.2] Furthermore, though, the appellant/claimant has suffered 15% disability, the same arises out of a compound fracture of left leg. 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 @ 10%, 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 vs. 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.

[9.3] Further, in **Lokesh B vs. Suryanarayana Raju Jaggaraju & Anr.** reported as **2025 INSC 939**, the Hon'ble Apex Court has authoritatively held that future prospects are liable to be added to the income of the claimant even in cases of self-employment. Relevant paragraphs thereof are extracted hereunder:-

"6. The only issue that arises for our consideration is whether the High Court erred in excluding future prospects and adopting a lower percentage of disability, thereby resulting in less compensation being awarded. We find merit in the appellant's submission on both counts.

*7. The monthly income of Rs. 9,500/-, as fixed by the High Court is accepted by both sides during the course of hearing, is affirmed. Though the appellant is self-employed, the law is now well settled that such claimants are entitled to future prospects. In **Santosh Devi v. National Insurance Company Limited and Others, (2012) 6 SCC 421** this Court extended future prospects to self employed persons.*

In National Insurance Company Limited v. Pranay Sethi and Others, (2017) 16 SCC 680 this view was reiterated. We therefore add 40% towards future prospects.”

In this regard, the Hon'ble Telangana High Court in the case **M.A.C.M.A.No. 1445 of 2010** titled as **Sri Kumaran Nair vs. B. Darshan and Another**, observed that the claimant, serving as a police constable, had sustained injuries which adversely affected his capacity to discharge strenuous official duties. Relying upon the medical evidence on record, which established a partial restriction in the movement of the knee, thereby impairing his prospects of career advancement, the Court deemed it appropriate to assess future prospects at 50% in the case of a government employee aged 38 years.

[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 31 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. 25,200 (18,000 + 7,200) 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 10% is assessed @ Rs. 4,83,840/- (25,200 x 12 x 16 x 10/100).

ASSESSMENT UNDER “MEDICAL EXPENSES / HOSPITALIZATION”

[10] In the present case, appellant/claimant suffered compound fracture of left leg. Even though the appellant could produce bills amounting to Rs. 4,15,177/- 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 facts and circumstances of the present case, it is evident from the documentary evidence duly proved on record that the appellant/claimant sustained compound fracture of left leg. 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 compound fracture of the left leg 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 6 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/.

QUESTION REGARDING NEGLIGENCE

[13] The learned Tribunal has returned a categorical finding with regard to rash and negligent driving of the offending vehicle on the basis of the consistent testimony of the claimant as well as the eye-witness HC Ajay Kumar, which stood duly corroborated by the registration of the FIR and the production of the relevant criminal record. The mere delay in lodging the FIR does not, in the facts and circumstances of the present case, create any dent in the case of the claimant, inasmuch as the evidence on record clearly indicates that the immediate concern of the witnesses was to ensure prompt medical treatment to the injured. It is by now well settled that delay in registration of the FIR cannot be made a ground to discard an otherwise genuine claim, particularly in motor accident cases where the primary

effort of the family members and the bystanders is to save the life of the victim. In this regard, reference may be made to the judgments of the Hon'ble Supreme Court in **Ravi vs. Badrinarayan and others, (2011) 4 SCC 693** and **Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656**, wherein it has been held that delay in lodging the FIR is not fatal to a claim petition if the occurrence of the accident is otherwise proved on record.

Furthermore, the Insurance Company has failed to lead any cogent or convincing evidence to substantiate its plea that the injuries were sustained during the alleged labour unrest or that the offending vehicle was not involved in the occurrence. In the absence of any such rebuttal evidence, the bald assertion raised on behalf of the insurer cannot be accepted. The finding recorded by the learned Tribunal on the issue of negligence is thus based on proper appreciation of oral as well as documentary evidence and the same does not call for any interference by this Court.

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. 13,200+ Rs. 1,08,000 + Rs. 4,83,840)	6,05,040/-

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/-
5.	Total Compensation	14,05,040/-
6.	Amount Awarded by the Tribunal	4,75,200/-
7.	Enhanced Amount	9,29,840/-

[15] The grant of interest @ 8% 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] Accordingly, the appeal filed at the instance of the appellant–Insurance Company, i.e. **FAO-798-2013**, being devoid of merit, stands **dismissed**, whereas the appeal preferred by the claimant/injured, i.e. **FAO-4691-2013**, is **allowed** in the aforesaid terms with the modification in the quantum of compensation as

assessed hereinabove. The impugned award dated 30.10.2012 passed by the learned Motor Accident Claims Tribunal, Gurgaon is modified to the extent indicated, and the claimant shall be entitled to the enhanced amount of compensation along with interest in the manner specified in the preceding paragraph. The liability to satisfy the award shall remain the same as determined by the learned Tribunal.

[17] Pending miscellaneous application(s), if any, shall also stand(s) disposed off.

March 24, 2026
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No