

2025:PHHC:046757



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

**FAO-349-2008 (O&M)
Date of Decision: April 04, 2025**

Dharambir

...Appellant

VERSUS

Kishore Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Jitender Dhanda, Advocate
for the appellant.

Mr.Vinod Gupta, Advocate
for respondent No.3.

Mr.Gopal Mittal, Advocate
for respondent No.5.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, questioning the adequacy of the compensation granted to him by learned Motor Accident Claims Tribunal, on account of injuries sustained, in a motor vehicular accident.

Suffice to consider that the accident had taken place on 12.10.2002, while, appellant-claimant was driving the truck bearing registration No.HR-46-6408 and the other truck involved was bearing registration No.HR-55-5697, driven by respondent No.1-Kishore Singh.

On appraisal of the evidence, brought on record, learned



Tribunal concluded about the accident to have been caused due to rash and negligent driving of truck bearing registration No.HR-55-5697, driven by respondent No.1-Kishore Singh and on account of the accident in question, the appellant-claimant sustained extensive injuries.

Considering the evidence, brought on record, learned Tribunal had granted an amount of Rs.10,000/-, on account of medical bills, Rs.10,000/- for operation of leg and forearm, Rs.8000/- for another operation, which is to be conducted for removal of the implants and nails. Besides the same, another amount of Rs.5000/- was granted on the count of 'pain and suffering, transportation etc.'. In total, the compensation was granted to the extent of Rs.33,000/-.

Being aggrieved, only the appellant-claimant has filed the appeal for seeking enhancement of the compensation.

At the very outset, it is submitted by learned counsel for the appellant-claimant that appellant-claimant had suffered 40% disability and on account of the injury sustained, learned Tribunal had not considered the aspect of functional disability, not only to the income generating capacity of the appellant, who was the driver, but also about non-quantifiable implications, on the life of the appellant-claimant.

It is further submitted that learned Tribunal, while taking into the consideration the surgery already undergone by him, has also not worked upon the additional medical exigencies for the removal of the rods and for the expenses to be incurred for future medical treatment. Thus, a prayer has been made for extensive enhancement of the compensation, so awarded by learned Tribunal.



On the other hand, learned counsel for the respondents have refuted the claim of the appellant-claimant, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. In fact, it is submitted that the appeal sans merit and deserves to be dismissed.

However, the 'work on' of the compensation, as detailed aforesaid, do call for re-determination.

Before proceeding further, it shall be appropriate to make beneficial reference to the decision rendered in *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, wherein, it was held by the Court that the '**just**' compensation is adequate compensation and the Award must be just that-'**no less and no more**'. The plea of victim suffering from a cruel twist of fate, when asking for some more, is not extravagant, but it is for seeking appropriate recompense, to negotiate with the unforeseeable and the fortuitous twists, in his/her impaired life. Therefore, while the money awarded by Courts, can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a burden on others), the Courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding '**just compensation**'.

Suffice to make reference to the decision rendered by the Hon'ble Supreme Court in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*, wherein the Hon'ble Supreme Court brought out difference between personal disability and functional disability, resulting in the loss of earning capacity. It was laid down that compensation, on account of loss of



earning capacity, has to be granted in accordance with the nature of job undertaken by the victim of the motor vehicular accident. The test for determining the effect of permanent disability, on future earning capacity involves the three steps, as was laid down in *Raj Kumar's case (supra)*, which was further reiterated in *Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796*.

Thus, it goes without saying that in matters of determination of compensation, the Tribunals/Courts are statutorily bound with the responsibility of fixing 'just' compensation. It is obviously true that determination of 'just' compensation, cannot be equated to bonanza, but at the same time, it ought not to be a niggardly amount. The concept of '**just compensation**' obviously suggest an application of fair and equitable principles and reasonable approach, on the part of Tribunals/Courts. However, the measures have to be applied proportionately.

Adverting to the case in hand, it is pertinent to mention that it is the pleaded case of the appellant-claimant that he had received multiple serious grievous injuries on his person, including fracture of right femur, left forearm and on other parts of the body. While in the witness box as PW-1, the claimant has categorically stated that he was employed as a driver on the truck bearing registration No.HR-46-6408. Besides deposing about the manner of taking place of the accident, he also deposed about the injuries sustained by him in the accident in question, on his right leg and left hand and he was taken to Medical College Hospital, Ajmer, where he remained admitted for 3-4 days and thereafter, he came to Arora Hospital, where he



remained admitted for 9 days. His leg and hand were operated by Dr.Arora and rods were inserted in his leg and hand. He also deposed about his salary to be Rs.3000/- per month.

PW-2 Dr.Ashok Arora also deposed about admission of Dharambir-patient, in his hospital on 16.10.2002, with diagnosis of fracture shaft femur right with fracture both bones left forearm with neurovascular deficit. He also deposed that he was earlier admitted in JLN Medical College, Ajmer and then also, he also deposed that closed nailing of left forearm was done on 17.10.2002. Again on 21.10.2002, right thigh was operated upon and interlocking nailing of the femur was done. The patient was discharged on 28.10.2002. Ex.P1 is the discharge card. Further, this witness has also proved the medical bills, which are Ex.P6 to Ex.P40 and also deposed about the another operation for removal of implants.

Besides the aforesaid, PW-3 Dr.Joginder Kapur was examined, who was member of the board of doctors, who assessed the disability of Dharambir and he deposed that Dharambir was found to be disabled to the extent of 40%, as a result of post traumatic deformity of right limb joint stiff knee and proved the disability certificate Ex.P41.

Perusal of the disability certificate, do state about the percentage of the disability to be 40%. However, close perusal of the certificate shows that it does not state about the injury to be permanent or temporary. Even the doctor, who proved the disability certificate, did not state about the same. Rather, in cross-examination, PW-3 Dr.Joginder Kapur stated that disability will decrease for the whole body 15 to 20% approximately and he also admitted to be correct that they have assessed the



disability of stiffness 30% and disuse atrophy of the muscle of the right limb. The disability is regarding right knee only.

Considering the same, some amount of guess work has to be applied, for 'work on' of the compensation, more particularly, considering the appellant-claimant to be working as driver. It being so and making some guess work, very close to the proximate reality, the functional disability of the whole body, is taken as 20%. Considering the salary of the appellant-claimant to be Rs.3000/- per month, while working as driver and looking at age of the appellant-claimant to be 35 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, 40% has to be added, on the count of 'future prospects'. Thus, the earnings of the injured-appellant comes to be $\text{Rs.}3000+1200(40\%)=\text{Rs.}4200/-$ and annual earnings comes to be **Rs.50,400/-**.

In consonance with the *Sarla Verma's case (supra)*, the appropriate multiplier to be applied is '17' and also multiplying the same with 20% of disability and dividing the same by 100, as per standard multiplier process, on account of the same, the loss is assessed as **$\text{Rs.}50,400 \times 17 \times 20 / 100 = \text{Rs.}1,71,360/-$** .

It should be noted that medical bills and the expenditure incurred on purchase of medicines have been proved. Considering the same, learned Tribunal had appropriately granted an amount of **Rs.10,000/-**, towards '**medical expenses**'.

Besides the same, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of the conveyance for 'to and fro' to the hospital, some amount must have been



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spent by the family of the appellant-claimant. Thus, on the count of 'transportation charges' a sum of **Rs.5,000/-** is awarded.

Obviously, during the period of treatment and some time thereafter, in the minimum, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, another sum of **Rs.5,000/-** is granted.

Furthermore, for some period of time, after the accident, in the minimum and even, looking at the kind of injuries sustained, the appellant-claimant must have been looked after by a bye-stander/attendant throughout. Even if, the appellant-claimant was being looked after only by his family members, then also, it should be noted that they could perform the role of care-giver, only by diverting their own time, from any form of gainful employment, which could have generated some income. Thus, on the count of 'attendant charges', an amount of **Rs.10,000/-** is granted.

The appellant-claimant, on account of the injuries sustained, must have passed through a very traumatic state of mind, on account of injuries sustained. Considering the same, on the count of 'pain and suffering', the compensation of **Rs.30,000/-** is granted.

Looking at the kind of injuries suffered by the appellant-claimant, definitely, some future medical treatment ought to be extended to him, from time to time, on account of inevitable consequences of the implants of rods. Considering the same, on the count of 'future medical needs', another amount of **Rs.10,000/-** is granted.

Thus, on the various counts, the compensation ought to be granted to appellant-claimant-Dharambir, is re-computed as herein given:-



1.	Loss of earnings	Rs.1,71,360/-
2.	Medical Bills	Rs.10,000/-
3.	Transportation charges	Rs.5,000/-
4.	Special diet	Rs.5,000/-
5.	Attendant charges	Rs.10,000/-
6.	Pain and suffering	Rs.30,000/-
7.	Future medical need	Rs.10,000/-
	Total	Rs.2,41,360/-

As such, the compensation, so awarded by learned Tribunal, stands enhanced from **Rs.33,000/-** to **Rs.2,41,360/-**. On the enhanced amount of compensation i.e. $Rs.2,41,360 - 33,000 = Rs.2,08,360/-$, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

Accordingly, the impugned Award dated 21.09.2007 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

April 04, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No