

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

246-2

**CM-3437-CII-2023 in/and
FAO-6798-2015 (O&M)
Date of Decision : 21.05.2025**

Sunita Gautam

....Appellant

VERSUS

Smt. Shareen Kaur and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Kumar Bamal, Advocate for the appellant.

Mr. Sachin Ohri, Advocate for respondent No.4.

ALKA SARIN, J. (Oral)**CM-3437-CII-2023**

1. This is an application for disposal of the main appeal.
2. For the reasons stated in the application, the same is allowed.

With the consent of learned counsel for the parties, the main appeal is taken on Board today itself.

CM-21225-CII-2015

3. For the reasons stated in the application, the same is allowed.
The delay of 62 days in re-filing the present appeal is condoned.

FAO-6798-2015 (O&M)

4. Present appeal has been filed by the claimant aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') vide award dated 09.12.2014 whereby an amount of Rs.7,23,095/- was awarded as compensation on account of the injuries suffered by her.

5. The parties are being referred to as claimant, driver/owner of the offending vehicle and Insurance Company for the sake of clarity.

6. The claim petition had been filed on account of injuries received by the claimant in an accident which took place on 26.01.2012. It was averred in the claim petition that on 26.01.2012, the claimant was travelling in a car bearing registration No.CH-01-AB-8997 while sitting on the rear seat thereof. The said car was being driven by Purushotam Gautam, brother-in-law of the claimant. They were coming from Gurgaon after performing the marriage of the daughter of the claimant, namely, Priyanka. At about 8:15 am when they reached near Village Garhi Kalan, P.S. Gannaur, District Sonapat, due to heavy fog, the driver Purushotam Gautam could not notice the vehicle bearing registration No.HR-38-Q-0338 (hereinafter referred to as 'the offending vehicle') which was wrongly and negligently parked in the middle of the road without any parking signal or light. Hence, the car being driven by Purushotam Gautam struck against the offending vehicle. All the occupants in the car, being driven by Purushotam Gautam, suffered multiple and grievous injuries. In this accident, Purushotam Gautam and son of the claimant, namely, Dev Gautam died on the spot. FIR No.43 dated 26.01.2012 under Sections 279, 337, 304-A Indian Penal Code, 1860 was registered as Police Station Gannaur.

7. On notice, respondent Nos.1 to 3 filed their joint written statement and raised various preliminary objections. It was averred in the written statement that the FIR has falsely been lodged against them. It was further averred that the accident took place due to the rash and negligent driving of Purushotam Gautam.

8. Respondent Nos.4 and 6 i.e. Bajaj Allianz General Insurance Company Ltd. filed a joint written statement, as both the vehicles were insured with the same Insurance Company, denying the factum of the accident and also the fact that the accident took place due to wrong parking of the offending vehicle. It was further stated that Purushotam Gautam was not holding a valid and effective driving licence to drive the car.

9. On the basis of pleadings of the parties, the following issues were framed :

1. Whether claimant received injuries in a motor vehicular accident which was caused due to negligence and wrong parking of vehicle No.HR-38-Q-0338 by Sukhwinder Singh since deceased ? OPP
2. Whether claimant is entitled to compensation on account of injuries received by her in a motor vehicle accident ? OPP
3. Whether the drivers of vehicle No. HR-38-Q-0338 and CH01-AB-8997 were not having valid driving licence at the time of accident ? OPR
4. Relief.

10. The Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Notional income	₹5,000/- p.m.
2	Loss of income @ 40%	₹2,000/- p.m.
3	Annual loss of income after applying the multiplier of 11	[₹2,000 x 12 x 11]= ₹2,64,000
4	Medical expenses	₹3,84,095/-
5	Loss of amenities	₹25,000/-

6	Pain and suffering	₹25,000/-
7	Special diet	₹25,000/-
	Total Compensation	Rs.7,23,095/-
	Interest	6% per annum

11. Learned counsel for the claimant-appellant would contend that the compensation awarded by the Tribunal under the pecuniary and non-pecuniary heads are on the lower side. It is contended that the claimant-appellant, who was 48 years of age at the time of the accident, had sustained multiple grievous injuries including fractures and her permanent disability has been assessed @ 40% vide Disability Certificate Ex.PW-5/1 proved on record by PW-6 Dr. Rajneesh Sood, Medical Officer, Department of Orthopaedics, Government Multi-Specialty Hospital, Sector 16, Chandigarh. Learned counsel would further contend the claimant-appellant remained under hospitalization w.e.f. 26.01.2012 to 18.02.2012 and had suffered lot of pain and agony. Learned counsel would further contend that the claimant-appellant is a well-educated woman holding a degree in Master of Arts and, besides being a Homemaker, she was also taking tuitions and as a result of the disability suffered by her due to the accident, she is not in a position to do her household chores as well as the tuition work. Learned counsel would further contend that the compensation awarded by the Tribunal under the pecuniary as well as non-pecuniary heads are on the lower side which deserve to be enhanced.

12. *Per contra*, learned counsel for respondent No.4-Insurance Company would contend that in the present case sufficient amount has

already been awarded as compensation and there is no scope for further enhancement.

13. I have heard the learned counsel for the parties.

14. The present is an unfortunate case where two members of the family i.e. son and brother-in-law of the claimant, namely, Dev Gautam and Purushotam Gautam died in the accident and the claimant and her husband sustained grievous injuries. The unfortunate accident took place when the claimant was returning after performing the marriage of her daughter. One claim petition being MACT No.116 of 2016 was filed by the legal representatives of Purushotam Gautam (since deceased) before the Motor Accident Claims Tribunal, Panipat. Connected appeal being FAO-3852-2017 has arisen out of the award dated 23.09.2016 passed by the Tribunal at Panipat. In the said appeal, vide order of even date, the finding regarding the contributory/composite negligence stands set aside. Even in the present case, since the claim petition has arisen out of the same accident, the finding qua composite negligence is accordingly set aside. In any case, it would not make a difference in the present case since the Insurance Company of both the vehicles is Bajaj Allianz General Insurance Co. Ltd.

15. Further, in order to prove her case the claimant-appellant stepped into the witness box as PW-5 and further examined Dr. Rajneesh Sood, Medical Officer, Department of Orthopaedics, GMCH, Sector 16, Chandigarh as PW-6. In his statement before the Tribunal, PW-6 Dr. Rajneesh Sood testified that on 17.02.2014 the claimant was examined by the Medical Board. X-ray of the right thigh showed old united supra Condylary fracture of femur with implant in situ; her X-ray pelvis showed

healed fracture of pudic rami; there was limitation of movement of right knee with painful movement at hip joint; shortening of 1 centimeter; weakness of right upper limb; her permanent physical disability was assessed as 40% vide his disability certificate as Ex.PW5/1; and that her treatment/medicines would continue throughout her life. This witness further testified that the claimant-appellant would not be able to live a normal life as she was prior to the accident. Thus, keeping in view the testimony of PW-6 Dr. Rajneesh Sood and the fact that the claimant-appellant suffered permanent physical disability @ 40% qua her hip, this Court deems it appropriate to assess her bodily disability to the extent of 20%.

16. Hon'ble the Supreme Court in the case of **Pappu Deo Yadav vs. Naresh Kumar & Ors. [2020 (4) RCR (Civil) 404]** has held as under :

“12. In view of the above decisive rulings of this court, the High Court clearly erred in holding that compensation for loss of future prospects could not be awarded. In addition to loss of future earnings (based on a determination of the income at the time of accident), the appellant is also entitled to compensation for loss of future prospects, @ 40% (following the Pranay Sethi principle).

13. The factual narrative discloses that the appellant, a 20-year-old data entry operator (who had studied up to 12th standard) incurred permanent disability, i.e. loss of his right hand (which was amputated). The disability was assessed to be 89%. However, the tribunal and the High

Court re-assessed the disability to be only 45%, on the assumption that the assessment for compensation was to be on a different basis, as the injury entailed loss of only one arm. This approach, in the opinion of this court, is completely mechanical and entirely ignores realities. Whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which the injury entails to the earning or income generating capacity of the claimant. Thus, loss of one leg to someone carrying on a vocation such as driving or something that entails walking or constant mobility, results in severe income generating impairment or its extinguishment altogether. Likewise, for one involved in a job like a carpenter or hairdresser, or machinist, and an experienced one at that, loss of an arm, (more so a functional arm) leads to near extinction of income generation. If the age of the victim is beyond 40, the scope of rehabilitation too diminishes. These individual factors are of crucial importance which are to be borne in mind while determining the extent of permanent disablement, for the purpose of assessment of loss of earning capacity.”

17. Though a multiplier method has rightly been applied by the Tribunal however, a multiplier of ‘13’ would be applicable instead of ‘11’ as

applied by the Tribunal in addition to future prospects @ 25% inasmuch as the claimant-appellant was admittedly 48 years of age at the time of the accident.

18. Further, in her statement before the Tribunal, the claimant-appellant testified that prior to the accident she was keeping good health and was a highly qualified woman holding a degree in Master of Arts. It was stated that she was earning ₹12,000/- to ₹18,000/- per month by taking tuitions besides being a homemaker. She proved on record her degree in Master of Arts as Ex.PW-5/A. There is nothing on record to prove that besides being a homemaker the claimant-appellant was also taking tuitions, however, it is a fact that she is a well-educated woman as is apparent from her degree in Master of Arts Ex.PW-5/A and thus being a well-educated homemaker, her income can be assessed according to the minimum wages applicable to a skilled worker in the Union Territory, Chandigarh at the time of the accident, which were ₹7,855/- per month.

19. Further, the claimant-appellant in her statement testified that she remained hospitalized from 26.01.2012 to 18.02.2012 i.e. for about 24 days and during this period medical expenses in the sum of ₹8,09,416/- were incurred out of which the department of her husband had reimbursed a sum of ₹4,25,321/- as is apparent from details of reimbursement Ex.P3. She further testified that due to her disability, she is totally incapacitated to do her daily work and her treatment is still going on and that she is still not in a position to lead a normal life. Keeping in view the diagnosis and history of treatment of the claimant-appellant, as has been narrated in her discharge summary Ex. PW-5/2, she apparently suffered lot of pain and agony. Hence,

the amount of ₹25,000/- awarded by the Tribunal under the head pain and suffering is on the lower side and same is enhanced to ₹2,00,000/-. The amount of 25,000/- awarded towards special diet is maintained. The amount of ₹25,000/- awarded towards loss of amenities of life is on the lower side and the same is enhanced to ₹1,00,000/-. Further, no amount has been awarded towards attendant charges. Since the claimant-appellant remained under treatment w.e.f. 26.01.2012 to 18.02.2012 i.e. for 24 days and as per the discharge summary Ex.PW-5/2 her follow up treatment was also going on, she is held entitled to attendant charges at least for one month. Thus, this Court deems it appropriate to award ₹4,967/- towards attendant charges as per the minimum wages at the relevant time. The amount of ₹3,84,095/- awarded by the Tribunal towards medical bills is maintained.

20. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income	[₹7,855 x 12] = ₹94,260/-
2	Loss of annual Income on account of 20% functional disability	₹18,852/- [₹94,260 – 75,408]
3	Future prospects @ 25%	[₹18,852 + 4,713] = ₹23,565/-
4	Multiplier of 13	[₹23,565 x 13] = ₹3,06,345/-
5	Pain and suffering	₹2,00,000/-
6	Loss of amenities of life	₹1,00,000/-
7	Special diet	₹25,000/-
8	Attendant Charges for one month	Rs.4,967/-
9	Medical Bills	₹3,84,095/-
	Total compensation	₹10,20,407/-

21. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from

the date of filing of the claim petition till the realization of the entire amount.

22. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh vs. Honey Goyal & Ors. [2025 INSC 361 : Civil Appeal No.4299 of 2025 arising out of SLP (C) No.4484 of 2020 decided on 18.03.2025]**, after calculation of the enhanced amount, the same be transferred by the Insurance Company in the bank account of the claimant within six weeks from today. The particulars of the bank account alongwith the requisite documents in support thereof shall be furnished by the claimants to the Insurance company within a period of two weeks from the date of this order and needful shall be done by the Insurance Company after verification thereof within four weeks thereafter alongwith up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

23. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal stands modified accordingly. Pending applications, if any, also stand disposed off.

21.05.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO