



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

FAO-7771-2014 (O&M)

Date of Decision: February 03, 2025

Rajesh Kumar

...Appellant

VERSUS

Deepak @ Depinder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Ekta Thakur and Ms.Shikha, Advocates
for the appellant.

Ms.Rajni Bala Rohilla, Advocate for
Mr.A.S.Barnala, Advocate
for respondents No.1 and 2.

Mr.Rajneesh Malhotra, Advocate
for respondent No.3.

ARCHANA PURI, J.

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

The facts germane, to be noticed, are as follows:-

That, on 10.06.2011, the appellant-claimant had proceeded from Police Station Sector-36, Chandigarh, for his home in Baltana, on his Activa bearing registration No.CH-04L-6648. When he reached near village Mauli Jagran, in the meantime, respondent No.1-Deepak alias Depinder Singh, while driving car bearing registration No.HP-34C-3839, came at a high

**FAO-7771-2014****-2-**

speed, in rash and negligent manner and struck the car from behind, as a result whereof, the appellant-claimant sustained multiple injuries on vital organs, including head injury.

Also, it was asserted that appellant-claimant was working as Home Guard volunteer in the Department of Home Guards, U.T. Chandigarh and drawing salary of Rs.9300/- per month.

So far as, the factum and manner of taking place of the accident as well as the liability fastened upon the respondents is concerned, it is pertinent to mention that none of the respondents, who have been saddled with the liability, have filed any appeal. Be it noted that it is only the appeal filed by the appellant-claimant for seeking enhancement of the compensation. Thus, there is no necessity to further dwell on the aforesaid aspects.

So far as, the vocation of appellant-claimant is concerned, the same stands amply established from the testimony of PW-2 Manraj Singh, Head Constable, who deposed that appellant was working as Home Guard volunteer and he remained on leave from 11.06.2011 to 28.02.2012. He also deposed that he was drawing salary for 31 days as Rs.9380/- per month. Considering the same, for the loss of income, during the period of leave from 11.06.2011 to 28.02.2012 i.e. 263 days, learned Tribunal worked upon the loss of income as $263 \times 300 = \text{Rs.}78,900/-$.

Besides the aforesaid amount, on account of medical expenditure, considering the bills Ex.P11 to P55, an amount of Rs.79,396/- was granted. Also, it is pertinent to mention that appellant-claimant had also examined PW-3 Dr.Rajesh Chhabra, Assistant Professor, Department of Neuro



Surgery, PGIMER, Chandigarh, who had proved the disability certificate, which is Ex.P56 and he has categorically deposed that claimant suffered disability of mild-left hemiparesis, reduced vision left eye and left third nerve paresis and the total disability was assessed as 56%, in relation to the whole body, which is permanent in nature and not likely to improve. He also deposed that it is going to affect his day-to-day activity and he may not be able to do his field duty actively.

In view of the observations aforesaid, the disability so spelt out, learned Tribunal has also taken into consideration the testimony of PW-2 Manraj Singh, who stated that the claimant was doing duties and was given light nature of work. On this account, it was also held by learned Tribunal that there cannot be any loss of future income.

Learned Tribunal had granted a sum of Rs.60,000/-, towards loss of future amenities. Besides the same, on account of 'pain and suffering' a sum of Rs.20,000/- was granted. Rs.3000/- was granted for 'transportation and another amount of Rs.6000/- was granted on the count of 'special diet'. For the attendant charges, an amount of Rs.4000/- was granted. Considering the aforesaid, the compensation awarded by learned Tribunal, in tabular form, is herein given:-

(i)	Loss of income	Rs.78,900/-
(ii)	Medical expenditure	Rs.79,396/-
(iii)	Loss of future amenities	Rs.60,000/-
(iv)	Pain and suffering	Rs.20,000/-
(v)	Transportation	Rs.3000/-
(vi)	Special diet	Rs.6,000/-
(vii)	Attendant charges	Rs.4000/-
	Total	Rs.2,51,296/-



Being aggrieved by the extent of compensation awarded, the appellant-claimant has filed the present appeal.

Definitely, the 'work on' of the compensation 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, the Hon'ble Supreme Court held that the '**just**' compensation is adequate compensation and the Award must be just that-'**no less and no more**'. The plea of the 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 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**'.

In a three Judges' Bench in *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, while considering the enhancement of compensation awarded, vis-a-vis, injuries suffered by the victim, a reference has been made to the decision rendered in *Laxman vs. Divisional Manager, Oriental Insurance Co. Ltd., 2012 ACJ 191 (SC)*, wherein, the Hon'ble Apex Court, has held as follows on next page:-

“(12) The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate



compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead normal life and enjoy amenities, which he would have enjoyed but for disability caused due to the accident.”

Furthermore, while making reference to various case law, it held that the compensation can be granted for disability as well as for loss of future earnings and the first head relates to the impairment of a person's capacity, while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

Thus, considering the same, if the victim of the accident suffers permanent disability, then efforts should be made to award compensation, not only for the physical frame and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed, but for the disability caused, due to the accident. In ***Jagdish's case (supra)***, the Hon'ble Supreme Court was considering the case of a carpenter, who had sustained injuries and lost both his hands. Therein, considering the serious disability, suffered by him, on account of loss of use of both of his hands, it was observed by the Court, as herein given:-

“.....For a person engaged in manual activities, it requires no stretch of imagination to understand that loss of hands is a complete deprivation of the ability to earn. Nothing, at least in the facts of this case, can restore lost hands. But the measure of compensation must reflect a genuine attempt of law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.”



Considering the facts of the case, the disability, which was worked upon as '90%', was taken to be total disability by the Hon'ble Supreme Court and thereupon, enhancement was made.

In this backdrop, now adverting to the case in hand, it is pertinent to mention that the appellant-claimant had sustained injuries in the accident in question. As already observed, PW-3 Dr.Rajesh Chhabra, Assistant Professor, Department of Neuro Surgery, PGIMER, Chandigarh, has been examined, who brought the record, pertaining to the assessment of the disability of claimant Rajesh Kumar and he was one of the member of the medical board. He also deposed about the claimant to be have suffered mild-left hemiparesis, reduced vision left eye and left third nerve paresis and the his disability was assessed as 56%, which is permanent in nature and not likely to improve.

Be it noted that the appellant-claimant was 36 years old, at the relevant time. Thus, it is quite obvious that he had a long career and definitely, the injuries sustained, are going to have serious impact upon his future growth in the job. Very true, as pointed out by learned counsel for the insurance company that appellant-claimant is still doing job and getting salary, but however, as deposed by PW-2 Manraj Singh, the appellant-claimant has not been put on very active duty. Considering the same, the Courts ought to be mindful of the fact that the extent of disability to be 56%, that too on the basis of hemiparesis i.e. weakness of upper and lower limb and reduced vision and left third nerve paresis, the 'body functionality' of the appellant is bound to be affected and in the given circumstances, his



chances of growth are bound to be reduced.

The test for determining the effect of permanent disability, on future earning capacity involves following 3 steps, as was laid down in ***Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*** and reiterated in ***Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Company Limited, 2020 (1) SCC 796***, as herein given:-

“13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions, so that he continues to earn or can continue to earn his livelihood.”

At this juncture, also it is apt to make reference to the observations made in ***Pappu Deo Yadav vs. Naresh Kumar and others, (2020) SCC Online 752***, which are herein given:-

“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 reassessed 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.”

“20. Courts should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities of life, both in the assessment of the extent of disabilities, and compensation under various heads. In the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disablement was assessed at 89%; however, the High Court halved it to 45% on an entirely wrong application of some ‘proportionate’ principle, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent that the income generating capacity of the appellant was undoubtedly severely affected. Maybe, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case.”

In the light of the aforesaid case law, it is quite obvious that though, the appellant-claimant continued to get same salary, but however, it stands established that the claimant, could not now perform active duty and thus, his chances of promotion in the job, have been capped, on account of kind of disability suffered by him. Thus, there is bound to be no further



growth in his own field.

In the light of the same, on account of disability, it cannot be concluded that there is no loss of future income and he be awarded compensation, only towards loss of future amenities.

However, to make assessment of the disability, the multiplier process ought to have been applied. At this juncture, it is appropriate to make reference to *Erudhaya Priya vs. State Express Transport Corporation, 2020 ACJ 2159*, wherein, reference was made to the settled principles, as set out in *Jagdish's case (supra)* and it was observed as herein given:-

“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]”

Also, it was observed that the aforesaid principle was emphasized in an earlier judgment, i.e. **Sandeep Khanuja v. Atul Dande & Another, 2017 ACT 979**, 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 the accident. Further, it was observed that while applying the multiplier method, future prospects on advancement in life and career, ought to be taken into consideration.

Observing on the same principle, reference is made to *Kartik Subramanian vs. B. Sarath Bahu and another, 2021 (2) RCR (Civil) 303*, wherein, again it was observed that multiplier method has to be applied for future prospects and advancement in life and career.

While working on the same principle, loss of earnings part was worked and towards the same, addition of future prospects was also made, while making the assessment of the compensation, which stood enhanced.

As held in *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, the addition also ought to be made on the count of 'future prospects', which considering the age of the appellant, ought to be 40%. Considering the earnings of the appellant as Rs.9380/- per month. Thus, the earnings of the appellant-claimant comes to be $\text{Rs.}9380+3752=\text{Rs.}13,132/-$ per month, annual whereof, comes to be $\text{Rs.}13132 \times 12 = \text{Rs.}1,57,584/-$.

Considering the age of appellant-claimant to be 36 years, as per *Sarla Verma's case (supra)*, the appropriate and suitable multiplier is '15' and thus, on the count of disability, taking the disability as 56%, the compensation is worked upon as $\text{Rs.}157584 \times 15 \times 56 / 100 = \text{Rs.}13,23,705/-$.

The total of the medical bills, proved in evidence, qua his treatment is **Rs.79,396/-** and the same is also granted.

The appellant-claimant, on account of the injuries sustained, must have passed through a very traumatic state of mind, while considering



his future to have been jeopardised, on account of injuries sustained. Considering the same, on the count of 'pain and suffering', the compensation of Rs.20,000/- awarded by learned Tribunal, now stands enhanced to **Rs.30,000/-**.

On the count of 'transportation', the compensation of Rs.3,000/- awarded by learned Tribunal, is too meagre. During the period of leave of the appellant-claimant, various rounds must have been made by the family members to the hospital to take care of the appellant-claimant and even, after discharge, various trips must have been made to the hospital, by the appellant for medical care. Considering the same, the compensation on the count of 'transportation' stands enhanced to **Rs.20,000/-**.

Obviously, during the period of treatment and some time thereafter, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, the compensation is enhanced to **Rs.20,000/-**.

Looking at the kind of injuries sustained by the appellant-claimant, he must have required constant help, to lead 'assisted living'. Considering the same, even though, he must have been looked after by his family members, but it is quite obvious his family members ought to have taken care by diverting their own time, from any form of gainful employment, which could have generated some income. Considering the same, on the count of 'attendant charges', the amount granted by learned Tribunal, to the extent of Rs.4000/- is too meagre, which calls for enhancement and thus, stands enhanced to **Rs.20,000/-**.

Thus, on various counts, as detailed aforesaid, the compensation



to be granted to appellant-claimant Rajesh Kumar, is re-computed, as herein given:-

1.	Loss of earnings	Rs.13,23,705/-
2.	Medical Bills	Rs.79,396/-
3.	Pain and suffering	Rs.30,000/-
4.	Transportation charges	Rs.20,000/-
5.	Special diet	Rs.20,000/-
6.	Attendant charges	Rs.20,000/-
	Total	Rs.14,93,101/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.14,93,101-2,51,296=Rs.12,41,805/-**. On the enhanced amount of compensation, i.e. **Rs.12,41,805/-**, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the appeal, till realization of the enhanced amount of compensation.

Accordingly, the impugned Award dated 07.07.2014 stands modified, to the extent, as indicated aforesaid. All the remaining terms, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid observations, the present appeal stands allowed.

February 03, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No