



FAO No.5127 of 2009 (O&M)

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

FAO No.5127 of 2009 (O&M)

Date of Reserve: 10.03.2025

Date of Decision: 24.03.2025

SATYAN DUA

.....Appellant(s)

Vs

ESS ESS BATHROOM PRODUCTS PVT. LTD. AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Varun Sharma, Advocate for
the appellant.

Mr. Diwan S. Adlakha, Advocate
for respondent No. 2/Insurance Company.

HARKESH MANUJA, J.

[1]. The present appeal lays challenge to an award dated 16.04.2009 passed by the learned Motor Accident Claims Tribunal, Chandigarh (for brevity, "learned Tribunal"), whereby an amount of Rs.8,47,024/- was awarded as compensation to the appellant/claimant along with interest @ 7.5% per annum on account of injuries sustained by him in a motor vehicular accident.

Brief Facts

[2]. The appellant/claimant being injured, filed 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 26.01.2006, while alleging rash and negligent driving of one Mr. Manoj Seth/driver who succumbed to his injuries on the spot.

[3]. After going through the pleadings and evaluating the evidence led by both the parties, learned Tribunal arrived at a conclusion that the accident occurred



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on account of rash and negligent driving of Mr. Manoj Seth/driver; holding respondent Nos.1 and 2 jointly and severally liable; awarded compensation in the following manner: -

S.No	Heads of Claim	Amount (in Rs)
1.	Pain and Sufferings	Rs.2,00,000/-
2.	Medical treatment	Rs.4,79,024/-
3.	Special Diet	Rs.10,000/-
4.	Transportation for medical treatment and follow-up treatment	Rs.3,000/-
5.	Attendants	Rs.5,000/-
6.	Loss of enjoyment of life and amenities	Rs.1,50,000/-
	Total	Rs.8,47,024/-

[4]. Being aggrieved against the award dated 16.04.2009, the present appeal was preferred by the appellant/claimant for enhancement of compensation. Facts as specified in the claim petition and the issue regarding negligence of the driver as held by the Tribunal being in favour of appellant, therefore, for the sake of brevity, those are not being repeated here.

Arguments

[5]. Learned counsel for the appellant/claimant assailed the award by submitting that the appellant was a student of 18 years of age at the time of motor vehicular accident, who suffered 80% permanent disability, and learned Tribunal erred while not granting any compensation on account of loss of income during hospitalization as well as for future loss of income. He also argued that the learned Tribunal erred while holding that the medical bills pertaining to the physiotherapy treatment taken by the appellant in Canada were not proved and thus, wrongly



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denied. He further argued that the compensation under conventional heads was also on the lower side and thus, liable to be enhanced.

[6]. On the other hand, learned counsel representing respondent No.2/Insurance Company submitted that appellant had been adequately compensated and thus, the present appeal was liable to be dismissed.

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

Discussion

On the aspect of enhancement of compensation

Assessment under “loss of income and future loss of Income”

[8]. In the present case, at the time of motor vehicular accident, appellant happened to be a student of 18 years of age, who suffered 80% permanent disability (Ex.P-4A) due to injuries received by him on the fateful day. Even though neither any income proof of the appellant was produced with the claim petition, nor the same was ever proved during the proceedings in the Tribunal or even before this Court, however, relying upon the decision rendered by the Hon’ble Supreme Court in the case of **“V. Mekala Vs. M. Malathi and another”**, reported as **(2014) 11 SCC 178**, whereby the income of a student of class 11th, injured in a road accident which took place in the year 2005, was taken as Rs.10,000/- per month. Relevant paragraphs thereof are reproduced hereunder:-

“17. The fact that the appellant was a brilliant student at the time of the accident should also be taken into consideration while awarding compensation to her. Therefore, taking Rs 6,000/- as monthly notional income by the Tribunal for the purpose of awarding compensation under this head is too meager an amount. The learned counsel appearing for the

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*respondent No. 2 contended that the appellant can still finish her education and find employment and therefore, there is no necessity to enhance the amount of compensation under the head of 'loss of income' and 'future prospects'. It is pertinent to reiterate here that the claimant/ appellant has undergone and undergoing substantial pain and suffering due to the accident which has rendered both her legs dysfunctional. This has reduced the scope of her future prospects including her marriage substantially. Moreover, a tortfeasor is not entitled to dictate the terms of the claimants-appellants career as has been held by the Karnataka High Court in the case of **K. Narsimha Murthy v. The Manager, Oriental Insurance Company Ltd and Anr., ILR 2004 Karnataka 2471**, the relevant paragraph of which reads as under :*

*"41. Further, it needs to be emphasised that it is not the right of the tortfeasor or a person who has taken over the liability of the tortfeasor in terms of and under the Act to dictate that the injured person should do some other work, manual or otherwise, it does not matter, may be with pain and discomfort, in order to minimise his or its liability. Such insistence is untenable in law and if such is the case, it would violate basic human rights of the injured person. In this case, the appellant is reduced to such a state that he is unable to do any work, manual or otherwise, without subjecting himself to pain and suffering, agony and discomfort. In an accident, if a man is disabled for a work which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes has lost all earning capacity he possessed before and he is required to be compensated on the basis of total loss. In reaching this conclusion we may derive support from the judgments in **Daniels v. Sir Robert Mc Alpine and Sons Limited and Blair v. FJC Lilley (Marine) Limited**. Secondly, the physical incapacity to earn income sustained by the appellant is not temporary, but permanent and complete as per Exhibit P. 43. Thirdly, it cannot be said that since the appellant has sustained only 54% permanent physical disability in respect of the whole body as per P.W. 3, the Court should take into account functional disability also at 54% only*

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while assessing the loss of earning capacity. Such hypothesis does not stand to reason nor can it be accepted as valid in terms of law. An injured person is compensated for the loss which he incurs as a result of physical injury and not for physical injury itself. In other words, compensation is given only for what is lost due to accident in terms of an equivalent in money insofar as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, but only values totality of the harm which the loss has entailed the loss of amenities of life and infliction of pain and suffering: the loss of the good things of life, joys of life and the positive infliction of pain and distress."

18. *Further, it has been held in the case of Reshma Kumari (supra) that certain relevant factors should be taken into consideration while awarding compensation under the head of future prospect of income. The relevant paragraph read as under :*

"27. The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so."

19. *Therefore, in the light of the principles laid down in the aforesaid case, it would be just and proper for this Court, and keeping in mind her past results we take Rs 10,000/- as her monthly notional income for computation of just and reasonable compensation under the head of loss of income....."*



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Further, the Hon'ble Supreme Court in **“S. Vasanthi. & Anr. vs M/s Adhiparasakthi Engg. College and Another”**, reported as **2022 (4) R.C.R. (Civil) 837**, held that in case of death of a student, income assessment could be made at par with the future earning capacity of his/her classmates. Relevant excerpt thereof is reproduced hereunder: -

“11. It could thus be seen that the deceased S. Sathiyarayan was twenty-three years of age at the time of the accident. He was a qualified engineering graduate and was pursuing an MBA degree at SRM University to further his professional capabilities. In view of the specific averments made in the affidavit as to the employment prospects of the classmates of the deceased S. Sathiyarayan and also his young age at the time of the accident, **we are of the considered view** that the Tribunal and the High Court have erred in not giving due weightage to the same. Had the deceased S. Sathiyarayan not met with the unfortunate accident, he would have surely drawn a salary equivalent to that of his classmates or at least an amount near the said amount.....”

Furthermore, the Hon'ble Supreme Court in **“Arvind Kumar Mishra v. New India Assurance Co. Ltd.”**, reported as **(2010) 10 SCC 254**, while considering the notional income of a student held as under: -

“14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like BIT, it can be reasonably assumed that he would have got a good job. The appellant has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs.3,50,000 per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs. 60,000 per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration.....”

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*Therefore, considering the facts of the present case wherein the motor vehicular accident took place in the year 2006 and relying **on V. Mekala' S. Vasanthi and Arvind Kumar Mishra's cases** (supra), this Court in its humble opinion holds that income of the appellant could be conservatively taken as Rs.10,000/- per month.*

[8.1]. A perusal of discharge summary (Ex.P4) shows that the appellant was admitted to Silver Oaks Hospital, S.A.S Nagar (Mohali) from 27.01.2006 to 24.02.2006 (29 days). Thus, loss of income during hospitalization needs to be assessed as Rs.10,000 (rounded off).

In cases involving permanent physical disability, while assessing future loss of income, actual functional disability of the injured needs to be taken into account and in the present case a perusal of disability certificate (Ex.P4-A) showed that the appellant suffered fracture in D-11 (spinal) with spastic paraparesis and fracture in right distal with restriction of wrist movement resulting into paralysis in lower parts of the body. Even, Dr. Rohit Jindal while appearing as PW-2 deposed that the nature of injuries suffered by the appellant rendered him 80% permanently disable in relation to whole body. Further, appellant in his claim petition and affidavit (Ex.PW3/A) specifically stated that due to the nature of his injuries, being bedridden, he was unable to continue with his education and this fact could not be controverted by the respondents, thus, the functional disability needs to be assessed @ 100%.

Further, the Hon'ble Apex Court in case of "**Sidram vs Divisional Manager United India Insurance Co. Ltd.**", reported as **2023 (3) SCC 439**, held that future prospects have to be given even in cases wherein victim suffered permanent disability. Relevant paragraph thereof is reproduced hereunder:-



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“31. It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases - and admits such possibility of future prospects, in case of the victim's death.”

Therefore, in view of **Sidram's** case (supra), this Court in its humble opinion while adding future prospects assesses the loss of future income as Rs. 30,24,000/- {10,000 (100% functional disability)+ 40% (future prospects) = 14000 x 18 x 12}.

Assessment under “other pecuniary heads”

[9]. Learned Counsel for the appellant contended that learned Tribunal erred while discarding medical bills (Rs.1,26,000/-) pertaining to physiotherapy treatment availed by the appellant in Physio-Logic Neurological Rehabilitation, North York Clinic, 265 Yorkland Blvd Toronto, Canada (Ex.P108 to P131) while holding that these were never legally proved. The Hon'ble Supreme Court in the case of **“Anita Sharma and others vs The New India Assurance Co. Ltd. and another”**, reported as **2021 (1) SCC171**, held that the standard of proof in motor accident claim cases is based on principles of preponderance of probability rather than beyond reasonable doubt. Relevant excerpt thereof is reproduced hereunder: -

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“22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in **Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646** wherein this Court reiterated that:

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (**Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101]**)”

Therefore, in view of exposition of law laid down in **Anita Sharma's** case (supra), this Court in its humble opinion holds that the learned Tribunal ought to have considered and accepted the physiotherapy/medical bills (Ex.P108 to P131). This fact is even bolstered by the proof of travel (Air tickets and foreign currency exchange bills) annexed by the appellant (Ex.P132 to P137) which clearly showed that appellant travelled to Canada to receive medical treatment. Thus, appellant is held entitled for compensation for Rs. 1,26,000/- in lieu of physiotherapy/medical treatment received by him in Canada and for the disregarded medical bills (Ex. P42 to P45) to Rs.3,100/- in addition to the compensation for medical treatment as awarded by the learned Tribunal.

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[9.1]. Further, as evident from the record, appellant continued to undergo physiotherapy after discharge from the hospital and even went on to Canada for receiving specialized physiotherapy treatment. The Hon'ble Supreme Court in case of “Abhimanyu Partap Singh vs Namita Sekhon & Another”, reported as 2022 (3) R.C.R (Civil) 557 held that in cases where physiotherapy treatment is required then multiplier system should be used. Relevant paragraph thereof is reproduced hereunder: -

“19. Similarly for medical expenses in the head of physiotherapy required to the claimant, the Tribunal awarded Rs.2,88,000/- @ Rs.50 per day. The High Court granted lumpsum amount of Rs.8,00,000/- including the expenses for diapers. In our considered opinion, the said amount is not adequate. In these days the physiotherapist would charge at least Rs.150/- per day to treat the patient for one hour which monthly comes to Rs.4,500/- and annually 54,000/-, applying the multiplier of 18, the amount in the head of physiotherapy charges comes to Rs.9,72,000/-. For the purpose of use of diapers, regular medical check-up and medical expenses if we further add Rs.2,00,000/- then in the head of future medical expenses the amount comes to Rs.11,72,000/-.”

Therefore, after placing reliance on Abhimanyu's case (supra) which was decided in the year 2022, the physiotherapy charges in present case is conservatively taken as Rs.5,000/- per month and thus, appellant is held entitled for compensation under the head of physiotherapy charges and it is assessed as Rs.10,80,000/- (5000 X 12 X 18).

[9.2]. Upon perusal of copy of discharge summary (Ex.P4), travel bills (Ex.P132 to P137) and the averments made in affidavit of appellant, it is evident that he was admitted in hospital for 29 days; received follow up treatment in

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Canada, therefore, compensation under the head of transportation and special/nutritious diet is cumulatively assessed as Rs.1,50,000/-.

[9.3]. In the present case, appellant having suffered 80% permanent disability resulting into paralysis in the lower parts of the body would require lifelong attendant but before assessing the attendant charges we need to look into the judgment rendered by the Hon'ble Apex Court in case of **"Kajal v. Jagdish Chand"**, reported as **(2020) 4 SCC 413**, whereby it was held that in cases where attendant is required even after discharge from the hospital, multiplier method could be used for assessing attendant charges. Relevant excerpt thereof is reproduced hereunder: -

*"22. The attendant charges have been awarded by the High Court @ Rs 2,500/- per month for 44 years, which works out to Rs 13,20,000/-. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc. This system was recognised by this Court in **Gobald Motor Service Ltd. v. R.M.K. Veluswami, AIR 1962 Supreme Court 1**. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of 'just compensation' within the meaning of the Act."*

Also, the Hon'ble Apex Court in **Abhimanyu's** case (supra), while assessing attendant charges in a case arising out of an accident relating to the year



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1996 assessed the attendant charges @ Rs. 5,000/- per month while deciding the case in the year 2022. Relevant extract thereof is reproduced hereunder: -

*“18. In the head of medical expenses, the MACT or the High Court has not awarded any compensation presumably because the mother of the claimant who was minor at the time of accident may have claimed the amount of medical expenses being an IAS officer. But now the claimant has become major, and looking to the nature of injuries, future medical expenses that includes the attendant charges, use of diapers due to loss of urination senses is required to be calculated including future medical expenses. The Tribunal awarded Rs.1,92,000/- in the head of attendant charges @ 1,000/- per month. While the High Court proceeded on the premises that the rate of the attendant charges is variable after every five years, however, the Court calculated the amount @ Rs.2,000/- thereafter @ Rs.4,000/- per month for a period of 20 years and accordingly determined Rs.9,00,000/- making enhancement of Rs.7,08,000/- in the said head. As discussed, if we apply the multiplier method and in view of the judgment of *Kajal (supra)*, we accept the rate of attendant charges Rs.5000/- per month for 12 hours, looking to the nature of injuries and disability the claimant is required two attendants at least within 24 hours then the expenses in the head of attendant charges comes to Rs.10,000/- per month. If we apply the multiplier of 18, the amount comes to Rs.21,60,000/-.”*

Therefore, while placing reliance on *Abhimanyu's* case (supra) and *Kajal's* case (supra), this Court in its humble opinion holds that attendant charges needs to be assessed as Rs.5,500/- (per month) and thus, compensation for attendant charges by applying multiplier of 18 is assessed as Rs.11,88,000/- (5500 X 12 X 18).

Assessment under ‘non-pecuniary heads’

[10]. In motor accident cases, determining the value of pain and suffering is a complex process which involves consideration of various factors and their

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subjective assessment. Unlike economic damages such as medical expenses or lost wages, which can be calculated based on objective evidence; pain and suffering damages are more intangible and subjective. While no amount of compensation can alleviate the mental trauma and agony caused to the injured and loss to the future enjoyment of amenities of life, but societal balance could be maintained if some lumpsum amount could be awarded on account of permanent disability. The Hon'ble Supreme Court in the case of "K.S. Muralidhar vs R. Subbulakshmi & Anr.", reported as 2025 AIR Supreme Court 70, held 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."

Therefore, in the present case, appellant is held entitled for compensation on account of permanent disability as well as "pain and sufferings" suffered by him to the tune of Rs.15,00,000/- after placing reliance on K.S Muralidhar's case (supra).

Further, considering the stigma associated with permanent disability resulting into diminished marital prospects the appellant needs to be compensated under this head. After placing reliance on a recent judgment delivered by the Hon'ble Supreme Court in case of "Deepak Singh Alias Deepak Chauhan vs Mukesh Kumar", Civil Appeal No. 2255 of 2025 (arising out of SLP(C) No. 4099



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of 2025 @ Diary no.236/2024),in the given facts and circumstances of the present case the appellant is held entitled for compensation to the tune of Rs.5,00,000/- on account of “loss of marriage prospects”.

Conclusion

[11]. In view of what has been discussed hereinabove, the appellant/claimant shall be entitled for the grant of compensation in the following manner:-

Sr.No.	Nature	Amount in Rupees
1.	Loss of Income and Loss of future Income (Rs.10,000 +Rs.30,24,000)	Rs.30,34,000/-
2.	Medical treatment {Rs.4,79,024 as awarded by Id. Tribunal + Rs.1,26,000 (discarded physiotherapy charges) + Rs.3,100 (discarded bills)}	Rs.6,08,124/-
3.	Pain and Suffering	Rs.15,00,000/-
4.	Loss of Marriage Prospects	Rs.5,00,000/-
5.	Transportation and nutritious diet	Rs.1,50,000/-
6.	Physiotherapy Charges	Rs.10,84,000/-
7.	Attendant Charges	Rs.11,88,000/-
	Total Compensation	Rs.80,60,124/-
	Amount Awarded by the Tribunal	Rs.8,47,024/-
	Enhanced Amount	Rs.72,13,100/-

[12]. The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case and as per the observations made by the Hon’ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other, (2009) (4) SCC 513** approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another,**



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2014 (1) RCR (Civil) 443 the interest is enhanced @ to 9% per annum on the amount of compensation awarded to the appellant/claimant from the date of institution of claim petition till its realization but excluding the period of delay in filing of the present appeal. Needless to mention here that the amount of compensation already paid to the appellant/claimant shall be deducted from the enhanced compensation.

[13]. Accordingly, the appeal filed at the instance of appellant is allowed with aforesaid modification/enhancement of the award passed by the learned Tribunal. Pending miscellaneous application(s) if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

March 24, 2025

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No