2025:AHC:200748

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 1298 of 2010

Nitin Kumar Tiwari

.....Appellant(s)

Versus

Sunder Lal And Others

.....Respondent(s)

Counsel for Appellant(s)	:	Amit Kumar Sinha
Counsel for Respondent(s)	:	Arun Kumar Shukla, Harinank Mauli Vikram Dwivedi, Harish Chandra Mishra

AFR

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation has been preferred by the claimant against the impugned judgment and award dated 22.01.2010 passed by the Motor Accident Claims Tribunal/District Judge, Kaushambi, in MACP No. 4 of 2007 (Nitin Kumar Tiwari vs. Sunderlal and another), whereby, for the injuries sustained by the claimant in a road accident, which occurred on 27.10.2006, a compensation of Rs. 3,50,000/- along with interest at the rate of 6% per annum has been awarded to the claimant, which has been ordered to be indemnified by the insurer of the offending Vehicle No.UP73-A-1495.

2. Since there is no cross appeal by the owner, driver and the insurer of the offending vehicle as such, the factum of accident and negligence is not disputed by the respondents.

3. In this case, the claimant asserted that he was approximately 26 years of age on the date of the accident, was self-employed, who was giving tuition to children, and was earning Rs. 6,000 per month, and his one side of the body became paralyzed due to the injuries sustained in the accident, he became permanently disabled requiring two persons as attendants to help him. The claimant asserted that he has become 100% disabled.

4. The Tribunal in the absence of any documentary evidence of occupation and income of the claimant assessed his income at only Rs.2,500/- per month, applied a multiplier of 18, deducted one-third

amount towards personal expenses, awarded Rs.90,000/- towards treatment expenses and Rs.8,000/- towards pain, suffering, and transportation expenses.

5. Since the claimant submitted permanent disability certificate of 70%, as such, the Tribunal has only awarded compensation on that basis. In all, the Tribunal has awarded an amount of Rs.3,50,000/- along with interest at the rate of 6% per annum, aggrieved against which, the claimant has filed this appeal for enhancement of compensation.

6. Per contra, learned counsel for the respondent-Insurance Company, has submitted that since no documentary proof of occupation and income was submitted by the claimant, as such, the Tribunal has rightly assessed the income of the claimant at Rs.2,500/- per month.

7. Learned counsel submitted that the claimant has also not proved the expenditure incurred on the attendants and the claimant was not 100% disabled, as such, the Tribunal has rightly assessed his permanent disability at 70%.

8. I have heard the learned counsel for both the sides and perused the record of the lower court.

9. Before the Tribunal, the claimant Nitin Kumar Tiwari examined himself as PW-1, who deposed that he sustained serious injuries in his head and leg and remained unconscious for about a week after the accident. He was treated in Virendra Hospital, Allahabad for about a month. He suffered serious injuries in the accident and regained full consciousness after about three months. He was also treated at Swarooprani Hospital, Allahabad, but was later admitted to Virendra Hospital for better treatment by his father. An amount of Rs.3 lacs was spent on his treatment. He further deposed that due to the injuries sustained in the accident, his left side of the body has been paralyzed due to which he has become permanently disabled regarding which, CMO, Kaushambi has issued a certificate of 70% permanent disability. He further deposed that at the time of the accident, he was aged about 26 years and was studying B.A.(Bachelor of Arts). Before the accident, he was imparting tuition to students of Class 5 to 8 from which he was earning Rs.5,000/- per month. Besides that, he was also involved in farming and was earning Rs.3,000/- per month. In this way, he was

earning Rs.8,000/- per month from both the occupations, but after the accident, he has become permanently disabled. Now he continuously requires the assistance of two persons for his routine work, and each of them are being paid wages at the rate of Rs.70/- per day. He further deposed that he was unable to do any work and was also not able to discharge his marital obligations and look after his family.

10. In the cross-examination by the Insurance Company, he deposed that at the time of the accident, he was a student of B.A. IIIrd year and was giving tuition and was also doing farming from which he was earning about Rs.8,000/- per month. He further deposed that he was giving tuition to 20 children. He suffered injuries in head, neck and leg and remained hospitalized in Virendra Hospital, Allahabad from 27.10.2006 till 25.11.2006. He admitted that he was not undergoing treatment at present, but deposed that whenever he experiences discomfort, he seeks medical treatment.

11. It is apparent that the claimant has deposed that he has become permanently disabled due to the injuries sustained in the accident and has also filed his permanent disability certificate which discloses that due to left sided hemiparesis he has suffered 70% permanent disability. It is also apparent that the Insurance Company has not cross-examined the claimant on the issue of permanent disability and paralysis, suffered by the claimant, as such, there is no ground to disbelieve that the claimant has become permanently disabled and is not in a condition to do any job.

12. The Apex court in the case of ***Raj Kumar vs. Ajay Kumar and A nother, (2011) 1 SCC 343,*** while analysing how to determine compensation in cases of permanent disability, has held as under:-

10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that

in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and Yadava Kumar v. National Insurance Co. Ltd. [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

13. The Apex Court in the case of ***Sarnam Singh vs. Sriram General Insurance Co. Ltd. & Ors. (2023) 8 SCC 193,*** while analysing when partial permanent disability will amount to 100% earning capacity loss, held as under:-

10. As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this Court in Mohan Soni v. Ram Avtar Tomar [Mohan Soni v. Ram Avtar Tomar, (2012) 2 SCC 267 : (2012) 1 SCC (Civ) 747 : (2012) 1 SCC (Cri) 641] . In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed at 60%. The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting. The High Court did not disturb the

finding regarding loss of income on account of disability. This Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%.

11. Applying the same principle to the case in hand, we find that the appellant herein was working as a gunman with Bharat Hotel Limited. On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31-5-2015. It is not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman. This is his functional disability. He was 50 years & 5 months old at the time of accident. Considering the aforesaid facts, in our view, the Tribunal was right in assessing the loss of earning capacity of the appellant at 100% and assessing the compensation accordingly. The High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment [Shri Ram General Insurance Co. Ltd. v. Sarnam Singh, 2017 SCC OnLine Del 13011] of the High Court, despite there being a judgment of this Court available on the issue.

14. The Apex Court in the case of ***Pappu Deo Yadav vs. Naresh Kumar (2022) 13 SCC 790 (By Three Judges)*** while considering the issue of awarding compensation for future prospects in cases of permanent disablement from motor accident, held as under:-

7. Two questions arise for consideration : one, whether 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 too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] involved assessment of compensation in a case where the victim died. However, it

went wrong in saying that later, the three-Judge Bench decision in Jagdish [Jagdish v. Mohan, (2018) 4 SCC 571 : (2018) 3 SCC (Civ) 102 : (2018) 2 SCC (Cri) 572] was not binding, but rather that the subsequent decision in Anant [Anant v. Pratap, (2018) 9 SCC 450 : (2018) 4 SCC (Civ) 378 : (2018) 3 SCC (Cri) 756] to the extent that it did not award compensation for future prospects, was binding. This Court is of the opinion that there was no justification for the High Court to have read the previous rulings of this Court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] 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.

15. The Apex Court in the case of ***Sidram vs. Divisional Manager, United India Insurance Co. Ltd. & Another (2023) 3 SCC 439***, while directing that in cases of serious permanent disability, compensation for future prospects should also be awarded, held as under:-

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.

16. The Apex Court in the case of ***Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRS. and others, (2023) 13 SCC 334*** while directing that in cases of permanent disability, there should not be any deduction for personal expenses, held as under:-

15. The High Court deducted 50% of compensation towards personal expenses. The present case being not of death and the claim not being made by the dependents, but the same being by a survivor in the accident with severe injuries resulting into permanent disability, there could not be any justification for deduction of personal expenses. We do not approve the said deduction in view of the judgment of this Court in Lalan D. [Lalan D. v. Oriental Insurance Co. Ltd., (2020) 9 SCC 805 : (2021) 1 SCC (Civ) 253 : (2021) 1 SCC (Cri) 238]

17. In the light of the above decisions of the Apex Court it is apparent that in each case of permanent disability, the Tribunal has to assess the corresponding loss of earning capacity. It is further apparent that in the case of permanent disability, there was no need to deduct 1/3rd or any other percentage from out of the income towards the personal and living expenses.

18. It is true that in the instant case, as per the disability certificate of the claimant, he is only 70% permanently disabled, but it is apparent that he is not in a position to do any work and has become 100% functionally disabled, as such, in the instant case, the compensation is to be determined by assessing his earning capacity loss as 100%. Considering the nature of disability, loss of income is, thus held to be 100% and not 70% as held by the Tribunal.

19. The Apex Court in the case of ***Kajal vs. Jagdish Chand & Ors. (2020) 4 SCC 413*** , ***Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd. & Anr. (2022) 7 SCC 738*** , ***Baby Sakshi Greola vs. Manzoor Ahmad Simon & Anr. 2024 SCC OnLine SC 3692*** has held that where a claimant has suffered 100% permanent functional disability due to an accident, the compensation under the head of loss of income must be awarded on the basis of the minimum wages of a skilled workman prevailing at the time of the accident in that region and should not be assumed on a notional basis.

20. In the instant case, the claimant claimed that he was earning Rs.6,000/- per month, but no documentary proof of occupation and income was furnished by the claimant before the Tribunal, as such, the Tribunal has assessed his income at only Rs. 2,500/- per month, which is inadequate, keeping in view that even the minimum wages of skilled

workman at the time of the accident in the State of UP was about Rs.4,500/- per month, as such, his income is assessed at Rs.4,500/- per month at the time of the accident.

21. A Division Bench of this Court in ***FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another***, decided on 26.04.2017 has held that even if the accident occurred prior to 26.09.2011, the claimants are entitled to compensation on future prospects as per amended Rule 220-A of the UP Motor Vehicle Rules, 1998, since it is a beneficial legislation.

22. The Apex Court in the case of ***Rahul Ganpatrao Sable*** *(supra)* has awarded compensation towards attendant charges, future medical expenses, loss of marriage prospects, pain and suffering.

23. Learned counsel for the claimant-appellant has admitted that the claimant is married and he is not undergoing further treatment, as such, no amount of compensation is required to be awarded towards loss of marriage prospects and future medical expenses to the claimant.

24. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimant is redetermined as under:-

S.No.	**Compensation Heads**	**Amount Awarded(in Rs.)**	**In Accordance with.**
1.	Monthly Income of the claimant on the basis of minimum wages of skilled workman	4,500/-	***Kajal*** (supra), ***Master Ayush*** (supra) & ***Baby Sakshi Greola*** (supra)
2.	Annual income of the claimant	4,500X12= 54,000/-	***Kajal*** (supra), ***Master Ayush*** (supra) & ***Baby Sakshi Greola*** (supra)
3.	Add future prospects @50% since claimant was below 40 years	27,000/-	***UP Motor Vehicle Rules,1998, Pappu Deo***

			Yadav*(supra)* and ***Sidram*** (supra)
4.	Total annual loss of future income	54,000+27,000=81,000/-	***UP Motor Vehicle Rules,1998, Pappu Deo Yadav****(supra)* and ***Sidram*** (supra)
5.	Multiplier applied since age of claimant was about 25 years(as per High School certificate)	18	***Pranay Sethi*** (supra)
6.	Total future loss of income due to 100% functional disability	81,000X18=14,58,000/-	***Pranay Sethi*** *(supra)* ***Raj Kumar****(supra)* and ***Sarnam Singh***(supra)
7.	Transportation expenses	1,00,000/-	-
8.	Treatment expenses (same as awarded by tribunal)	90,000/-	-
9.	Attendant expenses @ minimum wages of one unskilled workman @Rs.3,000/- per month for 18 years	3,000X12X18=6,48,000/-	-
10.	Compensation towards pain and suffering	3,00,000/-	-
11.	Compensation for loss of amenities	1,00,000/-	-
12.	Total compensation	26,96,000/-	

25. In this way, the claimant is entitled to total compensation of Rs.26,96,000/- alongwith interest @ 7% per annum from the date of filing of the claim petition till it's actual payment, which is to be indemnified by

the insurer of the offending vehicle.

26. **The appeal is allowed. The award of the tribunal is modified to the above extent.**

27. If any amount has been paid by the insurance company previously, then the insurance company is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months.

28. The tribunal is directed to deposit the total enhanced compensation alongwith interest in a fixed deposit of a bank, bearing monthly interest and the claimant will be entitled to withdraw the accrued monthly interest regularly for sustaining his livelihood. The tribunal will be at liberty to permit withdrawal from fixed deposit in special circumstances, keeping in view the claimants' requirement.

29. The original record of the lower court be sent back, forthwith.

(Sandeep Jain,J.)

November 12, 2025
Mayank

Digitally signed by :-
MAYANK KUMAR SHARMA
High Court of Judicature at Allahabad