



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

(i) FAO-5554-2011 (O&M)

Manju Pandey and another

...Appellants

VERSUS

Sanjeev Kumar and others

...Respondents

(ii) FAO-5555-2011 (O&M)

Roshan Pandey

...Appellant

VERSUS

Sanjeev Kumar and others

...Respondents

(iii) FAO-5556-2011 (O&M)

Danish

...Appellant

VERSUS

Sanjeev Kumar and others

...Respondents

Date of Decision: April 01, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Shakti Mehta, Advocate
for the appellants.

Mr.Neeraj Khanna, Advocate
for respondent No.3.

ARCHANA PURI, J.

These are three appeals, filed to assail the common Award

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dated 11.02.2011 passed by learned Motor Accident Claims Tribunal, whereby, three separate claim petitions, arising from the same accident, were decided, which resulted into death of Rohit Pandey, injuries sustained by Danish as well as damage caused to the ill-fated motorcycle bearing registration No.HR-03H-1892.

On appraisal of the evidence brought on record, learned Tribunal, on account of death of Rohit Pandey had taken the earnings of the deceased, as per minimum wages prevalent at that time as Rs.3500/- per month. Since, the deceased was unmarried, the earnings were scaled down to 50% and it was taken as Rs.1800/- per month, annual whereof, was taken as Rs.21,600/-. However, considering the age of the claimants/parents of the deceased, multiplier of '13' was applied and the compensation was worked upon as Rs.2,80,800/-. Besides the same, another amount of Rs.2000/- was granted on the count of 'funeral expenses'. In total, the compensation was worked upon as Rs.2,82,800/-.

Even, Roshan Pandey, brother of deceased Rohit Pandey had filed separate claim petition, for seeking compensation, in respect of damage caused to the motorcycle bearing registration No.HR-03H-1892, which was being occupied by his brother Rohit Pandey and Danish, at the relevant time. Besides himself stepping into witness box, claimant Roshan Pandey has also examined Rampal Mishra, Works Manager, Ekam Auto Point (P) Ltd. As PW-4, who had proved the estimate of cost involved for the repair of the damaged motorcycle, which is Ex.P5.

However, considering the provisions of Section 147 of the Motor Vehicles Act and also considering the restricted limit of compensation, so



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far as, third party property damage is concerned, learned Tribunal held Roshan Pandey to be entitled to Rs.6000/- as compensation.

Qua injuries sustained by Danish, claimant himself stepped into witness box as PW-1 and has deposed about sustaining fracture FA(R), fracture right hand, left hip joint. He further deposed that thumb of his right leg was amputated and also suffered injury on left clavicle bone, one teeth of upper jaw uprooted and lower jaw was displaced. Considering the period of his hospitalization from 18.05.2008 to 06.06.2008 and also taking the earnings of the claimant to Rs.3500/- per month, the compensation, on the count of pain and suffering was granted to the extent of Rs.25,000/-. As per the recitals of disability certificate Ex.P3, wherein, it is stated about the disability to be to the extent of 35%, qua upper and lower limb and taking it to be Rs.2000/- for every 1% disability, an amount of Rs.70,000/- was granted, on the count of disability.

Besides the same, another amount of Rs.2000/- on each count of special diet and transportation was granted. Thus, the total compensation worked upon as herein given:-

1.	Pain and suffering undergone by the claimant	Rs.25,000/-
2.	Expenses incurred on special diet	Rs.2,000/-
3.	Expenses incurred on transportation	Rs.2,000/-
4.	Disability to the extent of 35%	Rs.70,000/-
	Total	Rs.99,000/-

Respondents were held liable to pay the aforesaid compensation.

Dissatisfied with the adequacy of the compensation awarded, the appellants-claimants filed the respective appeals.

FAO-5554-2011 relates to the death of Rohit Pandey. **FAO-**

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5555-2011 relates to damage caused to the motorcycle bearing registration No.HR-03H-1892 and **FAO-5556-2011** relates to the injuries sustained by Danish, in the accident in question.

Be it noted that none of the respondents, upon whom, the liability to pay the compensation was fastened, have filed any appeal to challenge the Awards. It is only the claimants, who have filed the appeals for seeking enhancement of the compensation.

At the very outset, it is submitted by learned counsel for the appellants that learned Tribunal had not appraised the evidence in correct perspective. In fact, the earnings of deceased Rohit Pandey as well as of Danish, have been taken at the lowest level of minimum wages, as existing at that time. However, the evidence, with regard to their doing job, as such, has been overlooked. Even, it is submitted that so far as Rohit Pandey is concerned, the multiplier applied, has also been taken on lower side. Thus, the consequential 'work on' of the compensation is too meagre. Even, under the conventional heads also, the amount granted, do call for enhancement.

Likewise, it is submitted that the compensation awarded qua the damage caused to the motorcycle in the accident in question, is not worked upon in correct manner. In fact, the liability ought to be to the extent of Rs.7,50,000/-, qua which the insurance cover was obtained by the respondent, but however, wrong interpretation has been made to the provisions of Section 147 of the Motor Vehicles Act and thus, learned Tribunal had erroneously restricted the amount of compensation, only to the extent of Rs.6,000/-.

Further, also it is submitted that injuries sustained by Danish, in the

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accident in question, as such, has also not been appraised in the appropriate manner. In fact, the period of his hospitalization and extent of injuries, has been appraised in a mechanical manner. Various counts have been given amiss, while granting compensation. As such, learned counsel for the appellants-claimants, made a prayer for enhancement of compensation, in all the three appeals.

Considering the 'work on' of the compensation aforesaid, now let us consider each case, individually. Firstly, coming to FAO-5554-2011, which relates to death of Rohit Pandey. Vijay Krishna, father of Rohit Pandey, has stepped into witness box as PW-2. In his affidavit Ex.PB, besides deposing about his relationship with Rohit Pandey as well as factum and manner of accident, has also further proved post-mortem report. Also, he deposed about his son to be unmarried and 20 years old and stated about him to be working in Airtel, Sector-26, Chandigarh and getting salary of Rs.5,000/- per month. Besides the same, deceased was also indulging in part time accounts work of Surender Pal Kaur, LIC Agent and was earning Rs.4,000/- per month. Thus, Vijay Krishna deposed about the earnings of deceased to be Rs.9000/- per month.

The said testimony has been very correctly appraised by learned Tribunal. Sh.Inderjit Sharma, Manager of Human Resource, Dr.I.T. Planets has been examined as PW-3, who deposed about Rohit Pandey to be working with them and that he was earning Rs.11,000/- per month. He stated that the salary certificate is already on record as Ex.P4. Besides the same, PW-6 Smt.Surender Pal Kaur has also been examined, who deposed about herself to be LIC agent, since 1987 and is regular income tax payee. She

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also deposed about Rohit Pandey to be working in her office on every Sunday and on alternate days, in the late evening hours. She used to pay Rs.4,000/- per month to him. She has also issued salary certificate dated 05.08.2009. However, she had not brought any proof, with regard to her being LIC agent.

So far as, the age of the deceased is concerned, the same stands amply established from the matriculation certificate, which is Ex.P16 and the same contains the recital of date of birth as 17.07.1988. Thus, it stands established that at the time of accident, deceased Rohit Pandey was 20 years old. So far as, his being employed with Airtel is concerned, learned Tribunal has rightly concluded about no evidence, relating to the same, coming on record. Even though, PW-3 Inderjit Sharma has been examined, but however, he deposed about deceased to be working with Dr.I.T. Planets. Nothing, as such, is coming on record, about any connectivity between Dr.I.T. Planets and Airtel Telecom.

In the given circumstances, appropriately, learned Tribunal has not placed reliance upon the salary certificate Ex.P4. PW-3 Inderjit Sharma, Manager, Dr.I.T. Planets had not brought any record of the company, to establish the connectivity of Dr.I.T. Planets with Airtel Telecom or of himself being employee of Dr.I.T. Planets. Even, PW-6 Smt.Surender Pal Kaur has not proved the salary certificate Ex.P9, which was simply tendered into evidence by mother of the deceased. No person from the LIC office has been examined, to establish about Surender Pal Kaur to be LIC agent. Her income tax returns Ex.P7 and Ex.P8 have been proved in evidence, but the same do no establish about employment of the deceased with Surender Pal



Kaur, in any manner.

Considering the same and also taking into consideration the fact of deceased having passed 12th class, not being established and taking into consideration the matriculation examination certificate, learned Tribunal had correctly taken the minimum wages, prevalent at that time. Even though, the earnings have been taken as Rs.3500/- per month, at the relevant time, it was rounded off as Rs.3600/- per month.

From the evidence adduced, it stands established that Rohit Pandey was unmarried individual and therefore, loss of dependency has to be scaled down to half of his earnings, which has been appropriately taken by learned Tribunal as Rs.1800/- per month. Taking into consideration the age of the deceased to be 20 years, addition of 40%, ought to be made, on the count of 'future prospects', which comes to be Rs.720/-. After making such addition, the earnings of the deceased, comes to be Rs.2,520/- per month, annual whereof, comes to be Rs.30,240/-.

Further, while making assessment of the compensation for the claimants, learned Tribunal, had considered the age of the claimants i.e. parents of deceased, which as per the prevalent law, calls for correction. As per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, it is the age of the deceased, which ought to be taken into consideration, for application of the appropriate multiplier. Thus, considering the age of the deceased, the appropriate multiplier to be applied is '18'. Thus, by applying the same, the loss of dependency comes to be **Rs.30,240x18=Rs.5,44,320/-**.

Besides the aforesaid, on the count of 'loss of consortium',



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both the appellants-claimants, are entitled to prevalent amount of Rs.48,400/- each i.e. $\text{Rs.}48,400 \times 2 = \text{Rs.}96,800/-$ and they are also entitled to compensation, on the counts of '**loss of estate**' as well as '**funeral expenses**', which is **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Rohit Pandey, is re-computed, as herein given:-

Loss of dependency	:	Rs.5,44,320/-
Loss of consortium	:	Rs.96,800/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.6,77,420/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.6,77,420-2,82,800=Rs.3,94,620/-**. On the enhanced amount of the compensation i.e. **Rs.3,94,620/-**, the appellants-claimants 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 11.02.2011 relating to claim petition qua death of Rohit Pandey, stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same. With the above observations, **FAO-5554-2011** stands allowed.

Now, coming to **FAO-5555-2011**, which relates to compensation awarded qua damage caused to motorcycle bearing

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registration No.HR-03H-1892. The claim petition was filed by Roshan Pandey. He sought compensation qua damage caused to the ill-fated motorcycle, of which, his deceased brother Rohit Pandey as well as his friend Danish were the occupants, at the relevant time of the accident. Claimant-Roshan Pandey himself stepped into witness box as PW-5 and he has deposed about the damage caused to his motorcycle and also deposed about estimate of Rs.70,000/-, having obtained by him for the repair of the said motorcycle from M/s Ekam Auto Pvt. Ltd., as Ex.P5. Also further, the claimant examined Rampal Mishra, Works Manager, Ekam Auto Pvt. Ltd., Panchkula as PW-4, who proved the estimate Ex.P5 but, he was not the professional mechanic.

However, the ill-fated motorcycle was not insured and thus, while considering the provisions of Section 147 of the Motor Vehicles Act, so far as, damage to the property of third party is concerned, taking into consideration the restricted limit of compensation as Rs.6000/-, the amount, on the count of third party damage, was granted as Rs.6000/-.

Even though, now it is submitted that this amount is too less and calls for enhancement, but however, it is not so. Learned counsel for the insurance company mainly contends that the insurance policy is a limited policy and as per the policy condition, the claim for the third party property damages is limited upto Rs.6000/- and therefore, in case of making it liable to pay compensation, the insurance company is liable to indemnify the loss, only upto Rs.6000/-. The insurance policy has been proved as Ex.R3. Before making reference to the same, it is pertinent to mention that there is nothing, as such, coming on record, about any contract between the insurer



and insured of having wide indemnity cover. As per requirement of Motor Vehicles Act, the statutory limit of third party property damage is Rs.6000/-. However, there can be contract for having wide indemnity cover of Rs.7,50,000/-. For this, the additional premium of Rs.100/- is to be charged for changing TPPD cover to Rs.7,50,000/-. In this regard, it is important to make reference to the recitals of insurance policy of the offending vehicle, copy whereof is proved as Ex.R3. Perusal of the same reveals that there is third party property damage as per IMT 20 and the limit of liability under Section II-I(ii) is Rs.7,50,000/-. However, perusal of various recitals of this insurance policy reveals that only basic premium of Rs.2500/- was paid. Besides the same, for the legal liability to the driver, Rs.25/- was paid and for PA Owner-Driver, another Rs.100/- was paid. The total premium paid was Rs.2625/-. No premium as such was paid for having wide indemnity cover.

However, third party property damage having limited upto Rs.6000/-, is to be taken into consideration and considering the same, the insurance company has been appropriately made liable to indemnify the loss only to the extent of Rs.6000/-. As such, there is no merit in the appeal filed by Roshan Pandey and as such, **FAO-5555-2011** stands dismissed.

Now, coming to **FAO-5556-2011**, relating to the compensation awarded to Danish, on account of injuries sustained by him, in the accident in question.

As observed in the earlier portion of the judgment, learned Tribunal had granted compensation to the extent of Rs.99,000/-, on account of injuries sustained by Danish, in the accident in question. To substantiate the

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extent of injuries, claimant-Danish himself stepped into witness box as PW-1 and his sworn testimony, in the form of affidavit is Ex.PB, wherein, besides deposing about the manner of taking place of the accident, has further deposed about the injuries sustained in the accident in question. He has categorically stated that he remained admitted in PGI from 18.05.2008 to 06.06.2008 and he was diagnosed to be a case of fracture FA(R) fracture acetabulum (R), fracture right hand, fracture left hip joint and thumb of his right leg was amputated. He further suffered injuries on left clavicle bone, one teeth of upper jaw was uprooted and lower jaw was displaced.

He further deposed in his affidavit that he was operated twice. Firstly, during his first stay in PGI from 18.05.2008 to 06.06.2008. After his discharge, he had been continuously going for the follow-up treatment. He also deposed that he could not recover from the injuries and was again admitted in hospital on 31.03.2010. He was advised surgery and the cost of the same was amounting to Rs.1,25,000/- and the estimate in this regard was also given by PGI. He was 25 years old at the time of accident and was unmarried.

Besides the same, Danish also tendered into evidence photocopies of follow-up treatment, cards of PGI Ex.P1 and Ex.P2, copy of estimate Mark 'A', copy of leave record Mark 'B' and original disability certificate Ex.P3. Even, father of injured-Danish has also been examined and his affidavit is Ex.PA, wherein, he has also reiterated about the detail of injuries sustained by Danish and further also deposed that his son was operated on 04.06.2008. Iron rods and plates were inserted in the hip joint and one iron plate was inserted in the right hand and thumb of right leg was amputated partially.



The disability certificate is Ex.P3. As per the same, the claimant had suffered disability to the extent of 35%, qua upper and lower limb.

Taking into consideration the aforesaid evidence, the 'work on' of the compensation, as done by learned Tribunal, do call for re-determination.

Before proceeding further, it is appropriate to make beneficial reference to 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**'. Time and again, it has been reiterated by the Courts that always a genuine attempt to be made to restore the self-dignity of the claimant, who had sustained severe injuries, on account of taking place of the accident and the compensation awarded should be '**just compensation**'.

Reference is also made to *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*, wherein, the Hon'ble Supreme Court, had lucidly set out the principles for grant of compensation, in case of permanent physical functional disability as follows:-

“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. and Yadava Kumar v. National Insurance Co.Ltd.**)*

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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.

As to how the compensation, in case where permanent disability of the injured affects his functional disability, is to be assessed, has been considered by the Courts, time and again. It has been held by the Courts that the impact of the disability, upon the earning capacity, has to be taken into consideration.

It is pertinent to mention that in the case in hand, even though, it was asserted about claimant to be working in Dr.I.T. Planets and was getting Rs.5,000/- per month, but however, the same was rightly not considered by learned Tribunal. But anyhow, considering the age of the claimant, definitely, his earnings, in the minimum, to be taken as that of unskilled worker and taking it to be so, at the prevalent time, his earnings can be taken as Rs.3600/- per month. In this backdrop, it has to be taken into consideration that as per the disability certificate, he was found to be case of various fractures, as a result whereof, he is unable to squat and sit cross legged and the disability was assessed to be 35%. The condition was stated to be not likely to improve and hence, it was permanent disability.

The age of claimant-Danish is of utmost importance. There are



always chances of growth of a person, considering the young age, at which, he suffered the injuries. The claimant was young person of 24-25 years, at the relevant time and on account of injuries sustained, which have been detailed in the disability certificate, there was inability on his part to squat or sit cross-legged and there was also deformity in the right arm. Definitely, on account of this disability, which was permanent in nature, his avenues of further growth, must have become very restricted.

Considering the same, the disability, which is upper and lower limb, as assessed to be 35%, is taken as 35% functional disability. Considering the earnings of the claimant as Rs.3600/- per month, as observed aforesaid and considering the age of the appellant-claimant to be 24-25 years, at the relevant time, addition of 40%, on the count of 'future prospects' ought to be made and thus, the total earnings comes to be $\text{Rs.}3600+1440=\text{Rs.}5,040/-$ per month, annual whereof, comes to be $\text{Rs.}5,040 \times 12 = \text{Rs.}60,480/-$.

Considering the age of appellant-claimant Danish, the appropriate multiplier, to be applied is '18' and while considering the disability to be 35%, the loss of earnings is assessed as $\text{Rs.}60,480 \times 18 \times 35 / 100 = \text{Rs.}3,81,024/-$.

Besides the same, appropriate amount of **Rs.25,000/-** has been granted by learned Tribunal, on the count of 'pain and suffering'. However, amount granted, on the counts of 'special diet' and 'transportation', do call for enhancement and the same stands from Rs.2000/- on each count to **Rs.5000/-**, on each count.

So far as, second admission in the hospital is concerned, there is



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no doctor examined and in the absence of doctor, definitely, second admission, as such, does not stand established, but however, the fact remains that once the iron plates have been inserted, as evident from the record of first admission in the hospital, definitely, the claimant is ought to be in need of future medical treatment and on this count, another amount of **Rs.10,000/-** is granted.

On account of disability suffered by the claimant, his physical body functioning has also become restricted, as he is unable to squat and also could not sit cross-legged throughout his life, considering the same, there is definitely, loss of amenities and on this count, another amount of **Rs.50,000/-** is granted.

Taking into consideration the kind of injuries sustained by the claimant, it is quite obvious, he must have been looked after, by his family also, who would have taken care of him by diverting their time from the gainful employment for some period of time and in the minimum, some time thereafter, till he adept to skill of self-dependence. Thus, on the count of 'attendant charges', an amount of **Rs.10,000/-** is granted.

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

1. Loss of earnings	Rs.3,81,024/-
2. Pain and suffering	Rs.25,000/-
3. Special diet	Rs.5,000/-
4. Transportation charges	Rs.5,000/-
5. Future Medical treatment	Rs.10,000/-
6. Loss of amenities	Rs.50,000/-
7. Attendant charges	Rs.10,000/-
Total	Rs.4,86,024/-



As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.4,86,024-99,000=Rs.3,87,024/-**. On the enhanced amount of compensation, i.e. **Rs.3,87,024/-**, 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 11.02.2011 relating to claim petition qua injuries sustained by Danish, stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same. With the above observations, **FAO-5556-2011** stands allowed.

April 01, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No