

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

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| 1. CIMA No. 13/2003
CMP No. 27/2003 | Date of Decision:21.07.2011 |
| 2. CIMA No. 246/2007
CMP Nos. 46/2008, 47/2008 & 334/2007 | |
| 3. Cross appeal (C) No. 57/2003
CMP No. 1/2008 | |
| 4. Cross Appeal (C) No. 86/2003 | |

1. National Insurance Co.	v.	Smt. Gita Nagpal & Ors.
2. National Insurance Co.	v.	Anjana Nagpal & ors.
3. Kewal Nagpal.	v.	Santokh Singh & ors.
4. Smt. Geeta Nagpal & ors.	v.	Santokh Singh & ors.

Coram:

Mr. Justice J.P.Singh.

Appearing counsel:

For Appellant (s) : M/s. Ashwani Talwar & C. S. Gupta, Advocates.

For Respondent(s) : Mr. P. S. Chandel, Advocate.

i)	Whether to be reported in Press/Journal/Media	:	Yes
ii)	Whether to be reported in Digest	:	Yes

M/s Devinder Nagpal, Kewal Nagpal, Geeta Nagpal and Anju Nagpal commenced their journey from Jammu to Amritsar on January 19, 1997, by Maruti Car No. JK02D-5449. The Car, however, met with an accident at about 8.30.a.m near village Ghagwal, on the National Highway, when it was hit by a Bus bearing registration No. JKS-9535, which was coming from the opposite direction. All the occupants of the car sustained injuries as a result of the accident. They were taken to Military Hospital, Samba for first aid and thereafter to Government

Medical College Hospital, Jammu for treatment. The injured, who were in serious condition, were airlifted to Delhi for better treatment. Devinder Nagpal succumbed to the injuries on 6.2.1997 in the Hospital, at Delhi.

Despite best efforts of the Doctors, Kewal Nagpal could not recover from the injuries and was rendered 100% disabled as a result of grievous injuries to the spinal cord.

Smt. Geeta Nagpal, the widow, Sheetal Nagpal, the daughter, Master Ritin Nagpal, the minor son, S.R. Nagpal, the father and Smt. Bimla Devi, the mother, of deceased Devinder Nagpal, lodged a Claim for Rs. 4,19,000,00/- along with interest at the rate of 18% per annum as compensation for Devinder Nagpal's death, with the Motor Accidents Claim Tribunal, Jammu, which was registered as Claim Petition No. 486/Claim of 1998.

Kewal Nagpal too approached the Motor Accidents Claim Tribunal seeking Rs. 3,88,14,000/- as compensation for the injuries received in the accident and the permanent disablement caused thereby. His Claim Petition was registered as Claim Petition No. 493/Claim of 1998.

Both the Claim Petitions were contested by the National Insurance Company Limited, with which the offending Bus stood insured at the time of the accident.

The Driver and owner of the offending vehicle did not respond to the Claim Petitions despite service, and were, therefore, set ex-parte.

Out of the pleadings of the parties, the Tribunal framed following issues in the two Claim Petitions:-

Claim Petition No. 486/Claim:

- “1. Whether deceased Devinder Nagpal died as a result of a road accident on 19.1.97 involving the offending vehicle No. JKS 9535 because of rash and negligent driving of the offending vehicle by respondent No. 1 and that in the same accident petitioners Geeta Nagpal, Anju Nagpal and Kewal Nagpal sustained serious /multiple injuries? OPP
2. If issue No. 1 is proved, to what amount of compensation petitioners are entitled to? OPP
3. Whether the offending vehicle was being driven in violation of terms and conditions of the insurance policy and therefore, respondent No. 3 is not bound to indemnify the owner? OPR-3
4. Whether the respondent No. 1 did not possess a valid driving licence and therefore, respondent No.3 is not bound to indemnify the owner? OPR-3
5. Relief.

Claim Petition No. 493/Claim:

1. Whether accident involving death of Devinder Kumar and injuries to Geeta Nagpal, Anju Nagpal and Kewal Nagpal has occurred due to the rash and negligent driving of the bus No. JKS-9535 by its driver? OPP
2. In case issue No. 1 is proved in affirmative, what is the amount of compensation payable to the petitioners and by whom? OPP
3. Whether the offending vehicle was being driven in contravention of the terms and conditions of the Insurance Policy and its effect? OPR-3
4. Relief.”

Both the Claim Petitions were clubbed together for trial, allowing liberty to the claimants to produce their respective evidence in support of their Claims.

The claimants produced M/s Anju Nagpal, Kewal Nagpal, Pardeep Nagpal, Rajan Nagpal, Senthel Kumar, Dr. A. N. Jha,

Dr. Rajesh Gandotra, Naresh Kapai, Chartered Accountant, Vikram Khurana, Brij Sharma, Parhlad Sharma, Sushil Kumar, Sunil Moza, Badri Nath, Record Keeper, Government Medical College Hospital, Jammu and Geeta Nagpal as their witnesses to support their respective Claims.

The National Insurance Company opted not to produce any evidence to support their defence or rebut the evidence produced by the claimants.

There being no evidence by the Insurance Company to support its plea that in view of the violation of the terms and conditions of the Insurance Policy by the owner of the offending vehicle, it was not liable to indemnify the owner against the claims, Issue Nos. 3 and 4 in both the Petitions were decided against the Insurance Company, by the Tribunal, holding the Company liable to indemnify the owner against the claims.

Relying on the unrebutted evidence of the claimants and taking into consideration the fact that the driver of the offending vehicle had been found by the Police to have driven the vehicle rashly and negligently resulting in the motor vehicular accident, against whom the Final Police Report too stood filed in the Competent Court of jurisdiction, Issue No. 1 was decided in favour of the claimants and against the Insurance Company.

Dealing with Issue No.2, the Tribunal found the claimants entitled to compensation. Rs. 99,97,328/- along with interest @

9% per annum was awarded to the claimants in Claim Petition No. 486/Claim and Rs. 1,10,34,634/- along with interest at the same rate was awarded to Kewal Nagpal.

Aggrieved by the Awards of the Tribunal dated 31.8.2002, allowing the two Claim Petitions, the National Insurance Company Limited has questioned the Awards by their Appeals.

The Claimants too have filed Cross Appeals seeking enhancement in the amount of compensation awarded by the Tribunal.

The Claimant, Kewal Nagpal, died during the pendency of the Insurance Company's Appeal against Award dated 31.8.2002 in Claim Petition No. 493/1998, after about ten years of the accident and his legal representatives, Mrs. Anjana Nagpal, Chetan Nagpal and Nitin Nagpal have been impleaded as parties to the Appeal and Cross Appeal.

Keeping in view the fact that the issues raised in the Appeals and the Cross Appeals were similar and arise out of the evidence on which the claimants would rely for determination of the income of deceased-Devinder Nagpal and their dependence thereon and the loss caused to the disabled injured, the Appeals and the Cross Appeals, were heard together.

Mr. Talwar, learned counsel appearing for the appellant-Insurance Company, restricted his submissions in the Appeals

only to question the justifiability of the quantum of compensation awarded to the claimants by the Tribunal in so far as it pertained to the dependence of the claimants in Claim Petition No.486/Claim and loss of future earnings caused to Kewal Nagpal. According to him, in determining compensation, the Tribunal had erred in taking into consideration the loss which was caused to M/s Kashmir Walnut Trading Company and M/S Rajan Trading Company, because of the death of Devinder Nagpal and the disability caused to Kewal Nagpal, the partners thereof, which according to him, was impermissible, in that, the loss caused to the Firms because of the death of Devinder Nagpal and disability of Kewal Nagpal, may not be determinant of the income of the deceased on which the claimants' dependence could be determined, and it was only the amount that the deceased and the injured had been regularly withdrawing from the Firms for running their affairs, other than the affairs of the Firms, which in law, needed consideration for determination of compensation payable to the claimants.

Urging that the Tribunal had acted illegally in selecting 12 as the multiplier in Claim Petition No.486/Claim and 11 in Claim Petition No.493/Claim to determine compensation, he submitted that the Awards impugned in the Appeals needed modification by reduction of the amount of compensation and the rate of interest allowed thereon. According to the learned

counsel, the interest allowed by the Tribunal on future expenses in Claim Petition No. 493/Claim too was impermissible in view of the legal position settled by the Hon'ble Supreme Court of India in this behalf.

Compensation allowed to the claimants by the Tribunal under various other heads was not, however, contested by the learned counsel.

Contesting the appellant's learned counsel's submissions and supporting their Cross Appeals, it was argued on behalf of the respondents-Claimants by their learned counsel, Mr. Chandel that although the Tribunal had adopted proper parameters to determine compensation payable to the claimants, yet, in the circumstances, and on the basis of the evidence produced by the claimants, which remained unrebutted, the claimants were entitled to raise in the amount of compensation awarded to them by the Tribunal.

I have considered the submissions of the learned counsel for the parties, perused the evidence produced before the Tribunal and examined the Awards questioned in the Appeals.

In view of the submissions made at the Bar, the issue that, therefore, arises for determination in these Appeals and Cross Appeals, is as to whether the Tribunal has correctly assessed the compensation payable to the Claimants and if not, what should be "just compensation" to the Claimants, for

the death of Devinder Nagpal and 100% disablement caused to Kewal Nagpal, in terms of Section 168 of the Motor Vehicles Act, 1988?”

Before proceeding further, it needs to be recorded that the learned counsel appearing for the appellants-Insurance Company, did not dispute the figures reflected in the Balance Sheets of M/s Kashmir Walnut Trading Company, Jammu and M/s Rajan Trading Company, Jammu, the Firms, in which, besides others, M/s Devinder Nagpal and Kewal Nagpal were partners, which have been proved by the claimants by their evidence, and rather relied upon them to support his submissions.

In view of the statement made by the Appellant's learned counsel at the Bar, there is, therefore, no need to refer to the claimants' evidence produced before the Tribunal and suffice would it be to refer to the findings of the Tribunal on the issue pertaining to the income of deceased Devinder Nagpal and the dependence of the Claimants thereon, where the evidence of the Claimants too has been referred, to deal with the issue in question. The findings of the Tribunal on the issue read thus:-

“In this Claim Petition, the petitioners are claiming compensation on account of the death of the deceased Devinder Nagpal who is stated to have died in a vehicular accident. The petitioner No. 1 is the widow of the deceased whereas, petitioner No. 2 and 3 are his daughters and son and petitioners No. 4 and 5 are his aged parents. According to the petitioner Smt. Geeta Nagpal, the deceased Devinder Nagpal met with an accident on 19.01.1997 and he was taken to Appolo

Hospital Delhi where he remained under treatment for fifteen days and then he succumbed to the injuries. An amount of Rupees Six lacs was spent on the treatment and bringing the dead body of the deceased to Jammu.

Smt. Geeta nagpal has further deposed that the deceased Devinder Nagpal was partner in Kashmir Walnut Trading Company which used to Export the Walnuts and in the year 1997, a profit of rupees nineteen lacs from the said business fall in his share and now the said firm is going to loss. The deceased was also partner in Rajan Trading Company from where he earned a profit of Rupees forty six thousand in a year and after his death there is complete loss of income. Her statement has been corroborated by the petitioner Kewal Nagpal who has deposed that the deceased used to look after the export sale section of the firm which is an important part of such business. Similarly, Pardip Nagpal has deposed that the wife of the deceased Devinder Nagpal is a partner in the Kashmir Walnut Trading Company and she is only getting interest on the capital which was in the name of the deceased in Rajan Trading Company. The deceased looked after the export section of the business.

In order to prove the income of the deceased, the petitioners have further relied upon the statement of Naresh Kapai Chartered Accountant who has proved the balance sheets of M/s. Kashmir Walnut for the year 1995-96, 1996-97 and 1997-98 and they have been exhibited as "EXP-NK", EXP-NK-1 and EXP-NK-2". He has further proved the balance sheets of Rajan Trading Company for the same period and they have been exhibited as "EXP-NK-3" EXP-NK-4" and EXP-NK-5". He has further stated that the amount of the net profit of the firm is shown in the respective balance sheets.

There is no evidence in rebuttal and the evidence adduced by the petitioners can be safely relied upon in order to prove the income of the deceased. It is proved from the evidence that the deceased Devinder Nagpal was one of the partners of Kashmir Walnut Trading Company and Rajan Trading Company which deals in export business and stood exempted from the payment of income tax and he used to look after the export section of the firm. As discussed above, the deceased died on 6.2.1997. The balance sheets of both the firms have been proved by Shri Naresh Kapahi Chartered Accountant. The balance sheet of Kashmir Walnut Trading Company for the year 1996-97 reveals that the firm earned a net profit of Rs. 1,11,92,023.46 and in the said profit, the share of the deceased Devinder Nagpal was Rs. 19,11,970.60 and it was 12.40% more than the last year which proves that the business was flourishing day-by-day. The balance sheet for the year 1997-98 proves that the net profit of the said firm was Rs. 47,69,530.12 and the share of the petitioner Mrs. Geeta Nagpal who had stepped into the shoes of the deceased, in the said profit was Rs. 7,15,429.52 which was less by 2.35 times than last year. As such there was loss of income to the petitioners to the tune of Rs.

11,96,541/-. Similarly the balance sheet of Rajan Trading Company for the year 1996-97 proves that the net profit of the firm was Rs. 46,787/- and it was 2.2% more than the last year. Similarly the balance sheet for the year 1997-98 indicates that there was no profit in the share of deceased Devinder Nagpal and the loss was 9.6 time less than last year and thus there was complete loss of income during this period. The total income of the deceased prior to his death which was available for his own benefit and for the benefits of his dependents was Rs. 19,11,970/- and after his death the petitioner Smt. Geeta Nagpal continued to be partner in the firm but the profit considerably decreased and only profit of Rs. 7,15,429/- fell in her share. There was thus economic loss to the petitioners to the tune of Rs. 11,96,541/- annually and this loss of dependency was because of death of the deceased who was an expert businessman and used to look after the export section of the firm. Kewal Nagpal was another partner of the firm who looked after the purchasing wing of the firm but he has also become paraplegic in the said accident and is hundred percent disabled. Their brother Pardip Nagpal also died because of natural death. Now the whole business is being looked after by Rajan Nagpal who is the youngest brother of the deceased Devinder Nagpal and the petitioner Kewal Nagpal. He is a young lad of 21 years of age and can be presumed a raw and inexperienced hand in such business. In other words, both the firms have virtually collapsed and the surviving partners are hardly eking out their livelihood. The deceased Devinder Nagpal was looking after the export sale section and the petitioner Kewal Nagpal was Incharge of purchase wing of both the firms and the business flourished because of the business skills of both these partners. Whatever was earned was the outcome of the acumen of both these persons. Business caliber of the deceased and the disabled and proper supervision and control by them are very important factors in determining the income of the deceased. Taking into consideration all these peculiar facts and circumstances of the case, the total income of the deceased can safely be taken as Rs. 11,96,541/-.

Not it is to be seen as to what was his annual contribution towards his family members. In this connection the judgment of the High Court of Himachal Pradesh reported as 2000 ACJ 426 can be relied upon. In the said case the deceased was a partner in the firm and his monthly income was found as Rs. 8,770/-. The Hon'ble Court after taking into consideration the fact that the deceased was a businessman deducted 1/3rd of his gross income towards his personal living expenses and the remaining amount was taken as dependency of the petitioners. The said judgment has direct application to the case in hand. Even by applying the unit method, the contribution of the deceased would almost be the same and comes around 2/3rd of his total income. Relying upon the judgment of the Hon'ble High Court of Himachal Pradesh, the personal expenses of the

deceased are taken as $\frac{1}{3}^{\text{rd}}$ of his total income which is Rs. 11,95,541/- annually and its $\frac{1}{3}^{\text{rd}}$ comes to Rs. 3,98,847/- leaving behind a balance of Rs.7,97,694/- which can be treated as yearly loss of dependency suffered by the petitioners. This loss of annual dependency has to be multiplied by the use of an appropriate multiplier to assess the compensation under the head of loss to the dependents.

So far as selection of an appropriate multiplier is concerned, the Tribunal is assisted by the ready reckoner provided in second schedule to section 163-A of the Act. The age of the deceased was 43 years at the time of his death as disclosed in the Claim Petition and in the post-mortem report and as such he falls in the age group of above 40 years but not exceeding 45 years and a multiplier of 15 is provided for a person of this age group which is required to be scaled down keeping in view the uncertainties of future and other imponderables. It is also to be considered as to what capital sum if invested in long term deposits would yield interest equivalent to the multiplicand. Length of dependency is another factor which requires consideration while selecting an appropriate multiplier. The petitioners Nos. 4 and 5 are the aged parents of the deceased whereas the petitioners No. 2 is his major daughter and she is to be married in due course of time. The dependency in their case may not last for a longer period. Only the petitioner No. 1 aged 42 years and the petitioner No. 3 who has by now attained the age of majority are the dependents of the deceased. Taking into consideration all these facts and circumstances, in my opinion, a multiplier of 12 shall be appropriate in this case. The compensation therefore, payable to the petitioners for the loss of dependency amounts to Rs. 95,72,328/- (i.e., Rs. 79769x12).

The Petitioner No. 1 is the young widow of the deceased and is entitled to compensation for the loss of consortium. An amount of Rs. 15,000/- is awarded to her under the said head and the same amount is awarded for the loss of Estate. Rs. 15,000/- shall be just compensation for funeral expenses.

The deceased Devinder Nagpal was injured in an accident on 19.01.1997. He was admitted in the Appolo Hospital Delhi where he remained under treatment till 6.2.1997 and then succumbed to the injuries. According to the petitioner Smt. Geeta Nagpal, an amount of Rs. 6.00 lacs was spent on his treatment in Delhi and for bringing his dead body to Jammu. Her statement is corroborated by Shri Senthil Kumar, Executive Finance Appolo Hospital New Delhi who has proved the medical bill dated 06.02.1997 for an amount of Rs. 3,73,817/- which has been exhibited as "EXPW-SD". It is thus clear that an amount of Rs. 3,73,817/- was spent on his treatment in Appolo Hospital Delhi and some amount might have been spent for bringing his dead body along with attendants to Jammu. In my opinion, an amount of Rs. 3,90,000/- shall be just compensation under the

head "Medical Expenses" and this amount is also awarded to the petitioners.

In view of the discussion made above, the petitioners have been found entitled to compensation on account of the death of the deceased Devinder Nagpal in a vehicular accident under the following heads:-

1.	Loss of dependency.	Rs. 95,72,328/-
2.	Loss of consortium.	Rs. 15,000/-
3.	Loss of Estate.	Rs. 15,000/-
4.	Funeral expenses.	Rs. 5,000/-
5.	Medical expenses.	Rs. 3,90,000/-

Total=Rs. 99,97,328/-

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Perusal of the findings of the Tribunal reveal that in determining the amount of compensation payable to the Claimants, the Tribunal had taken into consideration the average loss caused to Devinder Nagpal in the two Firms, because of his death, and this loss has been taken to be the income of the deceased at the time of his death. Deducting 1/3rd therefrom, i.e., the amount which the deceased would ordinarily spend on him, the dependence of the Claimants has been determined. The average annual loss found to have been caused to the deceased has been taken about Rs. 12.00 lac.

While determining the dependence of the Claimants, the Tribunal, however, does not appear to have taken note of the annual drawals which the deceased would make from his profits in the last three years before his death, i.e., in 1995-96, 1996-97 and 1997-98.

According to the evidence of the Claimants, Devinder Nagpal had withdrawn an amount of Rs. 10,40,884.33 as on 31.03.1997 and Rs. 9,14,136.80 as on 31.3.1996 from M/s. Kashmir Walnut Trading Company, Jammu and Rs. 6,130.50

as on 31.3.1997 and Rs. Nil as on 31.3.1996 from M/s. Rajan Trading Company, Jammu.

Keeping in view the above figures, the average withdrawals made by Devinder Nagpal from the two Firms may be around Rs. 10.00 lac a year.

The evidence of the claimants is significantly silent as to the average amount which the deceased would spend on them and to run the affairs of his family, before his death.

In this view of the matter, the average of the amounts withdrawn by the deceased from the two Firms, can safely be taken as the amount which the deceased would spend on him and his dependants, i.e., the Claimants.

The question that, therefore, arises for consideration is as to whether the income of the deceased from the two Firms as such should determine the dependence of the Claimants for assessment of just compensation in terms of Section 168 of the Motor Vehicles Act, 1988, or the amount which he would, on average, withdraw from his business profits to run the affairs of his family.

True it is, that it may not be possible for a Court or Tribunal to determine with exactitude, the perfect compensation, for the loss of death of an individual. However, keeping in view the intention of the Legislature to provide Just Compensation to the victims of the motor vehicular accidents and the dependants left by them, the determination of Just

Compensation would, in my view, depend, *inter alia*, on the financial loss suffered by the dependants because of the exit of the person on whom they would depend for their sustenance. This is so because the compensation contemplated by Section 168 is the re-compense for the loss of dependence. Therefore, the basis for determination of compensation should be the loss of pecuniary benefits to the dependants of the deceased including pecuniary loss, loss of Estate etc., so that the hardship caused to the dependants was mitigated and they were placed in the same financial position that they had been enjoying before the death of the person on whom they would depend for their sustenance.

The total earnings of the deceased may not, therefore, be the determinative factor alone to assess the dependence of the claimants, because it is the amount which the deceased would normally spend on the dependents for their sustenance or was likely to spend on them during the period of their dependency on him, that should be the guiding factor to assess compensation payable to the dependants of the deceased for the loss caused to them because of the death of the person on whom they would depend.

The Tribunal was not, therefore, justified in omitting to consider the withdrawals which Devinder Nagpal would normally make from the two firms to run the affairs of his family, which included the dependence of the claimants, and

relying solely on the loss of income of the deceased, in determining the compensation payable to the dependants.

The findings of the Tribunal determining compensation, taking loss of income of Devinder Nagpal, as the loss caused to the dependants, cannot therefore, be justified and the dependence of the claimants, therefore, needs to be determined taking into account the claimants' dependence on his income, for which the pattern of withdrawals made by him from the two Firms, in the last three years before his death, can be a guiding factor.

In view of the above findings, I will now proceed to determine the compensation payable to the claimants for the death of Devinder Nagpal and disablement caused to Kewal Nagpal.

Claim Petition No. 486/Claims:

Taking average withdrawal of Rs.10.00 lac a year from the two Firms by Devinder Nagpal, as the yearly dependence of the claimants on his income and deducting 1/3rd therefrom, which he would have ordinarily spent on him had he remained alive, the annual dependency of the claimants, adopting the Multiplier method for assessment of compensation, which has come to be accepted by the Hon'ble Supreme Court of India as the appropriate method for calculating just compensation, would come to Rs.6,67,000/-.

The Tribunal has selected 12 as the multiplier to determine the loss of dependence.

Keeping in view the standard of life that the claimants are indicated to have been used to, the nature and expanse of the business of the deceased and the status of the family in the Society, I do not find any error in the selection of Multiplier by the Tribunal to determine the loss of dependency because the amount so determined, if invested in a Fixed Deposit, would yield almost the same amount by way of interest which the dependants had been getting from the income of the deceased for their sustenance.

Thus calculated, the dependence of the claimants on the income of the deceased would come to Rs.80,04,000/- (Rs.6,67,000 x 12).

The plea of the respondents that the compensation allowed by the Tribunal was on the lower side and the claimants were entitled to compensation more than the one allowed to them by the Tribunal, is found without merit as the evidence produced by the claimants and the facts and circumstances of the case, may not warrant any raise in the compensation awarded to them as indicated above, which is found equitable and reasonable compensation for the death of Devinder Nagpal.

Compensation allowed under other heads by the Tribunal having not been contested by the appellant, the total

compensation payable to the claimants, modifying the findings of the Tribunal on Issue No.2 shall, therefore, be as follows:-

1.	Loss of dependency.	Rs. 80,04,000/-
2.	Loss of consortium.	Rs. 15,000/-
3.	Loss of Estate.	Rs. 15,000/-
4.	Funeral expenses.	Rs. 5,000/-
5.	Medical expenses.	Rs.3,90,000/-

Total	Rs. 84,29,000/-
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The interest allowed by the Tribunal on the compensation awarded to the claimants, appears to be on the higher side and keeping in view the trend the Hon'ble Supreme Court of India has been following in allowing interest on compensation payable under the Motor Vehicles Act, I am of the view that the claimants need to be allowed interest @ 7.5% per annum on the compensation awarded to them. The compensation awarded to the claimants shall, therefore, carry interest at the rate of 7.5% per annum from the date of the filing of the Claim Petition.

Claim Petition No. 493/Claims:

The Claimant-Kewal Nagpal has been disabled 100% because of the Spinal Cord injuries of D-2 level. He is, therefore, dependant for his daily chores on others. He has, therefore, lost his earning capacity.

To determine compensation for loss of his earning capacity, the Tribunal has taken into consideration, the annual loss of Rs.11,96,540/- to his profits, which he would otherwise, on an average, earn from his business in partnership with

others in M/s Kashmir Walnut Trading Co. and M/s Rajan Trading Co., before the accident. Deducting 1/3rd therefrom as his personal expenses, Rs.7,97,694/- has been taken as annual loss of income to the claimant.

There does not appear any justification in treating the claimant's disability, though 100%, as total loss to his income from the two Firms, in that, even if the claimant was 100% disabled to personally participate in the business of the two Firms, yet the profit, which he would, otherwise earn, from his capital investments in the two Firms, even as a sleeping partner, cannot be lost sight of while determining loss of income.

The loss of earning capacity of the claimant, therefore, needs to be determined keeping in view his investment in the Two Firms and the income which he may generate therefrom, minus, however, the salary which because of his disablement, he may not now get from the Firms.

His investment as it so appears from the Balance Sheets brought on records is Rs. 77,83,780.31 as on 31.03.1997 in M/s Kashmir Walnut Trading Co. Jammu and Rs. 2,77,785/- as on 31.03.1997 in M/s Rajan Trading Co. His total investment in the two Firms, therefore, comes to Rs.80,61,565.31 as on 31.03.1997.

Even if, this amount of investment had to be kept in an ordinary Fixed Deposit, it would yield minimum yearly interest of about Rs.6.00 lac.

Therefore, deducting Rs. 6.00 lac, which the claimant, despite his 100% disability would earn on his capital deposits, from his assessed annual income, without making any deductions therefrom, as done by the Tribunal and applying some amount of guess work, the loss to his annual income can be taken as Rs.6.00 lac.

To compensate the claimant for the financial loss caused to him because of his disablement, it needs to be ensured that he gets the same amount of finances which he had been getting before the accident.

The Multiplier 11, that the Tribunal has selected to determine the multiplicand, is, therefore, adopted to determine the Future loss of earnings of the claimant.

The total loss of earnings, therefore, comes to Rs.66.00 lac.

In view of the law laid down in *R.D Hattangadi versus Pest Control (India) Pvt. Ltd. and others*, reported as 1995 ACJ, 366, the interest may not be payable to the claimant for loss of future earnings and on future expenses. Interest shall, however, be payable on rest of the items @ 7.5% per annum, as against 9% per annum as allowed by the Tribunal, on the

same analogy that has been adopted while dealing with Claim Petition No. 486/Claim.

For all what has been said above, no merit is found in the respondents’ learned counsel’s submission seeking enhancement of the amount of Compensation awarded to the claimant.

The Compensation awarded by the Tribunal to the claimant under other Heads barring loss of future earnings, having not been contested by the Appellant-Insurance Company, the total Compensation to which the claimant-respondents are entitled to in Claim Petition 493/Claim would be as follows:

1.	For Medical expenses	Rs.9,00,000/-
2.	For loss of future earnings	Rs.66,00,000/-
3.	For expenses on attendant till date	Rs.1,10,000/-
4.	For future expenses on attendant	Rs.2,64,000/-
5.	For transportation charges	Rs.25,000/-
6.	For expenses on Physiotherapy from 1997 to July 2002	Rs.1,65,000/-
7.	For expenses on future Physiotherapy.	Rs.3,96,000/-
8.	For special diet	Rs.50,000/-
9.	For future treatment.	Rs.50,000/-
10.	For pain and suffering	Rs.1,50,000/-
11.	For loss of amenities of life	Rs.1,50,000/-
Total		Rs.88,60,000/-

In view of the above discussion, the findings of the Tribunal on Issue No.2 are, therefore, required to be modified as indicated above.

Accordingly, modifying the findings of the Tribunal on Issue No.2, the claimants/respondents are held entitled to the above Compensation for 100% disablement of Kewal Nagpal.

The upshot of the above discussion and findings is that the Insurance Company's Appeals succeed and are, accordingly, allowed, modifying the Awards of the Tribunal, as indicated above and the Cross Appeals rejected.

(J.P.Singh)
Judge

Jammu:
21.07.2011
Tilak, Secy.