IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 130 of 2011.

Reserved on: 24th June, 2014.

Date of Decision: 31st July, 2014.

Kamaljeet Singh ***.....Appellant.***

Versus

Jitender Kumar & Others ***..Respondents.***

Coram

Hon'ble Mr. Justice Dharam Chand Chaudhary, J.

Whether approved for reporting[1]?

For the appellant: **Mr. Raman Sethi, Advocate.**

For the respondents: **Mr. Ashwani Sharma, Advocate for respondent No. 3.**

None for respondents No. 1 & 2.

Dharam Chand Chaudhary, J.

The appellant, who is a victim of an accident has preferred this appeal for enhancement of the compensation awarded by learned Motor Accident Claims Tribunal (Fast Track Court), Shimla vide the award dated 10.1.2011.

2. Be it stated that loss caused to the victim of an accident is irreparable and cannot be compensated in terms of money. However, the award of just and

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

reasonable compensation would certainly minimize his miseries considerably. The compensation payable to the victim of an accident cannot be assessed with all exactness, however, every possible efforts should be made to arrive at a figure, which appeals to be just and reasonable in the given facts and circumstances of each case. Hon'ble Apex Court in ***General Manager Kerala State Road Transport Corporation Trivandrum*** versus ***Sushma Thomus (Mrs.) & Others, (1994) 2 SCC 176*** has held that the amount awarded as compensation must not be niggardly since the law values life and limb in a free society in generous scales.

3. The view of the matter taken by the apex Court in ***K. Suresh*** versus ***New India Assurance Company Ltd., 2012 ACJ 2694,*** read as follows:

> "2. Despite many a pronouncement in the field, it still remains a challenging situation warranting sensitive as well as dispassionate exercise how to determine the incalculable sum in calculable terms of money in cases of personal injuries. In such assessment neither sentiments nor emotions have any role. It has been stated in Davies v. Powell Duffryn Associate Collieries Ltd., (1942)AC 601, that it is a matter of Pounds, Shillings and Pence. There cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentially lies in the pragmatic computation of the loss

> sustained which has to be in the realm of realistic approximation. Therefore, Section 168 of the Motor Vehicles Act, 1988 (for brevity 'the act') stipulates that there should be grant of 'just compensation'. Thus, it becomes a challenge for a court of law to determine 'just compensation' which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance."

4. A co-ordinate Bench of this Court, while taking note of the Indian Law and also the foreign law laid down, has held in ***Raj Kumar*** versus ***Satpal and others, 2010 ACJ, 1147***, as under:-

> "5. The principles with regard to determination of just compensation contemplated under the Motor Vehicles Act are well settled. Injuries cause deprivation to the body which entitles the claimant to claim damages. The damages may vary according to the gravity of the injuries sustained by the claimant in an accident. On account of the injuries, the claimant may suffer consequential losses such as, (i) loss of earning; (ii) expenses on treatment, which may include medical expenses, transportation, special diet, attendant charges etc., (iii) loss or diminution to the pleasures of life by loss of a particular part of the body, and (iv) loss of future earning capacity. The damages can be pecuniary as well as non-pecuniary, but all have to be assessed in Rupees and Paise. It is impossible to equate human suffering and personal deprivation with money. However, this is what the Motor Vehicles Act enjoins upon the Courts to do. The Court has to make a judicious attempt to award

> damages, so as to compensate the claimant for the loss suffered by him. Such compensation is what is termed as just compensation. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The Court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. The compensation or damages assessed for the personal injuries should be substantial damages to compensate the injured for the deprivation suffered by him throughout his life. They should not be just token damages."

5. In the above legal background now if adverting to the facts, the appellant was one of the occupants of ill-fated vehicle {Tata 407/31(truck), a medium goods carrier vehicle} registered as HP09-A-1189. The capacity, in which he was occupying the vehicle, is a disputed fact for the reason that as per the case of the appellant, he was employed as conductor by respondent No.1, the owner of the truck, whereas Insurance Company-respondent No.3 has disputed this part of the appellant's case. The fact, however, remains that he was travelling in the truck in question. First version qua the manner in which the accident has occurred finds recorded in the FIR Ex.PW2/A and as per the same Daulat Ram, at whose instance the FIR

has been registered, accompanied by the appellant (his brother), on 15.7.2008, had gone to Bithal for bringing sand. Shri Nand Lal, respondent No.2, was driver of the truck. In the night they stayed at Bithal and started on the following morning i.e. on 16.7.2008 around 6-7 a.m. from Bithal to Sandhu. Around 9.30 a.m., the truck rolled down about 100 meters from the road on account of rash and negligent driving attributed to its driver, respondent No.2 at Kalimitimod about one kilometer away from Narkanda. Daulat Ram aforesaid has received minor injuries, however, the appellant and the driver received multiple injuries, grievous in nature, in the accident.

6. The appellant, who was shifted to IGMC Shimla for treatment. He remained hospitalized as an indoor patient from 17.7.2008 to 26.8.2008. A reference in this behalf can be made to the discharge slip Ex.PW-3/A. He sustained fracture of C6 and C7 vertebral of cervical spine with Quadriplegia.

7. The claim petition was contested by the respondents. While respondent No.1, owner of the vehicle has taken a stand that he had engaged respondent No.2, a person having valid and effective driving licence to ply the vehicle, which otherwise was mechanically fit and duly insured with respondent No.3 and as such the liability, if any,

to pay the compensation is that of the insurer. Respondent No.2, driver has denied that the accident had occurred on account of rash and negligent driving attributed to him. Respondent No.3, Insurance Company, has come forward with the version that respondent No.2 was not having any valid and effective driving licence to drive the vehicle and also that the same was being plied in contravention of the provisions contained in the Motor Vehicles Act and the Rules framed thereunder. It is denied that the appellant-claimant was working as cleaner/conductor and rather he was travelling in the capacity of a gratuitous passenger.

8. Learned Motor Accident Claims Tribunal, after taking on record the evidence consisting of oral as well as documentary and hearing the parties on both sides has awarded compensation to the appellant under different heads, which reads as follows:

1.	Loss of earnings	:	₹4,80,000/-
2.	Medical expenses	:	₹10,000/-
3.	Pain and sufferings	:	₹20,000/-
4.	Loss of amenities	:	₹40,000/-
5.	Loss of marital prospects	:	₹20,000/-
	Total		**₹5,70,000/-**

9. Adverting to the evidence produced by the claimant-appellant, PW-1, Dr. Ravinder Mokta, is one of the members of the Medical Board, which has assessed the disability sustained by the claimant on account of injuries he suffered in the accident. He has proved the disability certificate Ex.PW-1/A and stated that the fracture of C6 and C7 vertebral of cervical spine with Quadriplegia has resulted in disability permanent in nature to the extent of 75%.

10. The appellant has himself stepped in the witness-box as PW-3. He has produced the discharge slip Ex.PW-3/A and claimed that he spent ₹2,50,000/- on his treatment. Also that on account of the disability sustained he is not in a position to move here and there and has hired the services of two persons namely Hem Chand and Rama Nand to whom he is paying ₹3500/- each as wages per month. He was working as conductor with the ill-fated truck and was being paid ₹4,500/- per month as wages whereas ₹100/- towards daily expenses. Aforesaid Hem Chand and Rama Nand have stepped in the witness-box as PW-4 and PW-5 and according to them, the claimant is not is a position to move out and even to answer the call of nature, he needs assistance of someone else. According to them,

they have been engaged by him to look after him on the monthly wages of ₹3500/-.

11. Respondent No.1 Jatinder is the owner of the ill-fated truck. He has stepped in the witness-box as RW-1 and admitted that the claimant was engaged as conductor with the ill-fated truck on payment of ₹3500/- per month as wages and ₹50/- as daily allowance. Insurer-respondent No.3, however, has not opted for producing any evidence except for producing a copy of the insurance policy, which is Ex.R-X.

12. On analyzing the evidence so come on record, it is satisfactorily established that the claimant-appellant was one of the occupants of the truck, met with an accident at Kalimitimod near Narkanda on 16.7.2008. The injuries, he received in the accident and the permanent disability sustained also stands established. There is, however, no legal and acceptable evidence that he was working as conductor with the ill-fated truck and was being paid ₹4,500/- per month as wages with ₹100/- as daily allowance because neither he nor the 1st respondent could produce any documentary evidence in this behalf. Rather there is variation between the statements of the two because according to respondent No.1, the appellant was being paid ₹3500/- per month as wages and ₹50/- as daily

allowance. In case the appellant was working as conductor, he was required to have licence issued by the licensing authority under Motor Vehicles Act. He must have gone with his brother Daulat Ram, on whose instance FIR Ex.PW-2/A has been registered, in the truck for loading the sand. Above-all, had he been working as a conductor in the truck, his brother Daulat Ram could have reported so at the time of registration of FIR Ex.PW-1/A. He has only stated before the police that he along with his brother (Kamaljeet Singh) had gone to bring sand from Bithal in the truck in question. The claimant-appellant, as per the entries in the matriculation certificate Ex.PW-3/B, being born on 4.10.1988, was about 20 years of age at the time of accident. Therefore, he can be said to be occupying the truck in question in the capacity of labourer for loading/ unloading the sand. The Insurance Policy Ex.RX covers the risk of three employees.

13. It is argued that on behalf of the insurer that its liability is only in accordance with the Workmen Compensation Act. The insurer, however, has not challenged the award nor such point raised in reply to the claim petition, hence the arguments so addressed cannot be accepted nor in the present appeal, which has been filed for enhancement of compensation, any such order

can be passed. Above all a coordinate Bench of this High Court in ***National Insurance Company*** versus ***Kishori Lal and others, 2004 (2)S.L.J., 1099***, has held that in such a situation the insurer is liable to satisfy the award in its entirety.

14. Having gone through the facts and circumstances and also the evidence available on record as well as the law laid down by the Hon'ble apex Court and also by this Court, in my considered opinion, a sum of ₹5,70,000/- awarded as compensation by learned Motor Accident Claims Tribunal (Fast Track Court), Shimla is on lower side and not in consonance with the principles annunciated in the various judicial pronouncements discussed at the very outset.

15. In a case of personal injury received in the accident, the compensation payable to the victim is awarded towards pecuniary damages (special damages) and non-pecuniary damages (General damages), as finds mention in ***K Suresh's*** case cited supra.

> "Pecuniary damages (Special damages)
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> (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.
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> (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity)."

16. Normally in the calculation of the pecuniary damages much difficulty is not there for the reasons that the same can be ascertained easily on account of involvement of actual reimbursement. The award of compensation under the head of medical expenses and the need for future medical treatment can be calculated on the basis of the cost thereof. The non-pecuniary damages need various factors such as age of the victim, nature of the injury he received in the accident, nature of the disability and effect, if any, thereof on his future life.

17. Learned Motor Accident Claims Tribunal towards pecuniary damages has awarded a sum of ₹10,000/- towards medical expenses and ₹4,80,000/- towards loss of earning throughout, no compensation is awarded towards future medical expenses. The income of

the victim-appellant has been assessed by learned Motor Accident Claims Tribunal as ₹2500/- per month and after applying the multiplier of 16 has calculated the compensation payable towards the loss of earning as ₹4,80,000/-. The claimant-appellant, no doubt, has come forward with the version that his wages was ₹4500/- per month with ₹100/- as daily allowance. He, however, cannot be said to be working as conductor as is held in this judgment in para supra. At the most his status was that of a casual labourer and as in this part of the country the daily wages of a casual labourer was not less than ₹100/- per day, therefore, the income of the appellant-claimant should have been assessed as ₹3000/- per month. He being about 20 years of age in terms of the law laid down by the apex Court in ***Sarla Verma & Others*** versus ***Delhi Transport Corporation & Another, (2009) 6 SCC 121***, the multiplier of 18 should have been applied.

18. In the given facts and circumstance when the appellant even was not working as labourer also and rather accompanying his brother Daulat Ram to bring sand in the ill-fated vehicle may be for their own personal use, the present is not a case where 30% increase in the monthly income towards future prospectus should be given. The judgments rendered by the apex Court in ***Minu Rout and***

Another versus ***Satya Pradyumna Mohapatra, (2013) 10 SCC 695*** and ***Santosh Devi*** versus ***National Insurance Company Limited and Others, (2012) 6 SCC 421***, i.e. in fatal accident cases are not attracted in the given facts and circumstances of this case and also that the deceased in these cases were working as driver i.e. skilled workman and on fixed salary and running milk dairy and also doing agricultural work, respectively, which however, is not the position in the case in hand as the appellant though has not been found to be working in any capacity and his income as ₹3000/- per month has been fixed keeping in mind that he would have earned this much amount even by way of working as a casual labourer.

19. Therefore, in view of the above, applying the multiplier of 18, the loss on account of earnings suffered by the appellant comes to ₹3000x12x18= ₹6,48,000/- instead of ₹4,80,000/- as assessed by learned Motor Accident Claims Tribunal, below.

20. The appellant has failed to produce voucher/bill with regard to accident incurred upon on his treatment. He even has not produced any voucher/bill with respect to the transport facility availed by him and nutritious diet taken. The fact, however, remains that after the accident on 16.7.2008, he remained hospitalized as an indoor patient till

26.8.2008 for a period over one month. Therefore, no exact amount can be assessed on this score, however, keeping in view his hospitalization and the nature of the injuries he received on his person, the award of a global amount of ₹50,000/-, as compensation towards the expenses he incurred upon during his treatment in the hospital would have been just and reasonable.

21. Learned Motor Accident Claims Tribunal has not awarded any amount towards the future medical expenses. In the nature of the injuries and permanent disability the claimant received, a further sum of ₹1,00,000/- would be just and reasonable compensation on this score. He, however, is not entitled to any compensation on account of attendant charges for the reasons that the claim so laid by him is not supported by way of legal and acceptable evidence. His own statement that he is paying ₹3,500/- per month each to the attendants i.e. PW-4 and PW-5 and the version of the so called attendants PW-4 and PW-5 in this behalf cannot be termed as legal and acceptable for want of evidence qua known sources of his income required for hiring the services of two attendants. Even taking into consideration the nature of the injuries and disability, he sustained two persons are not required for assisting him in performing the normal pursuits.

22. If coming to the non-pecuniary damages, the meagre amount of ₹20,000/- has been awarded towards pain and sufferings. This Court feels that in view of the nature of the injuries, the claimant received in the accident and his hospitalization for a period over one month as an indoor patient just and reasonable amount should have been awarded as compensation to him on this score. In the given facts and circumstances I award a sum of ₹50,000/- to the claimant on this score.

23. Learned Motor Accident Claims Tribunal has awarded a sum of ₹40,000/- towards the loss of amenities cause to the claimant. I enhance this amount also from ₹40,000/- to ₹50,000/-. No compensation has been awarded towards loss of expectation of life (shortening of normal longevity). In the case in hand the claimant received fracture C-6 and C-7 with quadriplegia, the disability is permanent in nature and with such disability, he cannot lead a happy and normal life. The present, therefore, is a case of shortening of normal longevity of life. The claimant is, therefore, awarded a further sum of ₹25,000/- on this score.

24. On account of injuries, the claimant received on his person his prospectus of marriage are also marred because normally no girl would prefer to solemnize

marriage with a person having incurred such type of disability. Learned Motor Accident Claims Tribunal has awarded a sum of ₹20,000/- on this score, which I enhance by ₹5,000/- further i.e. ₹25,000/-

25. The claimant-appellant therefore is entitled to the compensation on various heads as under:-

1.	Loss of earnings	:	₹6,48,000/-
2.	Medical expenses	:	₹50,000/-
3.	Future Medical expenses	:	₹1,00,000/-
4.	Pain and sufferings	:	₹50,000/-
5.	Loss of amenities	:	₹50,000/-
6.	Expectation of life	:	₹25,000/-
7.	Loss of marital prospects	:	₹25,000/-
	Total		**₹9,48,000/-**

26. The appeal, therefore, stands allowed and the appellant-claimant is awarded a sum of ₹9,48,000/- as compensation together with interest at the rate of 9% per annum from the date of filing of the petition till the deposit of the entire amount. The award stands modified accordingly.

July 31, 2014. **(Dharam Chand Chaudhary),**
(ps) **Judge.**