IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

FAO (MV) No. 271 of 2016
Reserved on: 08.07.2026
Date of decision: 21.07.2026
Date of uploading on the website: 21.07.2026

Pawan Vikrant .....Appellant

Versus

Neena & others .....Respondents

Coram
The Hon'ble Mr. Justice Sushil Kukreja, Judge.
[1] *Whether approved for reporting?*

For the appellant:	Mr. C.N. Singh, Dr. Nidhi Singh, Mr. Anshul Gandhi and Mr. Ramesh Thakur, Advocates.
For the respondents:	None for respondents No. 1 & 2.
	Mr. Praneet Gupta, Advocate, for respondent No. 3.

Sushil Kukreja, Judge.

The instant appeal has been maintained by appellant, who was the petitioner before the learned Motor Accidents Claims Tribunal (IV), Shimla, (hereinafter referred to as "the learned Tribunal") under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') against impugned

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

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award, dated 01.04.2016, passed by the learned Tribunal, whereby MAC Petition RBT No. 71-S/2 of 14/10, filed by the petitioner was allowed and he was held entitled for compensation to the tune of Rs. 6,03,000/- alongwith interest @ 7.5% per annum from the date of filing of the petition till realization of the award amount. The respondents were directed to pay the award amount jointly and severally and respondent No. 3, being insurer, was directed to indemnify the same.

2. The brief facts of the case are that on 16.04.2010, the petitioner was travelling in the vehicle bearing registration No. HP-30-1752 as a cleaner. When the aforesaid vehicle reached near place Kali Miti Bithal, the driver of the vehicle lost control over the same, as a result of which, it rolled on the road. As per the petitioner, the vehicle was being driven by respondent No. 2 in a rash and negligent manner. In the aforesaid accident, the petitioner sustained multiple injuries on his person and multiple fractures in the fingers of his hand, which resulted into amputation of his two fingers. After the accident, the

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petitioner was firstly treated at Civil Hospital, Rampur, wherefrom, he was referred to IGMC, Shimla and remained admitted there w.e.f. 17.05.2010 to 26.05.2010 and spent more than three lacs on his treatment. According to the petitioner, prior to accident he was earning approximately Rs. 5,000/- per month from selling vegetables and milk. However, on account of permanent disability suffered by him in the accident, he lost his earning capacity. On the basis of these submissions, the petitioner filed the claim petition under Section 166 of MV Act, seeking compensation in the sum of Rs. 15 lacs.

3. Respondents No. 1 and 2, despite opportunities, did not file reply to the claim petition, as such, their right to file the same was closed by the learned Tribunal below vide order dated 01.06.2011.

4. Respondent No. 3/Insurance Company contested the petition by filing reply, wherein, preliminary objections qua maintainability, non-joinder of necessary parties, petitioner had not come to the Court with clean hands, estoppel and jurisdiction were taken. On merits, it has been

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stated that the petitioner was travelling in the offending vehicle as gratuitous passenger. It has been denied that the petitioner was earning Rs. 5,000/- per month and engaged in selling the milk and vegetables. It has also been denied that the petitioner remained hospitalized.

5. On 27.11.2012, the learned Tribunal below had framed the following issues for consideration and adjudication:

> ***"1. Whether the petitioner suffered injuries in road accident on account of rash and negligent driving of respondent No. 2 of vehicle No. HP-30-1752 (Bolero Camper) at kalimitti Pul, Kumarsain, on 16.04.2010 at 5:30 PM, as allged? OPP***
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> ***2. If issue No. 1 is decided in affirmative, whether the petitioner is entitled for compensation of Rs. 15 lacs? OPP***
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> ***3. Whether the petition is not maintainable? OPP***
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> ***4. Whether the vehicle was being driven in violation of terms and conditions of the policy as the petitioner was travelling in the vehicle as gratuitous passenger? OPR-3***
>
> ***5. Whether the driver was not holding valid and effective driving licence at the time of accident? OPR-3***
>
> ***6. Relief."***

6. After the parties led evidence and after hearing the learned counsel for the parties, the petition was allowed and the petitioner was held entitled for compensation of Rs.

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6,03,000/- to be paid by the respondents jointly and severally alongwith interest @ 7.5% per annum from the date of filing of the petition till realization of the award amount. The respondent No. 3, being insurer, was directed to indemnify the award.

7. Feeling aggrieved and dissatisfied, the appellant preferred the instant appeal against the impugned award dated 01.04.2016 for enhancement of the same.

8. The learned counsel for the appellant contended that the learned Tribunal below had gravely erred in not awarding the compensation towards future prospects on account of disability suffered by the petitioner. He further contended that the compensation awarded by the learned Tribunal below under the other heads is also inadequate.

9. Conversely, the learned counsel for respondent No. 3/Insurance Company supported the impugned award and prayed for dismissal of the instant appeal.

10. I have heard the learned counsel for the appellant, learned counsel for respondent 3/Insurance Company and have carefully examined the entire records.

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11. The perusal of record reveals that the petitioner sustained injuries in a motor accident, which took place on 16.04.2010, due to rash and negligent driving of the driver of vehicle bearing registration No. HP-30-1752. The petitioner had also suffered permanent disability as per disability certificate, Ext. PW-3/A, perusal whereof shows that he had suffered 60% permanent disability on account of crush injury of his left forearm with vascular injury.

12. The law with respect to the grant of compensation in injury cases is well-settled. The injured is entitled to pecuniary as well as non-pecuniary damages. Pecuniary damages also known as special damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money whereas non-pecuniary damages are incapable of being assessed by arithmetical calculations. The pecuniary or special damages, generally include the expenses incurred by the claimants on his treatment, special diet, conveyance, cost of nursing/attending, loss of income, loss of earning capacity and other material loss, which may require any special

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treatment or aid to the insured for the rest of his life. The general damages or the non-pecuniary loss include the compensation for mental or physical shock, pain and sufferings, loss of amenities of life, loss of marriage prospects etc.

13. In ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd., (1995) 1 SCC 551***, a road accident resulted in 100% disability due to paraplegia below waist to a lawyer. The Supreme Court observed that no amount of compensation can restore the physical frame of the appellant. That is why it has been said by Courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of

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sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards. When compensation is to be awarded for pain and suffering and loss of amenity of life, the special circumstances of the claimant have to be taken into account including his age, the unusual deprivation he has suffered, the effect thereof on his future life. Para-9 of the said judgment is reproduced as under:-

> *"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.*
>
> *10. It cannot be disputed that because of the accident the appellant who was an active practising lawyer has become paraplegic on account of the injuries sustained by him. It is really difficult in this background to assess the exact amount of compensation for the pain and agony suffered by the appellant and for having become a lifelong handicapped. No amount of compensation can*

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> *restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury suffered during an accident, the object is to compensate such injury "so far as money can compensate" because it is impossible to equate the money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame."*

14. In ***Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254***, the road accident resulted in 100% permanent disability to a final year engineering student. The Supreme Court held the functional disability to be 70% to compute the loss of earning capacity according to the multiplier method. The Supreme Court further held that the whole idea of compensation is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for what he had suffered. Para-10 of the judgment reads as under:-

> *"10. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases- and that is now*

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recognized mode as to the proper measure of compensation is taking an appropriate multiplier of an appropriate multiplicand."

15. In ***Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343***, the Supreme Court laid down the following principles for computation of compensation in injury cases:-

> ***"General principles relating to compensation in injury cases***
> *5. The provision of the Motor Vehicles Act, 1988 ('Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. (See C. K. Subramonia Iyer v. T. Kunhikuttan Nair - AIR 1970 SC 376, R. D. Hattangadi v. Pest Control (India) Ltd. - 1995 (1) SCC 551 and Baker v. Willoughby - 1970 AC 467).*
> *6. The heads under which compensation is awarded in personal injury cases are the following:-*
> *Pecuniary damages (Special Damages)*
> *(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.*
> *(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.*

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(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).
In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.
7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii)- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/ deprivation/ disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.

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19. We may now summarise the principles discussed above :

> *(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
> *(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few*

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> *cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*
>
> *(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*
>
> *(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."*

16. In the instant case, perusal of disability certificate Ext. PW-3/A reveals that the petitioner had suffered permanent disability to the extent of 60% in the accident. The case of the petitioner is that prior to the accident, he was earning Rs. 5,000/- per month from selling vegetables and milk. However, after the accident, he was not in a position to do any work on account of disability suffered by him. On the basis of entire evidence led on record and in the absence of any cogent evidence, the learned Tribunal below had rightly assessed the income of the petitioner at Rs. 4,000/- per month. As per Matriculation Certificate, Ext. PW-1/A, date of birth of the petitioner is 30.01.1986. Thus, at the time of accident, he was 24 years of age.

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17. Learned Tribunal below assessed the net loss with respect to working capacity of the petitioner at the time of accident, after taking the functional disability @ 60% and after taking multiplier of 18 and had assessed the compensation to the tune of Rs. 5,18,400/- (28,800/- x 18) under this head. However, learned Tribunal below had committed an error in not giving an addition of 40% of the notional income towards future prospectus on account of disability suffered by the petitioner. It has been held in ***National Insurance Company Ltd vs. Pranay Sethi and ors*****,** ***(2017) 16 SCC 680***, that while determining the income, in case the deceased was self-employed or on a fixed salary and below the age of 40 years, an addition of 40% of the established income to the income of the deceased towards future prospects should be made. Paras 59.3 and 59.4 of the said judgment read as follows:-

> *"59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

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> *59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

18. In the instant case, since the petitioner was aged about 24 years and had no permanent job, therefore, in view of the law laid down by the Apex Court in ***Pranay Sethi's*** case (supra), an addition of 40% of the notional monthly income of the petitioner has to be made towards future prospects as he was aged below 40 years. Accordingly, after fixing the notional monthly income of the petitioner at Rs. 4,000/- and by adding 40% of the monthly income towards future prospects, the amount comes to Rs. 5,600/- per month (4,000+1,600/- = 5,600) and his annual income comes to Rs. 67,200/-.

19. The petitioner has suffered disability to the extent of 60% on account of fracture of both bones of left forearm with vascular injury and his working capacity must have been affected to some extent. Therefore, keeping in

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view the disability suffered by the petitioner, by taking the permanent disability to be 60%, the loss of income due to the disability comes to Rs. 40,320/- per annum. At the time of the accident, the age of the petitioner was 24 years and in view of the decision of the Hon'ble Apex Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another,(2009) 6 SCC 121***, the multiplier of '18' applied by the learned Tribunal below is just and proper. By applying the multiplier of '18' as per the settled law, the compensation under the head future loss of income is fixed at Rs. 7,25,760/-.

20. Learned Tribunal below has awarded compensation under the head medical expenses at Rs. 29,300/-, as per medical bills produced on record by the petitioner as Ext. PW-1/C-1 to Ext. PW-1/C-69, which, in the opinion of this Court, is just and proper and no fault can be found with the findings recorded by the learned Tribunal below on this count. The learned Tribunal below has awarded compensation under the heads pain and suffering at Rs. 20,000/- which in the opinion of this Court is

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inadequate. Since the petitioner had sustained fracture of both bones of left forearm with vascular injury causing permanent disability to the extent of 60%, therefore, a sum of Rs. 75,000/- is awarded to the petitioner under the heads pain and sufferings.

21. The perusal of the award further shows that the Tribunal below had not awarded any amount under the head ‘loss of amenities of life’. This head must take into account all aspects of a normal life that have been lost due to the injury caused and disability suffered by the petitioner. As per ***R. D. Hattangadi's case*** *(supra),* this includes a variety of matters such as the inability to walk, run or sit etc. In the present case, keeping in mind these factors as well as the age of the petitioner, since the petitioner suffered multiple injuries on his person, which resulted into amputation of his fingers and has affected the amenities of life of the petitioner, hence it would be proper to award a sum of Rs. 75,000/- under the head 'loss of amenities of life”.

22. Thus, the petitioner is entitled to the compensation as under:-

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"(a) For pain and sufferings = Rs. 75,000/-

(b) Loss of earning during = Rs. 5,000/-
hospital stay

(c) Medical expenses = Rs. 29,300/-

(d) Loss of future earnings = Rs. 7,25,760/-

(e) Loss of amenities of life = Rs. 75,000/-

Total = Rs. 9,10,060/-"

23. Consequently, in view of detailed discussion made here-in-above and the law laid down by the Hon'ble Apex Court, the present appeal is allowed and the impugned award is modified to the extent that the petitioner is entitled to compensation to the tune of Rs. 9,10,060/-. The remaining terms of the impugned award, including the interest component, shall remain the same.

The appeal stands disposed of in the above terms, so also the pending application(s), if any.

(Sushil Kukreja)
Judge

21st July, 2026
(raman)