HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No.174 of 2023

ICICI Lombard General Insurance Co. .....Appellant

Versus

Nahid and others .....Claimant/Respondents

Present:- Mr. Pulak Agarwal, Advocate for the appellant.
Mr. Hari Mohan Bhatia, Advocate for respondent no.1/claimant.
Mr. Narendra Singh, Advocate holding brief of Mr. Karan Anand, Advocate for respondent nos.2 and 3.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against award dated 16.12.2022, passed in Motor Accident Claim Petition No.19 of 2019, Nahid Vs. Shri Subhash Chawla and others, by the court of Motor Accident Claim Tribunal/Additional District Judge, Kotdwar, District Pauri Garhwal, by which, the appellant has been directed to pay compensation of Rs.28,26,645/- along with interest to the respondent no.1/Nahid ("the claimant").

2. Heard learned counsel for the parties and perused the record.

3. The claim petition has been filed by the claimant Nahid through his guardian and next friend on the ground that on 19.10.2015, he along with one Nazir Hussain was waiting for a bus to go to Dehradun when suddenly, a car bearing registration No. UK07 AM 3525 ("the car") approached them from Dehradun side in a very rash and negligent manner. The car hit a scooter and, thereafter, the claimant and one Nazir Hussain were hit. Nazir Hussain died during treatment. The claimant sustained injuries. At

the relevant time, the claimant was 32 years of age and working in Saraswati Printing Press, Dehradun and doing book binding, printing, etc. Due to accident, he became permanently disabled; he is mentally unwell now. He was earning about Rs.11,000/- per month.

4. In the claim petition, the appellant did file objections denying most of the averments made in the claim petition. According to the appellant, the claimant has not produced the relevant documents, for example copy of family register, income certificate, bills relating to treatment, etc. It is also the claim of the appellant that the accident took place due to negligence of the claimant himself.

5. The owner of the vehicle, who is respondent no.2, has also filed his objections. He did not accept most of the contentions for want of documents. But, in additional statement, the respondent no.2 has stated that the accident did not take place due to hit by the car. The respondent no.2 has admitted that he is owner of the car which was insured.

6. The parties have filed documents in support of their claim. Based on the pleadings of the parties, the following issues were framed:-

(i) Whether on 19.10.2015, the opposite party no.3 drove vehicle No.UK07 AM 3525 rashly and negligently and hit the claimant?

(ii) Is the petitioner entitled to compensation, if so, how much and from which of the opposite parties?

7. On behalf of the claimant 05 witnesses namely, PW1 Nagina, PW2 Gufraan Malik, PW3 Dr. Nisha Singla, PW4 K.C. Joshi and PW5 Rajkumar, were examined. No witness was examined by the other side.

8. After hearing the parties, the Tribunal held that the accident took place due to the rash and negligent driving of the driver of the car, due to which, the claimant sustained serious injuries.

9. On issue no.2 i.e. regarding compensation, the Tribunal held that though as per Disability Certificate the claimant is 50% disabled, but his functional incapacity has reached to 100%. It means his loss of earning is 100% and accordingly, determined the compensation, which is impugned.

10. Learned counsel for the appellant raises the following points in his submissions:-

a. The disability of the claimant was determined 50%. To it, the claimant is not entitled for compensation considering his 100% loss of earning.
b. The Tribunal has wrongly awarded Rs.4,75,000/- compensation for attendant expenses.
c. The Tribunal has wrongly awarded Rs.1,00,000/- for future treatment.
d. The income has not been properly assessed.

11. Learned counsel for the claimant submits that the percentage of disability does not proportionally result into the loss of earning. According to him, the percentage of disability and loss of

earning are two different concepts. In the instant case, though the claimant did suffer 50% disability as per Medical Certificate, but his loss of earning is 100%. He was working in a Printing Press as a Binder, but he is mentally unwell now; he is on bed; he cannot move on his own. In fact, the claim petition has been filed through his guardian and next friend. Therefore, his loss of earning is 100% and the Tribunal has rightly awarded the award. It is also argued that after the accident having taken place in the year 2015 the claimant was unwell, he filed the claim petition in the year 2019 only and whatever medical bills he had, those have been filed and for the future, a reasonable amount has been awarded. Similarly with regard to the attendant, it is argued that claimant cannot do anything on his own; he is on the bed; a reasonable amount has been awarded as compensation, based on the calculation, which needs no interference.

12. In addition to it, learned counsel for the claimant submits that, in fact, in the instant case, this Court should increase the amount of compensation because the future prospect part has not been considered in the instant matter. He would submit that in the case of National Insurance Company Limited Vs. Pranay Sethi and others, (2017)16 SCC 680, the Hon'ble Supreme Court has laid down the guidelines with regard to future prospects. The appellant was 32 years of age on the date of accident. He was on fixed salary @ Rs.11,000/- per month. Therefore, to this Rs.11,000/- 40% for future prospects has to be added, as held by the Hon'ble Supreme Court in para 59.4 in the case of Pranay Sethi (*Supra*). Para 59.4 is as under:-

> "**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."

13. Learned counsel for the claimant also submits that, in fact, this Court may consider for enhancing the compensation even when no cross appeal has been filed by the appellant. In support of his contention, he relied on the principle of law as laid down in the case of Ranjana Prakash and others Vs. Divisional Manager and another, (2011)14 SCC 639.

14. In the case of Ranjana Prakash (*Supra*), it has been considered by the Hon'ble Supreme Court and held that Order 41 Rule 33 of the Code of Civil Procedure, 1908 ("the Code") can however be pressed into service to make the award more effective or maintain the award on other grounds. In para 7 of the judgment the Hon'ble Supreme Court observed as under:-

> "**7.** This principle also flows from Order 41 Rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 of the Code can however be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or

> higher relief. For example, where the claimants seek compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may."

15. On it, learned counsel for the appellant submits that unless appeal is made, this Court may not in every case enhance the compensation invoking the provisions of Order 41 Rule 33 of the Code. He has referred the principle of law as laid down in the case of Vaibhav Jain Vs. Hindustan Motors Private Limited, (2025)2 SCC 208.

16. In the case of Vaibhav Jain (*Supra*), this aspect has been considered by the Hon'ble Supreme Court. In para 32, the Hon'ble Court observed as follows:-

> "**32.** From the decision above, which has been consistently followed, **it is clear that for exercise of the power under Rule 33 of Order 41 CPC the overriding consideration is achieving the ends of justice;** and one of the limitations on exercise of the power is that that part of the decree which essentially ought to have been appealed against, or objected to, by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party."
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> (emphasis supplied)

17. A bare reading of above principle makes it clear that the provision of Order 41 Rule 33 of the Code may be invoked in order to achieve ends of justice.

18. In the instant case, the future prospects part of the claimant has not been denied as such by the Tribunal. In fact, it was not argued and not calculated.

19. The Court wanted to know from the learned counsel for the appellant, as to whether in the case of injury when the income is ascertained, whether future prospects are to be calculated or not? To it, he would submit that the claimant needs to adduce evidence on that aspect.

20. In the case of Raj Kumar Vs. Ajay Kumar and another, (2011)1 SCC 343, the Hon'ble Supreme Court has considered the concept of disability as well as the loss of earning. In para 19, the law has been summarized by the Hon'ble Supreme Court. It reads as under:-

> **19.** We may now summarise the principles discussed above:
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> (*i*) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
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> (*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 cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).
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> (*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 to 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.
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> (*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.

21. Disability is one thing and loss of earning is something different which is though connected with the physical fitness of a person. Depending upon the job which a person does, the loss of earning *qua* disability may vary. A percentage of disability may not

result in a similar percentage of loss of earning for the persons working in different fields.

22. In the instant case, the claim petition has been filed by the claimant through his next friend. It is the case of the claimant that he is mentally unwell; his behaviour is uncontrollable; he is confined in a room; he cannot do even the daily day to day work without assistance. His wife Nagina has been examined as PW1. She has stated about it. She has been cross-examined also. According to her, the claimant has been permanently disabled. He cannot work now. If he is alive, his family has to bear the consequences of his disability. She has been cross-examined on this aspect. Nothing has been detected, which could otherwise dispute that part of the statement of PW1 Nagina. In fact, PW3 Dr. Nisha Singla, who was a Psychiatric in the District Hospital, Dehradun had also stated that mental disability of the claimant is 50%. She has stated that claimant will not be able to do the work like binding.

23. PW4 K.C. Joshi has also proved the documents with regard to the treatment.

24. In the instant case, though the mental disability of the claimant is 50%, but, in fact, it has resulted into the 100% loss of his earning capacity. Therefore, the court below has rightly held on that aspect and on that account no interference is warranted in the impugned order.

25. For attendant compensation of Rs.4,75,000/- has been awarded. It is consistent plea of the claimant which has been supported by the witnesses that the claimant has been mentally disabled; he cannot do anything without assistance; he is confined in a room. In para 30 of the award, the Tribunal has assessed the amount of compensation for expenses towards securing the services of attendant. For one month the amount has been assessed Rs.5,000/-. Such assessments cannot be mathematically correct. Some estimation or so to say guess work is always involved in it. But then it has to be done and the calculation which the Tribunal has done for calculating the compensation towards procuring the services of the attendant in no manner can be said to be without evidence or on higher side. Therefore, compensation awarded under the said head does not warrant any interference.

26. The claimant has been declared 50% mentally disabled and he is still under treatment and he has been even directed to be re-examined after 05 years. For future expenses, just Rs.1,00,000/- has been awarded and that has been discussed by the Tribunal in para 33 of their judgment. This amount also does not warrant any interference.

27. In so far as the income of the claimant is concerned, the Tribunal has discussed material on it. The pay register has been proved by PW5 Rajkumar. There appears to be no reason to make interference on that part as well.

28. In view of the foregoing discussion, in so far as the challenge to the award by the appellant is concerned, there is no

merit in it. But then, the question is as to whether the amount of the compensation has to be enhanced keeping in view the fact that compensation under the head of future prospect has not been granted to the claimant? Can by invoking the provision of Order 41 Rule 33 of the Code, such enhancement be made?

29. In the case of Ranjana Prakash (*Supra*), the Hon'ble Supreme Court has categorically held that this Court may in just cases enhance the compensation.

30. In the case of Vaibhav Jain (*Supra*) also, the Hon'ble Supreme Court has held that the provisions of Order 41 Rule 33 of the Code may be pressed into play so as to achieve the ends of justice. It has been held by the Tribunal and accepted by this Court that the claimant was 32 years of age and getting Rs.11,000/- fixed salary.

31. In view of the law as laid down in the case of Pranay Sethi (*Supra*), the claimant is definitely entitled to compensation by adding future prospects which would be 40% to the established income, as held by the Hon'ble Supreme Court in para 59.4 of the judgment in the case of Pranay Sethi (*Supra*). This 40% increase has to be made in the monthly salary of the claimant, which is Rs.11,000/-. 40% of Rs.11,000/- comes to Rs.4,400/- and if it is added to Rs.11,000/- it comes out to be Rs.15,400/-. This shall be counted as monthly salary. Based on it, the annual income of the claimant would be Rs.1,84,800/-. Considering the age of the claimant as 32 years, multiplier of 16 is to be applied and, as such the loss of future earning of claimant comes to Rs.29,56,800/-

(Rs.1,84,800/- x 16), instead of Rs.21,12,000/- as calculated by the Tribunal.

32. Therefore, the calculation of the compensation that is to be awarded to the claimant is as follows:-

Sl. No.	Item	Amount
1.	Loss of future income	Rs.29,56,800/-
2.	Under the Head of treatment	Rs. 41,645/-
3.	Under the Head of attendant	Rs.4,75,000/-
4.	Under the Head of physical pain	Rs.20,000/-
5.	Under the Head of mental agony	Rs.50,000/-
6.	Under the Head of nutritious food for six months 1000 x 6	Rs.6,000/-
7.	Lump sum amount for future medical treatment	Rs.1,00,000/-
8.	On account of loss of income	Rs.22,000/-
	Grand Total	**Rs. 36,71,445/-**

33. The award that has been granted to the claimant by the Tribunal is enhanced from Rs. 28,26,645/- to Rs.36,71,445/-. Now, the claimant is entitled to the total compensation of Rs.36,71,445/-. The appellant shall pay this amount to the claimant along with interest @ 9% per annum w.e.f. 19.04.2019 when the claim petition was filed till the date it is actually paid.

34. The appeal is decided accordingly.

(Ravindra Maithani, J.)
09.04.2026

Sanjay