

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

FAO-5412-2023**Vabhav (minor) through his father Surrender**

. . . . Appellant

Vs.**Surrender Singh and others**

. . . . Respondents

Reserved on: 10.07.2026**Pronounced on: 16.07.2026****Pronounced Fully/Operative Part: Fully**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Amandeep Singh, Advocate, for
Mr. Chanderhas Yadav, Advocate, for the appellant.

Mr. Sanjeev Kodan, Advocate,
for respondent No.3-Insurance Company.

DEEPAK GUPTA, J.

This appeal has been preferred by the claimant-injured seeking enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Jhajjar, vide award dated 18.07.2023.

2.1 The appellant is an unfortunate victim of a motor vehicular accident, who was merely four years of age on the date of occurrence. On 06.11.2019, at about 4:00 p.m., he had come out of his house along with his parents, when a school bus belonging to RCR School, allegedly being driven by respondent No.1 in a rash and negligent manner, came from behind and struck him. Owing to the impact, the appellant fell beneath the front wheel of the bus, which ran over both his legs. It is alleged that the driver stopped the vehicle only after people gathered at the spot and raised an alarm, but thereafter fled away with the bus.

2.2 The injured child was initially shifted to Birendra Hospital, Rewari. Considering the grievous nature of the injuries, he was referred to Medanta

Hospital, Gurugram, where he remained admitted on 06.11.2019. Thereafter, he was shifted to Pt. B.D. Sharma PGIMS, Rohtak, where he underwent multiple surgical procedures. On the statement of his father, Inder, FIR No.303 dated 09.11.2019 under Sections 279, 337 and 338 IPC was registered at Police Station Salhawas.

2.3 Pleading that he had suffered permanent disability, undergone repeated surgeries and incurred substantial expenditure towards medical treatment, transportation, medicines, attendant, nourishment and other incidental expenses, the appellant instituted a petition under Section 166 of the Motor Vehicles Act seeking compensation from the driver, owner and insurer of the offending vehicle.

3. Respondents No.1 and 2, namely the driver and owner of the offending bus, contested the claim petition. While admitting that respondent No.1 was driving the bus, they denied negligence and asserted that the accident occurred because the appellant suddenly came on the road and struck against the rear portion of the bus. It was further pleaded that the vehicle was duly insured with respondent No.3 and, therefore, any liability, if established, would be that of the insurer.

4. Respondent No.3-insurance company filed a separate written statement disputing the manner of the accident. It alleged that the FIR had been falsely lodged in collusion with the police officials and further pleaded that the accident occurred solely due to the negligence of the child, while crossing the road. The insurer also questioned the validity of the driving licence of respondent No.1 and denied the quantum of compensation claimed.

5. On the pleadings of the parties, the learned Tribunal framed the necessary issues and, after appreciating the oral as well as documentary evidence, returned a finding that the accident had occurred on account of rash and negligent driving of respondent No.1. Consequently, vide award dated 18.07.2023, compensation amounting to ₹18,63,379/- along with

interest was awarded in favour of the claimant, fastening the liability jointly and severally upon the respondents.

6.1 Aggrieved by the quantum of compensation so awarded, the present appeal has been filed. Learned counsel appearing for the appellant has confined his challenge to the quantum of compensation. It is contended that the learned Tribunal has committed a manifest error in assessing the functional disability of the appellant at only 50%, despite the fact that the disability certificate issued by the competent Medical Board records 100% permanent physical disability. It is argued that, having regard to the age of the claimant and the nature of injuries, namely bilateral below-knee restriction of mobility of his pelvic joints, the functional disability ought to have been assessed at 100%.

6.2 It is further contended that while determining the loss of future earning capacity, the Tribunal wrongly adopted the minimum wages payable to an unskilled worker. Reliance is placed upon the recent decisions of the Hon'ble Supreme Court to contend that in the case of a permanently disabled minor child, the notional income should ordinarily be assessed on the basis of the minimum wages payable to a skilled worker prevailing on the date of accident.

7. *Per contra*, learned counsel appearing for the insurance company submits that the learned Tribunal has awarded just and reasonable compensation after considering all relevant factors and that no case for enhancement is made out.

8. I have heard learned counsel for the parties and have carefully perused the record.

9. The findings of the learned Tribunal on the issues of rash and negligent driving and the liability of the respondents have attained finality, as neither the driver, owner nor the insurer has preferred any appeal or cross-objections. Consequently, the controversy in the present appeal is confined to the adequacy of compensation awarded.

10. The appellant was merely four years of age at the time of accident. The medical record leaves no manner of doubt that both his legs suffered extensive crush injuries resulting in bilateral below-knee restriction of mobility of his pelvic joints. The Disability Board has certified him to be suffering from 100% permanent physical disability.

11. The Tribunal, however, while computing compensation, proceeded to assess the functional disability at only 50%. Such an approach, in the opinion of this Court, is legally unsustainable.

12. The distinction between physical disability and functional disability is well settled by the Supreme Court in ***Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343***. The Court held that while medical disability represents the physical impairment assessed by medical experts, the functional disability is required to be assessed by the Court keeping in view the impact of such disability upon the earning capacity of the injured.

13. In the case of an adult already pursuing a particular vocation, the Court may assess the extent to which the physical disability affects that vocation. However, where the victim is a child of merely four years, no such exercise is possible. The Court is required to evaluate the disability from the standpoint of his future employability in life.

14. The appellant was merely four years of age when the unfortunate accident occurred. The medical evidence establishes that both his lower limbs had sustained extensive crush injuries resulting in bilateral below-knee restriction of mobility of his pelvic joints. Thus, the medical evidence indicates permanent restriction in the mobility of the lower limbs/hip joints, thereby severely impairing the appellant's locomotion. The Disability Board has assessed him to be suffering from 100% permanent physical disability.

15. The aforesaid medical condition undoubtedly causes substantial restriction in the appellant's mobility and would continue to adversely affect him throughout his life. At the same time, there is no material on record to conclude that the appellant has been rendered incapable of performing every

form of gainful employment. His upper limbs and cognitive faculties remain unaffected and, with education, rehabilitation and assistive devices, some sedentary avocations may still remain available to him. Therefore, the permanent physical disability of 100% cannot be mechanically equated with 100% loss of earning capacity.

16. Nevertheless, considering the tender age of the appellant, the permanent restriction in mobility, the lifelong nature of the disability, the narrowing of future employment opportunities and the principles laid down in ***Raj Kumar v. Ajay Kumar (supra)***, this Court is of the considered view that the assessment of functional disability at 50% made by the Tribunal is on the lower side. In the peculiar facts of the present case, the ends of justice would be adequately served by assessing the functional disability at 75%."

17. The learned Tribunal has adopted the minimum wages payable to an unskilled worker. Such an approach is inconsistent with the law laid down by the Hon'ble Supreme Court in ***Kajal v. Jagdish Chand, (2020) 4 SCC 413***, wherein it has been held that in the case of a permanently disabled minor, notional income should ordinarily be assessed on the basis of the minimum wages payable to a skilled worker.

18. The minimum wages payable to a skilled worker on the date of accident have been shown to be ₹10,969/- per month, which may conveniently be rounded off to ₹10,970/- per month. Adding 40% towards future prospects, the monthly income comes to ₹15,358/- and the annual income to ₹1,84,296/-. Applying the multiplier of 18, the total future income works out to ₹33,17,328/-. Considering 75% functional disability, the compensation under the head of loss of future earning capacity is assessed at ₹24,87,996/-.

19. Appellant also deserves to be adequately compensated under other heads, having regard to the nature of injuries and his futuristic requirements. Accordingly, revised Compensation is held to be as under :

Head	Amount (₹)
• Medical expenses	1,78,283
• Loss of future earning capacity (75%)	24,87,996
• Pain, shock and suffering 8,00,000	
• Loss of amenities and enjoyment of life	5,00,000
• Loss of marriage prospects	5,00,000
• Future medical treatment, rehabilitation and physiotherapy	5,00,000
• Artificial limbs/prosthetic limbs and future replacements	10,00,000
• Future attendant charges	5,00,000
• Special diet and conveyance	1,00,000
Total	₹57,66,279/-

20. The compensation is thus enhanced from ₹18,63,379/- to ₹57,95,611/-, resulting in an enhancement of ₹39,03,900/-. To take it in round figure, enhanced compensation is held to be **₹39,04,000/-**. The enhanced amount shall carry interest of 7.5 % per annum from the date of filing of the claim petition till realization. The liability to satisfy the award shall remain unchanged.

21. The enhanced compensation, along with accrued interest, shall be deposited by respondent No.3-insurance company with the Tribunal within a period of four weeks from today.

22.1 Upon deposit, 25% of the enhanced amount, together with proportionate interest, shall be released to the natural guardian of the minor claimant for meeting his immediate requirements relating to medical treatment, rehabilitation, education and allied expenses.

22.2 The remaining 75% of the enhanced amount shall be invested by the Tribunal in interest-bearing Fixed Deposit Receipts in a nationalised bank in the name of the minor claimant in a phased manner, with staggered maturities extending till he attains the age of majority and thereafter for

suitable periods, so as to ensure a regular source of funds for his future rehabilitation, higher education, replacement of assistive devices/prosthetic appliances (if required), and other medical needs. The monthly/quarterly interest accruing on such deposits shall be credited to a savings bank account of the minor claimant to be operated by his natural guardian, strictly for the welfare of the claimant.

22.3 The Tribunal shall, however, be at liberty to permit premature withdrawal of any part of the fixed deposits in case of genuine necessity relating to medical treatment, rehabilitation, education or any other welfare requirement of the claimant, upon being satisfied about the necessity thereof.

22.4 While structuring the investment, the Tribunal shall keep in view that the claimant is a permanently disabled child, who may require recurring expenditure on rehabilitation, assistive devices and long-term medical care, and the investment schedule shall be framed accordingly so that adequate funds remain available for such purposes.

23. The appeal is accordingly allowed to the aforesaid extent, with no order as to costs.

16.07.2026

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>

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