

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

FAO No.219 of 1993 (O&M)

Date of decision: 4th February, 2015

Surjit Singh

... Appellant

Versus

Jaspal Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashit Malik, Advocate
for the appellant.

Service of respondent No.1 – dispensed with.

Mr. G.D. Gupta, Advocate – Standing Counsel
for respondent No.2.

FATEH DEEP SINGH, J.

The appellant/claimant is aggrieved over the Award dated 06.01.1992 passed by the learned Motor Accident Claims Tribunal, Karnal whereby an amount of ₹12,000 along with interest was awarded for the injuries sustained by him due to the motor vehicular accident on 20.09.1989.

Heard Mr. Ashit Malik, Advocate for the claimant/appellant and Mr. G.D. Gupta, Advocate representing the insurer/respondent No.2.

The learned Tribunal has returned the findings on issue No.1 holding that the accident was caused due to the contributory fault of both the truck drivers i.e. truck bearing registration No.PCL-2917 and the other truck going ahead of it.

The dual assailment is over the quantum of compensation and the mode of accident. It is well proved on the record, though not much is available on account of destruction of the record in fire that engulfed the record room, that the claimant who has testified as PW3 was aged around 34 years and was employed as a co-driver and though claims that he was earning more than what has been assessed by the learned Tribunal to the tune of ₹1,000 per month but keeping in view even the daily wages of a labourer prevalent at that time, it would be appropriate to hold that the claimant in all likelihood must be earning ₹2,000 per month, which is a reasonable amount. Dr.P.K.Bhatia PW4 has proved that there was a fracture of left hip, right femur shortening and the disability has been assessed to the tune of 37% of the leg and therefore would come in the way of his avocation. Normally in such type of fractures, a person remains out of work as six months' period usually takes for healing of the fracture and it is proved by PW4 Dr.P.K.Bhatia that an amount of ₹42,000 has been incurred on the treatment which is corroborated from bills Ex.P7 to Ex.P55 and which has been greatly reduced by the learned Tribunal without spelling out any reasons and in view of the law laid down in **'R.D.Hattangadi v. Pest Control (India) Private Limited'** 1995 (2)

PLR 298 SC, the claimant is certainly entitled to compensation under various heads including that of disability by adopting multiplier method.

Thus, the claimant is entitled to compensation under the following heads:

(A) Pecuniary Compensation

(i)	Compensation assessed on account of loss of past and future earnings due to disability	₹1,40,000/-
(ii)	Compensation assessed on account of expenses incurred on special diet, services of attendant and conveyance etc.	₹10,000/-
(iii)	Compensation assessed on account of loss of earnings during hospitalization	₹12,000/-

(B) Non-Pecuniary Compensation

(i)	Compensation assessed on account of physical pain, mental agony and sense of wrong	₹25,000/-
(ii)	Compensation assessed on account of loss of beauty/pleasures of life etc.	₹50,000/-

Total	₹2,37,000/-
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Thus, from it all reflects that the claimant is certainly entitled to a total compensation of ₹2,37,000 (rupees two lacs thirty seven thousand only) which has been wrongly denied to him and the meager compensation so assessed by the learned Tribunal is purely based on the surmises and conjectures without application of settled principles of law under which the claimant was entitled to compensation under various heads which has escaped the sight of the learned Tribunal.

Besides this, the claimant is also entitled to interest @7.5% p.a. on the enhanced amount from the date of filing of the appeal till realization. Interim compensation paid, if any, shall be adjusted. Rest of the stipulations laid down by the Tribunal shall remain the same.

The second contentious issue is over the findings returned by the learned Tribunal on issue No.2 whereby compensation has been given on the basis of 'no fault principle'. Admittedly, the truck in question has been owned by respondent Jaspal Singh and is insured with Oriental Insurance Company Ltd. and the owner in spite of due notice has failed to put in appearance and the claim has been contested on behalf of insurer only. The learned Tribunal in its conclusions which have attained finality has held that Jagranjan Joshi was the driver of the Swaraj Mazda vehicle bearing No.PLC-2917 at the time of accident therefore, even if it is assumed that the claimant was a co-driver (though there is proof led to this effect) sitting in the said truck, which is owned by Jaspal Singh respondent and insured with respondent No.2, even by that analogy the claimant is certainly a third party qua the owner, driver and the insurer. There is nothing suggestive that he suffered injuries during the course of his employment, and therefore, neither owner nor insurer can escape from its liability and though driver has not been arrayed as a party for obvious reasons and therefore, the owner and insurer shall be liable jointly and severally to pay this amount of compensation.

In view of the foregoing discussions, the Award needs to be modified and is accordingly held so allowing the instant appeal in those terms.

**(FATEH DEEP SINGH)
JUDGE**

February 4, 2015
rps