

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

**FAO NO. 5415 OF 2003 (O&M)
DECIDED ON : 05.08.2015**

Abdul Aziz and another

...Appellants

versus

Noor Mohd. And others

...Respondents

AND

FAO NO. 5416 OF 2003 (O&M)

Afjal

...Appellant

versus

Noor Mohd. And others

...Respondents

AND

FAO NO. 5417 OF 2003 (O&M)

Khurshid

...Appellant

versus

Noor Mohd. And others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Sandeep Jasuja, Advocate,
for the appellant(s).

Mr. R. N. Singal, Advocate,
for respondent-Insurance Company.

K. C. Puri, J.

Vide this common judgment, I intend to dispose of three appeals bearing **FAO No. 5415 of 2003 titled as, "Abdul Aziz and another vs Noor Mohd and others"**, **FAO No. 5416 of 2003 titled as, "Afjal vs. Noor Mohd and others"** and **FAO No. 5417 of 2003 titled as, "Khurshid vs Noor Mohd. and others"**, as the same have arisen out of the common Award dated 13.08.2003 passed by Shri N. P. Dewett, Motor Accident Claims Tribunal, Gurgaon.

Briefly stated, Akram Khan, Abdul Aziz, Nurudeen filed **MACT No. 131 of 2000** titled as, **"Abdul Aziz and another vs Noor Mohd. And others"**, **Khurhseed** filed **MACT No. 137 of 2000** titled as, **"Khurshid vs Noor Mohd. And others"** and Afzal Aziz filed **MACT No. 147 of 2000** titled as **"Afjal vs Noor Mohd. And others"**, claiming compensation on account of injuries sustained by all of them in the motor vehicular accident which took place on 28.05.2000. All the above mentioned three claim petitions were decided vide common Award dated 13.08.2003.

Now the claimants have preferred three different appeals, mentioned above, for enhancement of compensation. For reference, the facts are being taken from FAO No. 5415 of 2000.

It was pleaded by the claimants that on 28.05.2000, the claimants have come from Bombay where they had been working

for gain by doing the work of Kabari. They were standing on the bus stand Koshi and were waiting for conveyance in order to go to their village. At that time, Dharambir came there along with his Tata Sumo bearing registration No. HR-50-3678. Dharambir was already known to the claimants. He was signalled to stop by the claimants and was asked to drop the claimants to their village. All the claimants were travelling in the Tata Sumo which was being driven by Dharambir at a moderate speed and on the left side of the road. At about 1.30 PM, when they reached near Gatta Factory (cardboard factory), in the area of Pema Khera, they noticed one dumper bearing registration No. RJ-02-G-2897 was coming from Punhana side i.e opposite side. The said dumper was being driven by respondent No.2 in rash and negligent manner and at a high speed. Dharambir took his Tata Sumo on the kaccha path in order to avoid accident but the said dumper struck with Tata Sumo and dragged the same for considerable distance and struck it against a tree. All the occupants of Tata Sumo suffered grievous injuries. The Tata Sumo was also badly damaged which was beyond repair. Respondent No.2-Harun ran away after leaving the dumper on the spot. It was further pleaded that the accident had taken place due to rash and negligent driving of dumper by respondent No.2. It was further pleaded that respondents No.4 to 6 were jointly and severally liable to satisfy the claim of the petitioners. It was further pleaded that Akram Khan, Abdul Aziz and Nurudin were

earning ₹6000/-, ₹5000/- and ₹4000/- per month respectively.

On put to notice, respondents No.1, 4 and 6 appeared and filed written statement. Respondent No.2 was proceeded ex parte. Respondent No.5 was given up.

Respondent No.1 filed written statement taking preliminary objections that the petition was not maintainable nor tenable in law; the same was not filed according to the provisions and rules of Motor Vehicles Act; the petition was bad on account of filing joint petition by the petitioners; that the petitioners were estopped from filing the petition by their act and conduct. The other averments were denied. It was further pleaded that false FIR was registered . It was further pleaded that the accident had taken place due to rash and negligent driving of the Tata Sumo.

Respondent No.4 filed separate written statement pleading therein that the petitioners received injuries. It was further pleaded that the accident was solely caused due to negligence of the driver of dumper. The other averments were denied.

Respondent No.6 filed separate written statement taking preliminary objections that the driver of Tata Sumo was not holding a valid driving license at the time of accident. It was further pleaded that there was violation of terms and conditions of the insurance policy and as such, the insurance company was not liable to pay any amount of compensation.

No replication was filed. From the pleadings of parties,

following issues were framed :-

- 1) Whether the accident took place due to rash and negligent driving of respondent No.2 resulting into injuries to claimants Akram, Abdul, Nurudin, Khurshid and Afzal, as alleged ? OPP
- 2) If Issue No.1 is proved, whether claimants Akram etc are entitled for compensation, if so, how much and from whom ? OPP
- 3) If Issue No.1 is proved, whether claimant Khurshid is entitled for compensation, if so, how much and from whom ? OPP
- 3-A) If issue No.1 is proved, whether claimant Afzal is entitled for compensation, if so, how much and from whom ? OPP
- 4) Whether the petitions are bad for mis-joinder and non-joinder of necessary parties ? OPR
- 5) Whether respondent No.2 was not holding a valid driving licence on the date of accident, as alleged? OPR
- 6) Whether there is violation of terms and conditions of insurance policy, if so, to what effect as alleged ? OPR
- 7) Relief.

In order to prove their case, petitioner Nurudin appeared as PW-1, petitioner Akram Khan appeared as PW-2,

petitioner Abdul appeared as PW-3, petitioner Khurshid as PW-4, petitioner Afzal as PW-5, Dr. Akhlaq Ahmad appeared as PW-6, James M., Manager as PW-7 and closed the evidence.

On the other hand, respondents tendered certain documents and closed the evidence.

The learned Tribunal, after adjudication, held that the accident was caused due to contributory negligence of both the vehicles and each of them was negligent to the extent of 50%. It was further held that the claimants were entitled to claim from owner, driver of the dumper to the extent of 50% and remaining 50% from the owner, driver and insurance company of the Tata Sumo.

Now the four claimants have preferred three different appeals, mentioned above, for enhancement of compensation.

Learned counsel for the appellant(s) at the very outset has submitted that the Tribunal has given a finding that it is a case of contributory negligence inter se the driver of Tata Sumo and driver of the dumper. However, it is submitted that so far as the claimants are concerned, they are not party to the negligence and are not tort-feasors. It is further submitted that in view of three Judges Bench authority of Hon'ble Apex Court "***Khenyei vs New India Assurance Company and others***" **2015 (2) RCR (Civil) 1019**, the claimants can claim compensation from any of the joint tort-feasor. It is submitted that contributory negligence is inter se the driver of dumper and Tata Sumo and

the appellants have nothing to do with that negligence. So, it is submitted that in view of ***Khenyei's case (supra)***, the appellants can claim the amount from the owner, driver of dumper and also from the owner, driver and insurance company of the Tata Sumo.

Learned counsel for the Insurance Company has submitted that in case the insurance company is directed to pay the amount, in that case, recovery rights should be given to the company against the owner and driver of the dumper.

I have considered the submissions made by both the sides and have gone through the records of case.

The learned Tribunal has given a finding that the accident had taken place due to contributory negligence of driver of dumper as well as driver of Tata Sumo. That finding has not been challenged by the drivers/owners of any of the offending vehicles.

So far as the claimants are concerned, qua them, it is a case of composite negligence and the claimants can recover the amount from any of the respondent before the Tribunal, including the insurance company. The Hon'ble Apex Court in ***Khenyei's case (supra)***, has held that where there is accident of two vehicles, the injured can claim compensation from any of the joint tort-feasor. It has been further laid down in that case that in case all the joint tort-feasors have been implicated and the evidence is sufficient, then it is upon the court/Tribunal to

determine inter se extent of the composite negligence. However, the determination of the extent of negligence between joint tort-feasors is only for the purpose of their inter se liability so that one may recover the amount from the other after making whole of the payment to the claimants. It has been further held that in case both of them have been impleaded and extent of negligence has been determined, in that case, one joint tort-feasor can recover the amount from the other in the execution proceedings. So, according to ratio of ***Khenyei's case (supra)***, it is held that it is a case of composite negligence and the claimants are entitled to claim amount from any of the respondents. However their inter se valuation made by the Tribunal to the extent of 50% each i.e dumper and the Tata Sumo remains unchanged. The claimants can recover the amount from any of them i.e the owners, drivers of both the offending vehicles and insurance company of the Tata sumo, including the enhanced amount, mentioned herein after. Now each appeal has to be dealt with separately.

FAO NO. 5415 OF 2003

This is an appeal directed by Abdul Aziz and Nurudin for enhancement of compensation.

First of all case of Abdul Aziz is taken. According to the claimants, Abdul Aziz received injuries on his leg, hand and collar bone. He deposed that he was taken to Delhi Hospital where he remained admitted for 6/7 days. His treatment went for ten

months. He spent ₹60/70,000/- on his treatment. He was working as Kabari and was earning ₹4000/- per month at Bombay.

The Tribunal has allowed a sum of ₹50,000/- on account of medicines and disability which was to the extent of 42.5%. Another sum of ₹2100/- was allowed in respect of loss of earning. In this manner, a total sum of ₹52,100/- was allowed as compensation to claimant Abdul Aziz.

Learned counsel for the appellant has submitted that amount ₹52100/- in respect of 42.5% disability is on lower side. More so, when there is shortening of left lower limb by 2 inches along with restriction of movements at the left knee and mild restriction of the movement at the right wrist. It is submitted that Exhibit P-18 is the disability certificate. It is further submitted that no amount in respect of attendant during the period of hospitalization, transportation, pain and sufferings has been allowed. Abdul Aziz while appearing in the witness box as PW-3 has stated that on 28.05.2000, the accident had taken place due to rash and negligent driving of the dumper and he received grievous injuries including fracture, in the said accident. Dr. Akhlaq Ahmad appeared as PW-6 who proved disability certificate Exhibit P-18 and deposed that Abdul Aziz suffered 42.5% disability on account of shortening of left lower limb by 2 inches along with restriction of movements at the left knee and mild restriction of the movement at the right wrist. In these

circumstances, the amount allowed by the Tribunal is on lower side. However, the amount has to be allowed keeping in view the price index of the year 2000 when the accident took place.

Keeping in view the above mentioned circumstances, in my view, it is a fit case to allow another sum of ₹1,00,000/- to the claimant Abdul Aziz, in addition to the amount awarded by the Tribunal, under all the heads including the medicines, pain and suffering, attendant charges etc.

Nurudin son of Abdul Aziz also suffered injuries in the same accident. He also suffered disability to the extent of 37.5% on account of shortening of left lower limb by 3 inches along with mild restriction of movement of left knee. The claimant/injured was taken to RML Hospital, Delhi. Exhibit P-19 is his disability certificate.

The Tribunal has held that no bill of medicine or treatment was produced by him. The Tribunal has allowed a sum of Rs.2100/- on account of loss of income, ₹40,000/- in respect of disability. Another sum of ₹5000/- was allowed in respect of medicines, special diet etc. In this manner, a total sum of ₹47,100/- was allowed as compensation to Nurudin.

The case of Nurudin is almost similar to that of Abdul Aziz. There is shortening of left lower limb by 3 inches along with mild restriction of movement of the left knee and permanent disability is to the extent of 37.5%. In these circumstances, ₹1,00,000/- more stands allowed to claimant Nurudin in addition

to the amount awarded by the Tribunal under all the heads.

The claimant/injured Akram Khan has not preferred any appeal. So, in view of the above, the appeal stands partly accepted in the manner discussed above.

FAO NO. 5416 OF 2003

This is an appeal directed by Afjal for enhancement of compensation.

The learned Tribunal has allowed a sum of ₹2100/- in respect of loss of income. Another sum of ₹1,00,000/- was allowed in respect of disability, medicine, treatment, special diet and loss of future income. In this manner, a total sum of ₹1,02,100/- was allowed as compensation.

The appellant Afjal has not produced any evidence to prove the medical bills which were placed on record by him. He examined PW-6 Dr. Akhlaq Ahmad who proved on record the disability certificate Exhibit P52 which shows that he suffered 17½ % disability on account of shortening of right lower leg by 1 inch along with mild restriction of the movement of right knee. It was further proved on record that the claimant was treated by Escorts Hospital, Faridabad. He further examined PW-7 James M. Manager of Escorts Hospital, Faridabad, who proved disability certificate Exhibit P-52. The said witness further proved the discharge summary Exhibit P-50 which shows that the patient was admitted in the hospital on 28.05.2000 and was discharged on 09.06.2000. He further proved on record the medical bills, x-

ray reports and ultra sound reports etc.

In these circumstances, the amount awarded by the Tribunal is on lower side. The ends of justice would be met in case another sum of ₹70,000/- stands allowed to the claimant/appellant Afjal, in addition to the amount awarded by the Tribunal. This amount includes all the heads i.e medicines, special diet, loss of earning, transportation etc.

FAO NO. 5417 OF 2003

This is an appeal directed by Khurshid for enhancement of compensation.

The Tribunal has allowed a sum of ₹10,000/- as compensation. The claimant/appellant Khurshid produced on record the bill Exhibit P-14 amounting to ₹8183/- and receipt Exhibit P-23 amounting to ₹110/-. The Tribunal allowed a sum of ₹10,000/- on account of treatment, medicines etc.

Learned counsel for the appellant has submitted that appellant Khurshid while appearing in the witness box has deposed that he was taken to Escorts Hospital, Faridabad, after the accident where he remained admitted for ten days. He further deposed that his treatment went on for two months and he has spent ₹2,00,000/- on his treatment.

Learned counsel for the appellant has further submitted that the appellant further examined James M. Manager of Escorts Hospital as PW-7 who deposed that the patient was admitted in the hospital on 28.05.2000 and was discharged on

29.05.2000. He further proved discharge summary Exhibit P-10. As per Exhibit P-10, there was dislocation of left hip and closed reduction of left hip was done under anesthesia and the reduction was found satisfactory. The patient was further advised complete bed rest for six weeks without bearing weight. It was further contended that the amount allowed by the Tribunal is on lower side.

I have heard learned counsel for the appellant and have gone through the records of the case.

No doubt appellant has not produced on record any evidence to prove that he spent ₹2,00,000/- upon his treatment, but according to Exhibit P-10, the amount of compensation allowed by the Tribunal is on lower side. In these circumstances, a sum of ₹25,000/- more stands allowed to the appellant Khurshid, in addition to the amount awarded by the Tribunal. The said amount shall include all the heads.

In view of the above discussion, all the three appeals stand partly accepted to the extent mentioned above. The enhanced amount shall carry interest @ 7.5 % per annum from the date of application till its realisation. The liability to pay the amount shall remain the same as ordered by the Tribunal, but the claimants can claim amount from any of the respondents being joint tort-feasors. However, in case one of the joint tort-feasor pays the amount more than his share as assessed by the Tribunal, in that case, he shall have the right to recover the

excess amount from the other tort-feasor .

Disposed of accordingly.

AUGUST 05, 2015

shalini

(K. C. PURI)

JUDGE