

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

**1. Date of decision:28.01.2015
FAO No.147 of 1999**

RAKESH KUMAR Appellant

VERSUS

JAGDISH KUMAR AND ANOTHER Respondents

2. FAO No.148 of 1999

BALDEV RAJ Appellant

VERSUS

JAGDISH KUMAR AND ANOTHER Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Jagdish Manchanda, Advocate
for the appellant.

Mr. Har Naresh S. Gill, Advocate
for respondent No.1.

Mr. Raghav Gulati, Advocate for
Mr. Paul S. Saini, Advocate
for respondent No.2(NIAC).

MAHAVIR S. CHAUHAN J. (ORAL)

FAO Nos.147 of 1999 and 148 of 1999 having arisen from a common award dated 01.09.1998 passed by learned Motor Accident Claims Tribunal, Karnal ("the Tribunal" in short) shall stand disposed of by this order being passed in FAO No.147 of 1999. Facts for the sake of convenience are being taken from FAO No.147 of 1999.

On 25.07.1997, Rakesh Kumar (appellant in FAO No.147 of 1999) was driving a Hero Honda Motor Cycle bearing registration No.HR-07A-4181 to go to Neelokheri. Baldev Raj, appellant in FAO No.148 of 1999, was riding the pillion. When the Motor Cycle reached near village

Raipur Roran, half kilometer towards Neelokheri, a Tata Sumo jeep bearing registration No.HR-01E-1894 being driven in a rash and negligent manner by respondent Jagdish Kumar, came there and hit the motor-cycle resulting into both the riders of the motor-cycle falling on the road and receiving multiple injuries.

In the claim applications, compensation was claimed on account of expenditure on treatment, special diet, special attendant, pain and suffering and loss of income etc.

The applications were contested by the respondents.

From the pleadings of the parties, learned Tribunal framed following issues:

1. Whether the accident was the result of rash and negligent driving of Tata Sumo bearing No. HR-01E-1894 by respondent No.1 Jagdish Kumar Sharma? OPP.
2. Whether respondent No.1 was not holding valid driving licence? OPR
3. To what amount of compensation claimant (s) in the respective petitions are entitled to and if so, against whom? OPP.
4. Relief.

Both the sides adduced evidence to their satisfaction and were heard by the learned Tribunal.

While returning findings in respect of factum and manner of occurrence in favour of the appellants, learned Tribunal awarded an amount of Rs.18000/- as compensation in favour of appellant Rakesh Kumar and Rs.19000/- in favour of appellant Baldev Raj.

By way of instant two appeals, applicants/appellants pray for modification of the award and for grant of just compensation in their favour.

Prayer is being resisted on behalf of the respondents.

After hearing learned counsel for the parties and on perusal of the impugned award, it comes out that appellant Rakesh Kumar received seven injuries including four simple injuries and two grievous injuries as reflected in Medico Legal Report (Exhibit P-2). He remained admitted in Civil Hospital for 2-3 hours and thereafter in the hospital of Dr. Ashok Gupta for about 15 days. He has placed on record bills regarding purchase of medicines amounting to Rs.4565/-. Dr. Ashok Gupta while appearing as PW-6 has stated that he charged from appellant-Rakesh Kumar an amount of Rs.1675/- towards his treatment. After discharge from the hospital, appellant Rakesh Kumar had to visit the hospital on various occasions as is apparent from Exhibits P-6 and P-7. He was applied plaster and must have remained in the bed for at least six weeks.

Similarly, appellant Baldev Raj received eight injuries as evidenced by his Medico Legal Report (Exhibit P-3). Two of the injuries were found to be grievous and radiological examination revealed that he had suffered fracture of Sacrum Bone. He received treatment from the hospital of Dr. Ashok Gupta for the period from 25.07.1997 to 06.08.1997. He has also proved on record, bill Exhibit P-9 for Rs.2600/- and bills mark C-1 to C-11 for Rs.5566/-. He also had to visit the hospital for quite some time for follow up treatment.

While there is no dispute as regards the assessed income of the two appellants but it is a matter of common knowledge that during the treatment, the appellants must have experienced pain and suffering besides having suffered loss of earnings and loss of enjoyment of life. They also must have spent some amount on special diet and attendant and for follow up treatment. They also must have incurred some expenditure for going to and fro

the Doctor. Though, there is no evidence in support of these circumstances but some guess work has to be employed and going by the period of treatment and follow up as also the nature of injuries, it can be legitimately held each of the appellants is entitled to a compensation amounting to Rs.65000/- each on all the afore-stated counts.

In the consequence, the appeals of the appellants are partly allowed and a compensation amounting to Rs.65000/- is awarded in favour of each of the appellants.

Learned counsel appearing for the respondent-insurer, by referring to provisions of Rule 22, Order XLI of the Code of Civil Procedure, 1908 would argue that even without filing cross objections or a cross appeal, the insurer is entitled to impugn correctness of the findings recorded by the learned Tribunal with regard to award of interest at the rate of 12% p.a. and submits that it is on the higher side. I find myself in agreement with the submissions made by the learned counsel for the respondent-insurer in view of the fact that the rate of interest is being reduced by the banks continuously and these days it is below 6% p.a.

In the circumstances, the appellants are held entitled to interest at the rate of 6% p.a. on the enhanced amount of compensation from the date of application till realization/payment thereof.

The appellants are also held entitled to costs of these appeals which are assessed at Rs.1100/- each appeal.

Other terms of the impugned award shall remain unchanged.

These appeals are disposed of in the above stated terms.

(MAHAVIR S. CHAUHAN)
JUDGE

28.01.2015
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