

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

1. F.A.O No. 6679 of 2010

Manjinder Kaur & anr. ...Appellants

Versus

Jaspreet Singh Grewal & anr. ...Respondents

2. F.A.O No. 6743 of 2010

Baljeet Kaur and anr. ...Appellants

Versus

Jaspreet Singh Grewal & anr. ...Respondents

3. F.A.O No. 1287 of 2011

Amrinder Singh ...Appellant

Versus

Jaspreet Singh Grewal & anr. ...Respondents

Date of decision:- 16.11.2015

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Richa Mittal, Advocate for
Mr. S.K. Sharma, Advocate
for the appellant (s) in all the FAO's

Mr. Vinod Gupta, Advocate
for respondent No. 2 in all the FAO's

None for other respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest? Yes

RITU BAHRI J.

Three appeals, as noticed above, are being disposed of by

GAURAV ARORA
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I attest to the accuracy and
integrity of this document

this common judgment, having arisen out of the impugned Award dated 31.03.2010 passed by the learned Motor Accident Claims Tribunal, Ludhiana in claim petitions i.e FAO No. 6743 of 2010 and 1287 of 2011 filed under Section 166 of the Motor Vehicle Act (for short 'the Act') and F.A.O No. 6679 of 2010 filed under Section 163-A of the Act.

Facts not in dispute

On 08.03.2006, Harbhajan Singh was going from the side of village Dugri to village Gill side at Guru Nanak Engineering College, Ludhiana by jeep No. HRK-4491 along with Amrinder Singh and Alok Anand. The said jeep was being driven by Kulwinder Dhiman. When the said jeep reached at Railway crossing, it was lying closed and the jeep hit against the pipe meant for crossing railway crossing. All the occupants of the car sustained multiple and grievous injuries. Harbhajan Singh, Alok Anand and driver Kulwinder Dhiman died at the spot. Amrinder Singh was taken to Apollo Hospital, Ludhiana.

COMPENSATION AWARDED BY THE TRIBUNAL

The Tribunal held that the accident had been caused due to rash and negligent driving of Kulwinder Dhiman and awarded a compensation of Rs.4,21,000/- in F.A.O No. 6743 of 2010, Rs.3,57,000/- in F.A.O No. 6679 of 2010 and Rs.6,78,507/- in F.A.O No. 1287 of 2011

F.A.O No. 6743 of 2010

Learned counsel for the appellant has argued that in the present case, the deceased Harbhajan Singh was a final year student of Mechanical Engineering and was a brilliant student. However, the learned Tribunal had taken his salary at Rs.4000/-, which is on the lower side and deserves to be enhanced. Further nothing has been awarded towards future prospects. Rs.5000/- has been awarded only towards funeral charges. To give force to its contention, reference has been made to judgment "***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77***", "***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54***" and "***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459***", "***Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520***" and "***Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193***".

F.A.O No. 6679 of 2010

Learned counsel for the appellant has argued that the deceased Kulwinder Dhiman was also a final year student of Mechanical Engineering and However, the learned Tribunal had taken his salary at Rs.4000/-, which is on the lower side and deserves to be enhanced. Further nothing has been awarded towards future

prospects. Rs.5000/- has been awarded only towards funeral charges.

F.A.O No. 1287 of 2011

Learned counsel for the appellant contends that in the present case, the appellant suffered 75% permanent disability and the learned Tribunal had only granted the amount of bills i.e Rs.6,58,507/-, which had been spent on his treatment and Rs.20,000/- towards attendant. He was a final year student of Mechanical Engineering and was a brilliant student

RE-ASSESSED COMPENSATION

F.A.O No. 6743 of 2010

In the present case, the claimants filed their claim petition under Section 166 of the Act and thus the compensation deserves to be enhanced, in view of the above mentioned judgments.

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs.10000/- per month
(ii)	50% of (i) above to be added as future prospects=	Rs.10000+Rs.5000=Rs.15000/- per month
(iii)	1/2 of (ii) deducted as personal expenses of the deceased=	Rs.15000-Rs.7500=Rs.7500 per month
(iv)	Compensation after multiplier of 18 is applied	Rs.7500 X 12 X 18= Rs.16,20,000/-
(v)	Loss of love and affection to parents	Rs.1,00,000/- (Rs.50,000/- each)
(vi)	Funeral charges	Rs.25,000/-
(vii)	Total Compensation awarded	17,45,000/-
(viii)	Enhanced amount of compensation	Rs.17,45,000-Rs.4,21,000=Rs.13,24,000/-

F.A.O No. 6679 of 2010

In this case, the claimants had filed their claim petition under Section 163-A of the Act, so the compensation awarded by the Tribunal does not require any interference. However, since nothing had been awarded under conventional heads, reference can be made to a judgment of Hon'ble the Supreme Court in a case of ***R.K. Malik and anr. vs. Kiran Pal and others, 2009(14) SCC 1*** wherein Rs.75,000/- had been awarded under conventional head in claim petitions filed under Section 163-A of the Motor Vehicle Act.

So, the claimants are entitled to compensation of Rs.75,000/- only over and above the amount awarded by the Tribunal, in view of ***R.K. Malik's case (supra)***

F.A.O No. 1287 of 2011

In the present case, the appellant had suffered permanent disability to the extent of 75% and he was awarded compensation with respect to the bills only.

The fact of accident is admitted and proved. A reference can be made to the judgment of Hon'ble the Supreme Court of India in the case of ***Syed Sadiq etc. vs. Divisional Manager, United India Ins. Co. 2014(1) RCR (Civil) 765***, where the accident victim was aged 24 years and was vegetable vendor. It was held that a vegetable vendor is reasonably capable of earning Rs.6500/- per month with 50%

increment in the future prospect of income. Multiplier of 18 was applied for calculating the amount of compensation

Reference can further be made to judgment of Hon'ble the Supreme Court of India in a case of ***Govind Yadav vs. The New India Insurance Co. Ltd., 2011(4) RCR (Civil) 817*** wherein a claimant who was working as a helper met with an accident and his leg was amputated resulting in 70% permanent disability. Since, he could not prove his salary, his salary was taken at Rs.3000 per month and his notional annual income comes to Rs 36000/- and loss of earning on account of 70% permanent disability came at Rs.25,200/- per annum and multiplier of 18 was applied. Further Rs. 2 lacs was awarded towards future treatment and Rs.1.50 lacs towards pain and suffering and trauma and further Rs.1.50 lacs towards loss of amenities. In para 17, 18, 19 and 20 of the judgment, it has been observed as under:-

“17. A brief recapitulation of the facts shows that in the petition filed by him for award of compensation, the appellant had pleaded that at the time of accident he was working as Helper and was getting salary of Rs.4,000/- per month. The Tribunal discarded his claim on the premise that no evidence was produced by him to prove the factum of employment and payment of salary by the employer. The Tribunal then proceeded to determine the amount of compensation in lieu of loss of earning by assuming the appellant's income to be Rs.15,000/- per annum. On his part, the learned Single Judge of the High Court assumed that while working as a Cleaner, the

appellant may have been earning Rs.2,000/- per month and accordingly assessed the compensation under the first head. Unfortunately, both the Tribunal and the High Court overlooked that at the relevant time minimum wages payable to a worker were Rs.3,000/- per month. Therefore, in the absence of other cogent evidence, the Tribunal and the High Court should have determined the amount of compensation in lieu of loss of earning by taking the appellant's notional annual income as Rs.36,000/- and the loss of earning on account of 70% permanent disability as Rs.25,200/- per annum.

*The application of multiplier of 17 by the Tribunal, which was approved by the High Court will have to be treated as erroneous in view of the judgment in **Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121**. In para 42 of that judgment, the Court has indicated that if the age of the victim of an accident is 24 years, then the appropriate multiplier would be 18. By applying that multiplier, we hold that the compensation payable to the appellant in lieu of the loss of earning would be Rs.4,53,600/-.*

*18. The award made by the Tribunal for future medical expenses was wholly inadequate. In **Nagappa v. Gurudayal Singh (2003) 2 SCC 274**, this Court considered whether it was permissible to award compensation in installments or recurring compensation to meet the future medical expenses of the victim. After noticing the judgment of **M. Jagannadha Rao, J.** (as he then was) in **P. Satyanarayana v. I. Babu Rajendra Prasad 1988 ACJ 88 (AP)**, the judgment of the Division Bench of the Kerala High Court in **Valiyakathodi Mohd. Koya v. Ayyappankadu Ramamoorthi Mohan 1991 ACJ 140 (Kerala)**, this Court observed:*

“In this view of the matter, in our view, it would be difficult to hold that for

future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment, the court has to arrive at a reasonable estimate on the basis of the evidence brought on record. In the present case, it has been pointed out that for replacing the artificial leg every two to three years, the appellant would be required to have some sort of operation and also change the artificial leg. At that time, the estimated expenses for this were Rs 18,000 and the High Court has awarded the said amount. For change of the artificial leg every two or three years no compensation is awarded. Considering this aspect, if Rs one lakh is awarded as an additional compensation, the appellant would be in a position to meet the said expenses from the interest of the said amount.”

After the aforesaid judgment, the cost of living as also the cost of artificial limbs and expenses likely to be incurred for periodical replacement of such limb has substantially increased. Therefore, it will be just and proper to award a sum of Rs.2,00,000/- to the appellant for future treatment. If this amount is deposited in fixed deposit, the interest accruing on it will take care of the cost of artificial limb, fees of the doctor and other ancillary expenses.

19. The compensation awarded by the Tribunal for pain, suffering and trauma caused due to the amputation of leg was meager. It is not in dispute that the appellant had remained in the hospital for a period of over three months. It is not possible for the Tribunals and the Courts to make a precise assessment of the pain and trauma suffered by a person whose limb is amputated as a result of accident. Even if the victim of accident gets artificial limb, he will suffer from different kinds of handicaps and social stigma throughout his life. Therefore, in all such cases, the Tribunals and the

Courts should make a broad guess for the 1 purpose of fixing the amount of compensation. Admittedly, at the time of accident, the appellant was a young man of 24 years. For the remaining life, he will suffer the trauma of not being able to do his normal work. Therefore, we feel that ends of justice will be met by awarding him a sum of Rs.1,50,000/- in lieu of pain, suffering and trauma caused due to the amputation of leg.

20. The compensation awarded by the Tribunal for the loss of amenities was also meager. It can only be a matter of imagination as to how the appellant will have to live for the rest of life with one artificial leg. The appellant can be expected to live for at least 50 years. During this period he will not be able to live like normal human being and will not be able to enjoy the life. The prospects of his marriage have considerably reduced. Therefore, it would be just and reasonable to award him a sum of Rs.1,50,000/- for the loss of amenities and enjoyment of life.”

In view of the above mentioned judgment, the compensation is re-assessed as under:-

HEAD	COMPENSATION AMOUNT
Salary	Rs.10000 per month
Annual Salary	Rs.1,20,000/-
Future Prospects (23 years of age)	120000 + 50% = Rs.1,80,000/-
Disability 75%	Rs.180000 X 75% = Rs.1.35,000/-
Multiplier of 18	135000X18=24,30,000/-
Future treatment	Rs.2,00,000/-
Pain and sufferings	Rs.1,50,000/-
Loss of amenities	Rs.1,50,000/-
Medical treatment	Rs.6,58,507/-
TOTAL COMPENSATION AWARDED:-	Rs.35,88,507/-
ENHANCED AMOUNT OF COMPENSATION	35,88,507-6,78,507=Rs.29,10,000/-

Resultantly, the enhanced amount of compensation of **Rs.13,24,000/- (in FAO No. 6743 of 2010), Rs.75,000/- (in FAO No. 6679 of 2010) and Rs.29,10,000/- (in FAO No. 1287 of 2011)** shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539.***

Remaining conditions of disbursal of amount shall remain unaltered.

With the aforesaid modification in the impugned award, the appeals preferred by the claimants are allowed to the above extent.

November 16, 2015

G Arora

(**RITU BAHRI**)
JUDGE