

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.5350 of 2011 (O&M)
Date of decision: 30.06.2015

Mam Chand @ Lucky

..... Appellant

versus

Ashok and another

..... Respondents

FAO No.1108 of 2012 (O&M)

Devinder Sharma and others

..... Appellants

versus

Ashok and others

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldeep Singh

Present: Mr. Diwan S. Adlakha, Advocate for the appellant
in FAO No.5350-2011
Mr. R.S. Mamli, Advocate for the appellants
in FAO No.1108-2012
Ms. Vandana Malhotra, Advocate for respondent No.2
in both the cases.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? Yes

2. To be referred to the Reporters or not ? Yes

3. Whether the judgment should be reported in the Digest? Yes

Kuldeep Singh, J.

By this order, I will dispose of FAO No.5350 of 2011 and
FAO No.1108 of 2012, arising out of the same award dated 7.4.2011,
passed by the Motor Accident Claims Tribunal, Yamuna Nagar at

Jagadhri (for short, 'the Tribunal), vide which three claim petitions i.e. MACT case No.53 of 2010, MACT case No.12 of 2009 and MACT case No.18 of 2009 were disposed of. However, for facility of reference, facts are being taken from FAO No.1108 of 2012.

Common facts of the case are that on 24.10.2009, Mam Chand along with Parmod Kumar (since deceased) were riding a motorcycle bearing registration No.HR-07-2615. One Rajesh Kumar son of Nand Sawroop was following them on a separate motorcycle. When they reached near biscuit factory, Karalghat, a Tata Sumo bearing registration No.HP-18-A-4099 being driven by respondent No.1 (driver cum owner), came from the opposite direction and hit the motorcycle being driven by Mam Chand. As a result of the accident, Mam Chand and Parmod Kumar received injuries. Driver of Tata Sumo stopped the vehicle for two minutes and thereafter, fled away. Rajesh Kumar witnessed the accident. While fleeing away, the driver of the Tata Sumo hit Om Narayan Mishra near Himalya Law College, Kala Amb (Himachal Pradesh) and caused multiple injuries to him also. As a result of the accident Parmod Kumar and Om Narayan Mishra died at the spot, whereas Mam Chand was removed to the Civil Hospital, Sadhaura, from where he was referred to PGI, Chandigarh. There he remained admitted from 24.10.2009 to 25.11.2009. FIR was registered against the respondent/ driver of the offending vehicle.

In his written statement, respondent No.1 driver cum owner denied the accident but claimed that his Tata Sumo was insured with the respondent Insurance Company.

In the separate written statement, Insurance company also claimed that Tata Sumo has been falsely implicated. Accident, if any, was outcome of rash and negligent driving of motorcyclist. Other legal objections were also taken.

The Tribunal, after going through the file passed the award for Rs.2,84,000/- in favour of Devinder Sharma etc. legal heirs of Parmod Kumar in claim petition No.12 of 2009.

In claim petition No.18 of 2009, an award of Rs.83,719/- was passed in favour of Mam Chand claimant. Interest @ 7.5% per annum from the date of filing of claim petition till actual realization was also allowed. Similarly, award was also passed in favour of the legal heirs of Om Narayan Mishra who have not come in appeal.

I have heard learned counsel for the parties and have also carefully gone through the file.

Taking up decision in claim petition No.12 of 2009, regarding death of Parmod Kumar, it comes out that the claimants Devinder Sharma and Sunita Devi are parents of the deceased, whereas claimant Shiv Kumar is brother of the deceased. It was found that the age of the deceased was 20 years. Income of the deceased was taken to be Rs.4000/- per month, taking him to be a casual labourer. Since the deceased was bachelor, 50% was deducted as personal expenses. The dependency comes out to be Rs.24,000/- per annum. Multiplier of 11 as per age of the parents of the deceased was applied and the dependency of the claimants was calculated as Rs.2,64,000/-. Rs.10,000/- for mental pain and agony were allowed. Rs.10,000/- on account of funeral expenses and

transportation were also allowed and total compensation Rs.2,84,000/- was allowed.

Regarding injury sustained by Mam Chand, his income was also calculated as Rs.4000/- per month treating him as a casual labourer. All the medical bills amounting to Rs.35,719/- were allowed. For 15% disability, as per disability certificate (Ex.P13), compensation of Rs.30,000/- were allowed and another sum of Rs.8000/- for loss of income for two months was allowed. Rs.10000/- were allowed on account of pain and suffering, mental agony, special diet and transportation etc. and total compensation of Rs.83,719/- were allowed.

First of all, taking up case regarding death of Parmod Kumar, deceased, who was 20 years of age, the contention of learned counsel for the appellants is that multiplier as per age of the parents of the deceased was wrongly applied and that future prospects were also not considered. The compensation on account of loss of love and affection and funeral expenses is on the lower side. Learned counsel for the appellants has referred to the authority in the case of Amrit Bhanu Shali and others, v. National Insurance Co. Ltd. and others, 2012(4) RCR (Civil) 343, wherein the Hon'ble Supreme Court applied the multiplier as per age of the deceased and not on the basis of the age of the dependents.

Learned counsel for the Insurance Company has argued that the matter regarding grant of future prospects and the question as to whether the multiplier is to be applied as per age of the parents of the deceased or the deceased has been referred to the Larger

Bench of Apex Court, therefore, the same should not be allowed.

I am of the view that though the matter is referred to a Larger Bench of Apex Court, but the existing law has not been set aside so far. Therefore, multiplier as per age of the deceased is to be applied and the future prospects are also to be allowed. Accordingly, keeping in view the age of the deceased 50% income is added on account of future prospects. The total income comes to Rs.6000/-. Since the deceased was unmarried, therefore, 50% are deducted as personal expenses. The dependency of the parents comes to Rs.3000/- per month. As per age of the deceased, multiplier of 18 is to be applied. Therefore, amount of compensation comes to Rs.6,48,000/-. Rs.one lac on account of loss of love and affection to the parents is allowed. Rs.25,000/- on account of funeral expenses and last rites are also allowed. Total amount of compensation comes to Rs.7,73,000/-. The enhanced compensation shall be paid with interest Interest @ 7.5% per annum from the date of filing of claim petition till actual realization and only the parents of the deceased shall be entitled to same in equal share.

Now coming to the case regarding injuries to Mam Chand, there is no dispute regarding medical bills allowed to the claimants. Claimant remained admitted in PGI for one month i.e. From 24.10.2009 to 25.11.2009. For 15% disability, compensation of Rs.30,000/- has been allowed. Learned counsel for the appellants has relied upon the authority of the Hon'ble Supreme Court in the case of Arvind Kumar Mishra v. New India Assurance Co. Ltd. and another, 2010(4) SCC (Civil) 153 and has pressed that multiplier

method should be applied to grant compensation on account of disability. In Arvind Kumar Mishra's case (*supra*), there was 70% permanent disability to a youth of 25 years and the Apex Court applied the multiplier method to grant the compensation.

I am of the view that in the present case also, as per statement of PW11 Dr. Depender Singh, claimant was operated case of right tibia fracture with restricted right ankle and knee movement with difficulty in walking and weak calf muscles. The doctor proved the disability certificate (Ex.P13). Therefore, on account of fracture of right leg and restricted movement of the ankle and weak calf, some disability has been incurred by the claimant. Since he has been treated to be casual labourer, functional disability is also involved. Hence, I find that in the present case, the multiplier method should be applied. If the income of the deceased is taken to be Rs.4000/- per month as calculated by the Tribunal, loss of income on account of 15% disability comes to Rs.600/- per month. Since the injured was only 25 years of age, multiplier of 18 is to be applied. Amount of compensation comes to Rs.1,29,600/-. Since there was fracture of right leg and the claimant is unlikely to attend his duties for three months, he is entitled to loss of income for three months, for which, a sum of Rs.12,000/- is allowed. Another sum of Rs.20,000/- for pain and suffering is allowed. Rs.6,000/- are allowed as attendant charges for three months. Rs.3000/- for transportation charges are also allowed. Total amount of compensation is re-calculated as Rs.2,07,319/-, including Rs.35,719/- as medical bills. The enhanced compensation shall be paid with interest Interest @ 7.5% per annum

from the date of filing of claim petition till actual realization.

Both the appeals are accordingly allowed.

30.06.2015

gk

**(Kuldip Singh)
Judge**