

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

**FAO No.5248 of 2012 (O&M)
Date of decision: 28.10.2015**

Virender Singh

....Appellant

Versus

Joginder Singh and others

....Respondents

2) FAO No.5249 of 2012 (O&M)

Savitri Devi

....Appellant

Versus

Joginder Singh and others

....Respondents

3) FAO No.5554 of 2012 (O&M)

Master Arjun

....Appellant

Versus

Joginder Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.S. Gulati, Advocate
for Mr. A.S. Sullar, Advocate
for the appellant (s) (in all the appeals).

Mr. Suvir Dewan, Advocate
for respondent No.3 (in all the appeals).

RITU BAHRI J. (Oral)

CM No.23713-CII of 2012 in FAO No.5249 of 2012

For the grounds mentioned in the application, the same is allowed and the delay of 100 days in filing the appeal stands condoned.

CM No.25390-CII of 2012 in FAO No.5554 of 2012

For the grounds mentioned in the application, the same is allowed and the delay of 105 days in filing the appeal stands condoned.

MAIN CASE

By this single judgment I intend to dispose of three appeals i.e. FAO No.5248 of 2012 titled as “*Virender Singh vs Joginder Singh and others*”, FAO No.5249 of 2012 titled as “*Savitri Devi vs Joginder Singh and others*” and FAO No.5554 of 2012 titled as “*Master Arjun vs Joginder Singh and others*” as all these appeals have arisen out of the same award dated 28.02.2012.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 01.10.2010, Virender Singh along with his mother Savitri, Arjun son of Joginder Singh and Akshita daughter of Joginder Singh was returning to his

village Assaudha from Rohtak in an Estilo Zen bearing registration No.HR-13-E-4956. Virender Singh was on the steering wheel of the same and he was driving the said car at a moderate speed while adhering to the traffic rules. At about 10:30 a.m., when they reached one kilometre ahead of Sampla by-pass, on Delhi road towards Bahadurgarh, a Tata Sumo bearing registration No.HR-37-B-3704, being driven by its driver in a rash and negligent manner without following the traffic rules arrived from the opposite side and struck against the said car after coming on the wrong side of the road. Due to the impact of the same, all the occupants of the car including Virender Singh sustained serious and grievous multiple injuries and thereafter, they were taken to the PGIMS, Rohtak, by some passerby.

In this regard, an FIR No.404 dated 02.10.2010, under Sections 279, 337 IPC, in respect of the accident in question was got registered at Police Station Sampla, District Rohtak.

Consequently, the claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY MACT

Before the Tribunal, Virender Singh (eye-witness) appeared as PW-1 and tendered his affidavit Ex.PA to prove the accident in question. Neither the driver of the offending vehicle nor any other person claiming to have witnessed the accident appeared in the witness-box to rebut the statement of PW-1 and

the Tribunal has returned the finding on Issue No.1 in favour of the claimants-appellants.

Virender Singh's case

PW-3, Dr. K.L. Bhatt of Maharaja Agarsen Hospital, Punjabi Bagh, New Delhi has deposed that Virender Singh son of Mahender Singh resident of village Asaudha Todran, District Jhajjar, was admitted in Maharaja Agarsen Hospital, New Delhi on 01.10.2010, with the diagnosis of blunt injury to the abdomen with the alleged history of road-side accident. His CT Scan report showed the hepatic contusion/laceration involving segments, 3, 4 (a) and 4 (b) with a small sub capsular collection and fluid in sub hepatic space and right paracolic gutter. Both lungs basis showed plural thickening, plural tags left to right. The patient was treated conservatively and on 04.10.2010, the patient was discharged against medical advice by making a writing on the treatment file by one of his attendants and as such, he was discharged as LAMA vide discharge slip Ex.PO.

PW-4, Suresh Garg, Deputy Manager of Maharaja Agarsen Hospital, Punjabi Bagh, New Delhi, has deposed that he has brought the summoned record and as per the same, Virender Singh son of Mahender Singh resident of VPO Asudha, Tehsil Bahadurgarh was admitted in Maharaja Agarsen Hospital, New Delhi on 01.10.2010 and was discharged as LAMA on 04.10.2010. The hospital had charged Rs.25,720/- for treatment and Rs.620/-

as OPD charges from Virender Singh vide bill Ex.PP and receipts thereof Ex.PP/1 to Ex.PP/5.

The claim petition was accepted by the Tribunal and a sum of Rs.35,000/- was awarded as compensation on account of injuries sustained by Virender Singh along with future interest at the rate of 7.5% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below:-

Sr. No.	Heads	Calculations
1.	Bills Ex.PP and receipts Ex.PP/1 to Ex.PP/5 and bills Ex.PK to PK/5	Rs.28,350/- rounded off to Rs.29,000/-
2.	Pain and suffering	Rs.6,000/-
3.	Total compensation awarded	Rs.35,000/-

Savitri Devi's case

Savitri Devi being an old lady has not appeared in the witness-box, but her son, namely, Joginder Singh appeared as PW-2 and tendered his affidavit Ex.P2 to prove the accident in question.

PW-8, Dr. Deepak Vats, Senior Medical Officer, Department of Medicines Emergency, Indraprastha Apollo Hospital, New Delhi, has deposed that he has brought the summoned record and as per that record, Savitri Devi was admitted with the diagnosis of fracture acetabulum. She was earlier treated at Maharaja Agarsen Hospital, New Delhi. In Apollo Hospital, total hip replacement of right side was done. She

was discharged on 21.03.2011. Ex.PN/2 is the discharge summary of patient-Savitri and Ex.PN/3 to Ex.PN/5, are her OPD cards.

PW-4, Suresh Garg, Deputy Manager, Maharaja Agarsen Hospital, Punjabi Bagh, New Delhi, has deposed that Savitri Devi wife of Mahender Singh resident of VPO Asudha, Tehsil Bahadurgarh, Haryana, was admitted in Maharaja Agarsen Hospital, New Delhi on 01.10.2011 and was discharged on 14.10.2010. The hospital had charged Rs.2,07,500- for treatment and admission charges plus miscellaneous charges such as blood process, etc. of Rs.8,590/-. The bill of Rs.2,07,500/- issued in favour of Savitri Devi is Ex.PR and receipts thereof are Ex.PR/1 to PR/5 and the receipts showing the payment of Rs.8,590/- are Ex.PR/6 to PR/15.

PW-5, Deva Nand Sharma, Billing Clerk, Indraprastha Apollo Hospital, New Delhi has deposed that he has brought the summoned record pertaining to the patient Savitri Devi wife of Mahender Singh and she remained admitted in the Indraprasth Apollo Hospital, New Delhi from 16.03.2011 to 21.03.2011. She was charges Rs.2,48,870.82/- for her hospitalization in the aforesaid hospital and a bill Ex.PS and receipts Ex.PS/1 and Ex.PS/2, were issued in favour of the patient in this regard and the same are correct as per the record. She was also charged Rs.7,100/- towards OPD and dressing charges vide bills/receipts Ex.PS/3 to Ex.PS/12 and are correct according to the record of the

hospital.

On the basis of evidence led by the parties, the Tribunal has returned the finding on Issue No.3 in favour of the claimant-appellant. The claim petition was accepted by the Tribunal and a sum of Rs.5,56,000/- was awarded as compensation on account of injuries sustained by Savitri Devi along with future interest at the rate of 7.5% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below:-

Sr. No.	Heads	Calculations
1.	Treatment charges	Rs.2,16,000/-
2.	Payment of the bills and Ex.PS and receipts Ex.PS/1 and Ex.PS/2	Rs.2,56,000/-
3.	Bills Ex.PV to PV/29	Rs.58,601/- rounded off to Rs.59,000/-
4.	Pain and suffering	Rs.25,000/-
5.	Total compensation awarded	Rs.5,56,000/-

Master Arjun's case

Joginder Singh, father of the minor claimant-appellant, namely, Arjun, appeared as PW-2 and tendered his affidavit Ex.P2 to prove the accident in question.

PW-7, Dr. A.K. Banerjit, Senior Consultant, Neuro Surgery, Indraprastha Apollo Hospital, New Delhi, has deposed that he has brought the summoned record as per which patient-Arjun was admitted in the Apollo Hospital, New Delhi, with the diagnosis of brain injuries with haemorrhage inside the brain, fracture left tibia and multiple facio-maxillary injuries. He was

operated on 05.10.2010 for his injuries in the scalp, face and tongue by plastic surgeon. The patient was discharged on 11.10.2010 and Ex.PM/1 was the discharge summary of patient-Arjun. The OPD cards Ex.PM/2 and Ex.PM/3, relates to the patient-Arjun. Arjun had also got follow-up treatment in the Apollow Hospital vide OPD card Ex.PM/4.

PW-5, Deva Nand Sharma, Billing Clerk, Indraprastha Apollo Hospital, New Delhi, has deposed that patient Arjun son of Joginder, aged 03 years, male, resident of village Asaudha, Bahadurgarh was admitted in Indraprastha Apollo Hospital, New Delhi, from 01.10.2010 to 11.10.2010. The hospital had charged Rs.2,64,238.62/- vide bill Ex.PT and receipts Ex.PT/1 to Ex.PT/5 for his admission and treatment charges in the hospital. The patient was also charged Rs.9,130/- vide bills/receipts Ex.PT/6 to Ex.PT/19.

On the basis of evidence led by the parties, the Tribunal has returned the finding on Issue No.4 in favour of the claimant-appellant. The claim petition was accepted by the Tribunal and a sum of Rs.3,48,000/- was awarded as compensation on account of injuries sustained by Arjun along with future interest at the rate of 7.5% per annum from the date of filing of the petition till its realization. The compensation assessed by the Tribunal is reproduced as below:-

Sr. No.	Heads	Calculations
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1.	Treatment charges	Rs.2,74,000/-
2.	Payment of the bills and Ex.PV/30 and PV/31	Rs.24,000/-
3	Pain and suffering	Rs.50,000/-
4.	Total compensation awarded	Rs.3,48,000/-

Feeling dissatisfied with the impugned award, the claimant-appellant, namely, Virender Singh has preferred the appeal i.e. **FAO No.5248 of 2012** titled as “***Virender Singh vs Joginder Singh and others***”, the claimant-appellant, namely, Savitri Devi has preferred the appeal i.e. **FAO No.5249 of 2012** titled as “***Savitri Devi vs Joginder Singh and others***” and the claimant-appellant, namely, Master Arjun has preferred the appeal i.e. **FAO No.5554 of 2012** titled as “***Master Arjun vs Joginder Singh and others***”.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that all the claimants-appellants have sustained injuries as a result of the accident.

In the peculiar facts and circumstances of the case and to meet the ends of justice, the compensation is required to be re-assessed. Accordingly, the compensation in all the appeals is re-assessed as under:-

1. FAO No.5248 of 2012

As per the deposition of PW-4, Suresh Garg, Deputy

Manager of Maharaja Agarsen Hospital, Punjabi Bagh, New Delhi, the claimant-appellant remain admitted in hospital for almost three days. So, the amount of compensation is re-assessed as under:-

Sr. No.	Heads	Calculations
1.	Bills Ex.PP and receipts Ex.PP/1 to Ex.PP/5 and bills Ex.PK to PK/5	Rs.28,350/- rounded off to Rs.29,000/-
1.	Special diet	Rs.5,000/-
2.	Loss of income	Rs.5,000/-
3	Pain and suffering	Rs.10,000/-
4.	Transportation charges	Rs.5,000/-
5.	TOTAL COMPENSATION AWARDED	Rs.54,000/-
6.	Enhanced amount of compensation	(Rs.54,000/-) – (Rs.35,000/-) =Rs.19,000/-

2. FAO No.5249 of 2012

As per the deposition of PW-4, Suresh Garg, Deputy Manager of Maharaja Agarsen Hospital, Punjabi Bagh, New Delhi, the claimant-appellant, namely, Savitri Devi remain admitted in hospital from 01.10.2010 to 14.10.2010 and as per the deposition of PW-8, Dr. Deepak Vats, Senior Medical Officer, Department of Medicines Emergency, Indraprastha Apollo Hospital, New Delhi, the claimant-appellant remain admitted in hospital from 06.03.2011 to 21.03.2011. So, it is established that the claimant-appellant in the present case remained under treatment for six months. Accordingly, the amount of compensation is re-assessed as under:-

Sr. No.	Heads	Calculations
1.	Treatment charges	Rs.2,16,000/-

2.	Payment of the bills and Ex.PS and receipts Ex.PS/1 and Ex.PS/2	Rs.2,56,000/-
3.	Bills Ex.PV to PV/29	Rs.58,601/- rounded off to Rs.59,000/-
4.	Pain and suffering	Rs.40,000/-
5.	Special diet	Rs.20,000/-
6.	Attendant charges	Rs.15,000/-
7.	Transportation charges	Rs.20,000/-
5.	TOTAL COMPENSATION AWARDED	Rs.6,26,000/-
6.	Enhanced amount of compensation	(Rs.6,26,000/-) – (Rs.5,56,000/-) =Rs.70,000/-

3. FAO No.5554 of 2012

Keeping in view the deposition of PW-7, Dr. A.K. Banerji, Senior Consultant, Neuro Surgery, Indraprastha Apollo Hospital, New Delhi, who has deposed that the claimant-appellant, namely, Arjun who is a child of 3-4 years of age, was operated upon on 05.10.2010 for his injuries in the scalp, face and tongue by plastic surgeon and was discharged on 11.10.2010, it is proved that the claimant-appellant remain admitted in hospital for almost seven days. Hence, the amount of compensation is re-assessed as under:-

Sr. No.	Heads	Calculations
1.	Treatment charges	Rs.2,74,000/-
2.	Payment of the bills and Ex.PV/30 and PV/31	Rs.24,000/-
3.	Pain and suffering	Rs.50,000/-
4.	Special diet	Rs.10,000/-
5.	Transportation charges	Rs.10,000/-
6.	TOTAL COMPENSATION AWARDED	Rs.3,68,000/-
7.	Enhanced amount of compensation	(Rs.3,68,000/-) – (Rs.3,48,000/-) =Rs.20,000/-

The enhanced amount of compensation of **Rs.19,000/-** shall be payable to the claimant-appellant, namely, Virender Singh, **Rs.70,000/-** shall be payable to the claimant-appellant, namely, Savitri Devi and **Rs.20,000/-** shall be payable to injured-claimant, namely, Master Arjun, within a period of two months 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 the 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.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

28.10.2015

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