

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

**FAO No.862 of 1999 (O&M).
Date of Decision: 01.06.2016.**

Kumari Sarita Garg

....Appellant.

VERSUS

Chhotu alias Prem Singh and other

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Kamaldeep Kaur, Advocate for
Mr. Adarsh Jain, Advocate for the appellant.

Service of notice on respondents No.1 and 2 was dispensed
with vide order dated 31.05.2016.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-6039-40-CII-1999

There being delay of 21 days in filing and 68 days in refiling
the appeal, separate applications under Section 5 of the Limitation Act and
under Section 151 of the Code of Civil Procedure for condonation of delay
were filed by the appellant.

Considering the averments made in the applications, the delay
in filing as well as in refiling is condoned subject to all just exceptions and
the applications are disposed of.

FAO-862-1999

seeks enhancement of compensation awarded by Motor Accident Claims Tribunal, Faridabad (for short, “the Tribunal”) vide award dated 22.07.1998 passed in MVA Case No.56 of 1994 filed by her on account of injuries sustained in a vehicular accident that took place on 19.10.1993.

The submissions made by Ms. Kamaldeep Kaur, learned counsel for the appellant and Mr. Vipul Sharma, learned counsel for respondent No.3 have been heard.

Learned counsel for the appellant submitted that the appellant-injured was aged 16 years and was a student. She could not attend the school for a long time and lost one important year of her academic career. The loss in study would effect her prospects of higher qualifications and admission to specialized courses, however, learned Tribunal did not consider the said non-pecuniary loss suffered by the appellant. Also due to the grievous injuries suffered by the appellant, she suffered disfiguration of face and body which would diminish her marriage prospects, but on the said count, she has not been adequately compensated. The amount awarded towards pain and suffering and for the grievous injuries (fractures) suffered by the appellant is also on the lower side.

PW3 Dr. Banwari Lal, Medical Officer, who medico legally examined the injured and prepared medico legal report Ex.PW3/A detailed the injuries suffered by the appellant. In Para No.12 of the award, learned Tribunal noticed the injuries on the person of the injured described by PW5 Dr. K.D. Soni, Orthopedic Surgeon, Escorts Centre, Faridabad as under:-

- (1) Head injury,
- (2) Fracture mandible
- (3) Fracture right femur,

- (4) Fracture left wrist, and
- (5) Lacerated wound right knee.

The X-ray reports Ex.PW5/1 to Ex.PW5/3 and the discharge summary Ex.P5/4 were also proved by PW5 Dr. K.D. Soni. It had also come in evidence that the appellant remained hospitalized w.e.f. 19.10.1993 to 02.11.1993 i.e. for almost 15 days. The multiple grievous injuries suffered by the appellant and the period of her hospitalization had obviously caused grave pain and suffering to the appellant for a long time. Considering the same, the amount of Rs.10,000/- awarded by learned Tribunal for the pain and suffering is enhanced to Rs.30,000/-. Though there is no medical document to prove that the appellant suffered disability on account of the injuries sustained by her but the fact remains that she suffered three fractures i.e. fracture mandible, fracture right femur and fracture left wrist which proves that her total physical structure was shattered. In Para No.12, learned Tribunal rightly noticed that the appellant had suffered three fractures and awarded compensation of Rs.30,000/- on this count which is appropriate.

No evidence was led by the appellant to prove that she was a student. Even the class in which she was studying or the school which she was attending were not named by her. No evidence was led to prove that she lost one year of her academic career or any other kind of loss in studies. Yet, it can not be ignored that the appellant was a young girl aged 16 years and as she suffered fracture of mandible needless to say that the injury must have resulted in disfiguration of the face and physical structure which can cause her embarrassment throughout life. On this count, a further amount of

prospects and on that count, another amount of Rs.20,000/- is allowed. In addition to the above, a further amount of Rs.20,000/- is allowed to the appellant for loss of amenities of life.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 22.07.1998 passed by learned Tribunal is modified. The enhanced compensation of Rs.1,10,000/- shall be paid to the appellant within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

01.06.2016.
jitender