

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. FAO No. 3079 of 2001 (O&M)**  
**Date of Decision : 08.07.2016**

Virender Kumar .....Appellant

Versus

Hakam Singh and another .....Respondents

**2. FAO No. 3080 of 2001 (O&M)**

Makhan Lal .....Appellant

Versus

Hakam Singh and another .....Respondents

**3. FAO No. 3081 of 2001 (O&M)**

Som Nath .....Appellant

Versus

Hakam Singh and another .....Respondents

**CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Rakesh Nagpal, Advocate  
for Mr. Suresh Monga, Advocate  
for the appellant.

Mr. Mohinder Pal, Advocate  
for respondents no. 1 and 2.

Ms. Anamika Mehra, Advocate  
for Mr. Lalit Garg, Advocate  
for respondent 3-Insurance Company.

**Surinder Gupta, J.**

Above captioned three appeals have been taken up together for disposal by this common judgment as these claim petitions were filed relating to injuries suffered by claimants-appellants on 25.04.1997 in accident with Jeep bearing registration no. HR-24-C-5877 (later referred to

Kumar and two more claimants were disposed of by the Motor Accident Claims Tribunal, Sirsa (later referred to as 'the Tribunal') vide common award dated 04.06.2001.

### **BRIEF FACTS**

2. Case of claimant(s), in brief, is that on 25.04.1997 at about 08.00 p.m., claimant-Virender Kumar (appellant in FAO No. 3079 of 2001) met claimant-Som Nath (appellant in FAO No. 3081 of 2001), who was on his scooter with his father Makhan Lal (appellant in FAO No. 3080 of 2001) and five years old child near Darpan Theatre, Mandi Dabwali. Som Nath stopped the scooter on the side of road and started talking to Virender Kumar, when the offending vehicle, which was being driven by respondent no. 1-Hakam Singh in a rash and negligent manner came from the side of Malout and hit occupants of the scooter and also claimant-Virender Kumar and then cyclist namely, Naresh Kumar, who received serious injuries and were taken to Civil hospital, Dabwali and from where they were referred to General Hospital, Sirsa. All the injured were taken to Gupta Nursing Home, Bathinda for their treatment. The matter was reported to police on the next day vide FIR No. 191, registered at Police Station City Dabwali.

3. Appellant-Virender Kumar, aged 19 years, averred that he was working as salesman with M/s United Motors, Mandi Dabwali and was getting salary of ₹1800/- per month. He suffered grievous injuries including fracture of both bones of right leg and remained under treatment at Gupta Nursing Home, Bathinda from 26.04.1997 to 14.07.1997. He spent more than ₹2 lacs on his treatment, which was still going on at the time of filing of claim petition.

4. Claimnat-Makhan Lal, aged 50 years (appellant in FAO No. 3080 of 2001), averred that he was having *kiryana* shop at Mandi Dabwali

and having monthly income of ₹5000/-. He suffered fracture of right forearm and of right leg and remained under treatment at Gupta Nursing Home, Bathinda from 26.04.1997 to 17.05.1997. He spent more than ₹1 lac on his treatment, which was still going on at the time of filing of claim petition.

5. Claimant-Som Nath, aged 29 years (appellant in FAO No. 3081 of 2001) was also having *kiryana* shop at Mandi Dabwali. As per claimant-appellant, he suffered multiple injuries including fracture of right wrist and right leg and remained admitted in Gupta Nursing Home, Bathinda from 26.07.1997 to 14.07.1997. He spent more than ₹2 lacs on his treatment.

6. The Tribunal awarded compensation of ₹5,21,000/- to Virender Kumar, which was assessed as follows:-

| <b><i>Sr. No.</i></b> | <b><i>Heads</i></b>                                                                                                                      | <b><i>Calculation</i></b> |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| (i)                   | Medical expenses including special diet                                                                                                  | ₹264000                   |
| (ii)                  | Loss of income during the period of treatment from 25.04.1997 to March, 2000 i.e. for about three years at the rate of ₹1800/- per month | ₹64000                    |
| (iii)                 | Compensation for permanent disability of 40% (loss of annual income @ 40% multiplied by 16)                                              | ₹138000                   |
| (iv)                  | Conveyance charges                                                                                                                       | ₹20000                    |
| (v)                   | Pain and suffering (already undergone and to be undergone in future)                                                                     | ₹35000                    |
| <b><i>Total</i></b>   |                                                                                                                                          | <b>₹521000</b>            |

7. Claimant-Makhan Lal was awarded compensation of ₹82,000/-, which was assessed as follows:-

| <b><i>Sr. No.</i></b> | <b><i>Heads</i></b>                                                 | <b><i>Calculation</i></b> |
|-----------------------|---------------------------------------------------------------------|---------------------------|
| (i)                   | Medical expenses including special diet (bills Exs. P-354 to P-377) | ₹40000                    |
| (ii)                  | Pain and suffering                                                  | ₹10000                    |

|       |                                                                                    |        |
|-------|------------------------------------------------------------------------------------|--------|
| (iii) | Loss of income during the period of treatment for five months @ ₹2000/- per month. | ₹10000 |
| (iv)  | Compensation for permanent disability of 10%                                       | ₹20000 |
| (v)   | Conveyance charges                                                                 | ₹2000  |
| Total |                                                                                    | ₹82000 |

8. Claimant-Som Nath was awarded compensation of ₹1,96,000/-, which was assessed as follows:-

| Sr. No. | Heads                                                                      | Calculation |
|---------|----------------------------------------------------------------------------|-------------|
| (i)     | Medical expenses (as per medical bills Ex. P-1 to P-131)                   | ₹116000     |
| (ii)    | Compensation for permanent disability of 15%                               | ₹30000      |
| (iii)   | Pain and suffering                                                         | ₹15000      |
| (iv)    | Loss of income during the period of treatment @ ₹2500/- per month          | ₹25000      |
| (v)     | Conveyance charges (for five visits from Dabwali to Bathinda and Ludhiana) | ₹10000      |
| Total   |                                                                            | ₹196000     |

9. Seeking enhancement of compensation awarded to them, claimants-appellants Virender Kumar, Makhan Lal and Som Nath have filed instant appeals.

10. I have heard learned counsel for appellants and perused copy of record of the Tribunal supplied by learned counsel for appellants.

11. Learned counsel for appellants has argued that appellant-Virender Kumar remained admitted in hospital for about six months. He had suffered communitied fracture of right tibia. Repeated operations were performed and later on bone grafting was done. He also suffered 40% permanent disability. Appellant-Virender Kumar was 19 years of age and due to his disability he has suffered loss of marriage prospects. The Tribunal has not awarded any compensation on this score and also towards attendant

charges, future medical expenses and loss of amenities of life. Appellant-

Makhan Lal had suffered three injuries as mentioned in MLR (Ex. PL) including fracture of both bones of right leg. He remained admitted in Gupta Nursing Home, Bathinda from 26.04.1997 to 17.05.1997 and underwent two operations. He had suffered 10% permanent disability. He was 50 years of age and was working as salesman on a shop. In his case also, the Tribunal has not awarded any compensation towards attendant charges, future medical expenses and loss of amenities of life. Appellant-Som Nath had suffered comminuted fracture of both bones of right leg and fracture right radius lower 1/3<sup>rd</sup> and inferior radio ulna joint dislocation and suffered 15% permanent disability. He had also remained admitted in Gupta Nursing Home, Bathinda from 26.04.1997 to 14.07.1997. One operation was performed on him in Gupta Nursing Home, Bathinda and thereafter he had to go to DMC, Ludhiana where he remained admitted during three intervals from 09.09.1997 to 18.09.1997, 08.10.1997 to 18.10.1997 and 02.11.1997 to 06.11.1997. During his admission at DMC, Ludhiana, he underwent five operations including bone grafting. Permanent disability suffered by him has badly affected his business of *kiryana* shop. The conveyance charges for going to Ludhiana as awarded by the Tribunal are on lower side and nothing was awarded for loss of amenities of life, attendant charges, nutritious diet and future medical expenses.

12. Learned counsel for respondent no. 3-Insurance Company has argued that the accident took place in the year 1997. The Tribunal while computing amount of compensation has liberally allowed compensation as per evidence on record and price index prevailing at that time, which calls for no further enhancement. Though, appellants have suffered disability of different grades but there is nothing on record that these disabilities have in

13. On giving careful thought to submissions of learned counsel for parties and on perusal of record and the award passed by the Tribunal, I find that in all the three appeals, appellants are entitled to enhancement of compensation. The Tribunal has taken note of the fact that claimant-Virender Kumar suffered communitied fracture of right tibia. He remained admitted in Gupta Nursing Home, Bathinda from 26.04.1997 to 14.07.1994. During this period a fixator was applied on his leg and operation was performed and thereafter plaster was applied. Pus developed in his leg and he was taken to DMC Hospital, Ludhiana for further treatment, where he remained admitted during different durations as follows:-

- (i) From 17.12.1997 to 30.12.1997
- (ii) From 22.02.1998 to 28.02.1998
- (iii) From 22.06.1998 to 17.08.1998
- (iv) From 14.10.1998 to 02.11.1998

14. During his admission in DMC, Ludhiana, bone of his leg was removed and grafting of bone was done. During his last admission bone grafting was done and in all he had to undergo five operations. Every time he had to go to Ludhiana in taxi and thereby spent huge amount of conveyance charges.

15. From the evidence on record, I find that the Tribunal has though taken a pragmatic view about award of compensation under conventional heads but it has not considered the grant of compensation to Virender Kumar, who was a young boy of 19 years for the loss of his marriage prospects, attendant charges, future medical expenses and loss of amenities of life.

16. Appellant-Makhan Lal had also remained admitted in Gupta Nursing Home from 26.04.1997 to 17.05.1997 and suffered 10% permanent disability while appellant-Som Nath remained admitted in Gupta Nursing

Home, Bathinda from 26.04.1997 to 14.07.1997 and for different durations in DMC, Ludhiana as observed by the Tribunal and also referred by learned counsel for appellants .

17. A person, who has to go from Dabwali to Ludhiana covering a distance of about 200 kilometers, has to spend on transportation and also requires one or two attendants to take care of him. For the injuries of the nature of fracture suffered by appellants, they require continuous medical care, physiotherapy etc. but the Tribunal has not awarded any compensation to meet future medical expenses. To neither of claimants the Tribunal has allowed any compensation towards loss of amenities of life and compensation awarded to Virender Kumar and Mohan Lal appellants for nutritious diet, clubbed with medical expenses, is also deficient.

18. The accident took place in the year 1997 i.e. about 19 years back. Instead of assessing the compensation under all the above conventional heads separately, it will be appropriate to enhance compensation in lump sum. Consequently, compensation of ₹5,21,000/- awarded by the Tribunal to appellant-Virender Kumar is enhanced to ₹6,50,000/- and of Makhan Lal from ₹82,000/- to ₹1,25,000/- and of Som Nath from ₹1,96,000/- to 2,50,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petitions till actual realization. Respondent No. 3 being insurer of the offending vehicle will deposit the enhanced amount of compensation in bank accounts of claimants-appellants or pay the same through demand drafts.

**July 08, 2016**  
jk

**( SURINDER GUPTA )**  
**JUDGE**