

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

FAO No. 4052 of 2003 (O&M)

Date of decision: 27.01.2016

Jarnail Singh

... Appellant

versus

Ajjan Lal and others

.... Respondent

2. FAO No. 4053 of 2003 (O&M)

Dallel Singh

... Appellant

versus

Ajjan Lal and others

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. A.P. Bhandari, Advocate for the appellant.

Mr. R.K. Bashamboo, Advocate for respondent No.3.

Ms. Richa Mittal, Advocate for

Mr. R.C. Gupta, Advocate for respondent No.6.

K.Kannan, J. (ORAL)

Both the appeals are at the instance of the claimants seeking for additional sum in FAO No. 4052 of 2003 and for grant of award which was dismissed in FAO No. 4053 of 2003. The accident had taken place, when the claimant in FAO No. 4053 2003 was driving the insured's vehicle dashed against the vehicle going ahead of him. The

claimant in FAO No. 4052 of 2003 was a cleaner in the vehicle.

The claimant in FAO No. 4052 of 2003 had suffered an amputation of leg. He was 30 years of age and the Tribunal took his income at Rs. 3,000/- and assessed the compensation at Rs. 1, 89, 039/- provided Rs. 30,000/- for disability but made no assessment for loss of earning capacity. It had provided for the medical expenses in full and also provided for special diet, attendant charges and transportation for the period of hospitalization for a month.

I find the assessment to be grossly inadequate. The component of pain and suffering assessed is low and the Tribunal had failed to note that a person who had lost his leg at 30 years of age not merely lost the amenities of life but had suffered loss of earning capacity which ought to have been assessed at the same percentage as disability was assessed namely at 75%. There ought to be some provision also for future medical expenses, such as prosthesis with regular replacements. The various heads of claim are tabulated as under:

<u>Injury Case</u>	Date of accident 17.10.1999		
Age	30		
Period of hospitalization	19.10.1999 to 19.11.1999		
Occupation/ Income	Cleaner		
SR. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
1	Loss of Income from:	3,000/-	3,000/-

	to:		
2.	Medical Expenses:	19,039/-	
	(i) Medicines	20,000/-	20,000/-
	(ii)Hospital charges		
	(iii)Attendant charges		
	(iv)Special diet		
	(v)Transportation		
3	Pain and suffering	20,000/-	75,000/-
4	Disability (70%)	1,30,000/-	1,30,000/-
5	Loss of earning capacity		
	(i)Income		3000/-
	(ii)Multiplier	17	17
	(iii) 70 % of loss of earning capacity		2100 x 12 x 17 4,28,400/-
7.	Reduction in life expectancy		25,000/-
8.	Loss of prospect of marriage		-
9.	Future medical expenses		50,000/-
10.	Total	1,89,039	7,28,400/-

The total compensation will be Rs. 7,28,400/- and the amount shall stand enhanced with interest at 7.5% from the date of the petition till the date of payment. The liability shall be on the Insurance Company. The award is modified and FAO No. 4052 of 2003 is allowed.

In FAO No. 4053 of 2003, the petition was dismissed because the Tribunal had held that he was himself responsible for the accident. He was admittedly a paid driver and there is a compulsory

statutory coverage as an employee under the Employees Compensation Act 1923 in terms of Section 147 of the Motor Vehicles Act. No part of the compensation can be abated for his own negligence and I will assess the compensation taking the income at Rs. 3,000/- and applying the formula as prescribed under the Compensation Act which makes possible the assessment in terms of Section 4 of the Employees Compensation Act. He was said to have 21% disability which was found to be permanent. It was a fracture of the lower limb and the disability I would take as merely a disability which could have functionally impaired his movements but still not disable him to work as a driver all times in future. For the inconvenience and difficulty, I would assess the loss of earning capacity at 10% and determine the compensation. He was 30 years of age and the factor provided under the Employees Compensation Act is 207.98. The 60% salary amended by Act 30 & 48 of 1995 Rs. 1,800/- shall be multiplied by 207.968 and 10% applied thereon ($3000 \times 60/100 \times 207.98 \times 10\%$) that comes to Rs. 37,436.40 This shall be the compensation with interest @ 12% as provided under the Workmen Compensation Act. The liability shall be on the Insurer.

FAO No. 4053 of 2003 is allowed to the above extent.

(K.KANNAN)
JUDGE

27.01.2016

kv