

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1291 of 2004

Date of decision : March 03, 2016

Hari Singh,

..... Appellant

v.

Naresh and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Anil Ghanghas, Advocate
for the appellant.

Mr. Rohit Goswami, Advocate
for Mr. DP Gupta, Advocate
for respondent No.3.

Mr. Manoj Chahal, Advocate
for respondents No.4 and 5.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

This appeal has been filed for enhancement of compensation by the injured-appellant. Brief facts are that on 13.5.1999, the injured-appellant was coming to Bhiwani from village Rasiwas in a jeep and was sitting on the rear seat. The said jeep stopped near the bus stand of Pehladgarh to alight the passengers and when the passengers were alighting, another jeep, being driven by respondent No.1, came from the back side from Dadri and struck against the jeep in which the appellant and other

passengers were sitting. As a result of this accident, the appellant and the other occupants received injuries.

The Tribunal held respondent No.1, driver of the offending jeep, responsible for causing the accident, and awarded a sum of ₹ 70,000/- for pain and suffering, medical expenses, and for loss of income.

Counsel for the appellant has argued that there was disability of 12% because there was crush injury on the right foot. As per him, a sum of ₹ 12,000/- had to be granted on account of 12% disability, and there were medical expenses of ₹ 4685/- also. Apart from that, the appellant was hospitalized for 47 days.

These facts are not denied by counsel for the Insurance Company.

In the circumstances, I award a sum of ₹ 30,000/- for medical expenses and on account of disability. I further grant ₹ 20,000/- for pain and suffering.

As regards the loss of earning, counsel for the appellant has argued that the appellant was a driver and had shown his salary ₹ 6000/- per month. On the other hand, counsel for the respondent has pointed out and rightly so that it has not been proved that the appellant was a driver or that he was getting ₹ 6000/- per month since the person who had employed the appellant was not brought into the witness box. He, however, submits that the appellant did have heavy motor vehicle driving licence.

In the circumstances, the appellant would have to be held to be a skilled worker and as per relevant notification of the State of Haryana, salary of a skilled worker was ₹ 1800/- per month in the year 1999.

Counsel for the appellant has further argued that with this 12%

disability in the right foot, the functional disability of the appellant could have been 100% since he could not work as a driver.

Counsel for the respondent on the other hand has argued that even though 12% disability in the right foot may cause some trouble yet it cannot be held that the person is 100% functional disabled to do the job of a driver, and states that this functional disability could not be more than 12% which is given on the medical certificate.

In my opinion, arguments of both the counsel are too extreme. In the circumstances, I deem it appropriate to assess the functional disability as 20%. Considering that his income was ₹ 1800/- per month, loss of earning would be ₹ 360/- per month, and suitable multiplier in the present case would be 16. Ordered accordingly. Enhanced amount would carry interest @ 8% pa from the date of application till the date of payment.

This appeal stands disposed of in the above terms.

(AJAY TEWARI)
JUDGE

March 03, 2016
`kk'