

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

**FAO No.4892 of 2003.**

**Date of Decision: 24.02.2016.**

Veerpal and another

....Appellants.

VERSUS

Subhash and another

....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Mr. Saurabh Singla, Advocate for  
Mr. Sandeep Jasuja, Advocate for the appellants.

Mr. Gopal Mittal, Advocate for respondent No.2.

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**SNEH PRASHAR, J.**

This appeal for enhancement of compensation was filed by appellants Veerpal and Kamal Singh assailing the award dated 06.06.2003 passed by Motor Accident Claims Tribunal, Gurgaon (for short, “the Tribunal”) in MACT Case No.148 of 1999.

Appellants Veerpal and Kamal Singh alongwith one Sanjay Kumar filed a joint petition under Section 166 of the Act of 1988 claiming compensation on account of injuries suffered by them in a motor vehicular accident during which their scooter was hit by tractor bearing registration

No.HR-26G-6582 (hereinafter referred as to “the offending tractor”) being driven in a rash, negligent manner and high speed by its driver-owner Subhash (respondent No.1). The petition was allowed by the learned Tribunal and an amount of Rs.43,000/- to claimant Veerpal and Rs.1,95,000/- to claimant Kamal Singh alongwith interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount was awarded as compensation.

Feeling unsatisfied with the award dated 06.06.2003, the appellants preferred the instant appeal.

The submissions made by Mr. Saurabh Singla, learned counsel for the appellants and Mr. Gopal Mittal, learned counsel for respondent No.2-insurance company have been heard and record perused.

Learned counsel for the appellants-claimants argued that claimant Veerpal suffered fracture of femur shaft. He remained hospitalized for ten days and continued to take follow up treatment for almost one year. He spent Rs.50,000-60,000/- on his treatment and suffered disability to the extent of 3%. He was running a milk dairy and was earning Rs.5000/- per month but learned Tribunal wrongly assessed his income as Rs.2000/- only and awarded compensation for loss of earning capacity to the extent of Rs.13000/- only. The total medical bills produced by the claimant were also not taken into consideration and the amount of Rs.5000/- awarded under the head of transportation and special diet was inadequate.

As regards claimant Kamal Singh, learned counsel asserted that besides the compensation awarded on account of pain and suffering,

transportation and special diet being inadequate, learned Tribunal assessing income of the claimant as Rs.2000/- only awarded Rs.1 lac under the head of loss of future earning capacity whereas the disability suffered by claimant Kamal Singh was assessed as 35%.

Controverting the arguments of learned counsel for the appellants, learned counsel for the respondent-insurance company submitted that the amount awarded as compensation by the Tribunal was just and appropriate.

The medico legal report Ex.P46 of appellant Veerpal proves that he suffered an injury in his right thigh and was referred to Orthopaedic Surgeon for further management. The photostat copy of the prescription slip Mark-C issued by Sethi Hospital affirms that the appellant had suffered fracture femur shaft. As per the bill Ex.P26 raised by Sethi Hospital, he remained hospitalized w.e.f. 14.05.1999 to 24.05.1999 and was operated upon on 18.05.1999. The bill is of Rs.15,710/-. The other bills produced Ex.P27 to Ex.P33 produced are of an amount of Rs.940/-. Exhibits P34 to P42 relate to the history sheet/treatment. Learned Tribunal referred to the bill Ex.P3 of Sethi Hospital and observed that it seems to be inflated but the said bill pertains to the other injured-claimant namely Kamal Singh and not to appellant Veerpal. As already observed, the bills Ex.P27 to Ex.P33 are of Rs.940/-. Accordingly, amount of Rs.17,000/- awarded by learned Tribunal on account of expenditure on treatment, medicines etc. to appellant Veerpal is adequate and calls for no intervention.

An amount of Rs.8,000/- was allowed by the learned Tribunal

for the pain and suffering undergone by appellant Veerpal. Considering the nature of the injuries suffered by him, the said amount is enhanced to Rs.15,000/-. The amount of Rs.5,000/- allowed for expenditure on transportation and special diet is enhanced to Rs.10,000/-.

The appellant was examined by Board of Doctors of Faridabad and as per the certificate Ex.P3 his disability on account of fracture of femur shaft (left) was assessed as 3%. It was not mentioned in the certificate that the disability was permanent and there was no likelihood of improvement. According to the appellant he was running a milk dairy. Though he did not produce any substantive evidence to support his version yet even if he is accepted to be a milk dairy owner, the disability is not likely to cause any loss in his earning capacity. Anyhow the amount of Rs.13,000/- awarded for the disability suffered by the appellant is enhanced to Rs.16,000/- for the reason that to some extent he will suffer loss in enjoyment of immunities of life on account of the disability suffered by him.

Learned Tribunal noticed that appellant Kamal Singh suffered three fractures in his leg and one fracture in his shoulder during the accident. He remained hospitalized for ten days. The amount of Rs.50,000/- awarded to him on account of pain and suffering calls for no intervention but the amount of Rs.10,000/- awarded under the head of transportation and special diet is enhanced to Rs.20,000/- as during the period of hospitalization even if the appellant was being taken care of by his family members they must have spent good amount on their transportation,

boarding and lodging.

PW5 Dr. Subhash Chander Manchanda, being a member of the Board of Doctors who examined appellant Kamal Singh on 23.01.2012, proved the disability certificate Ex.P4 and stated that due to post traumatic stiff knee (left side) the disability of the appellant was assessed as 25%. He admitted in his cross-examination that the disability was qua left limb which means that the functional disability qua whole body was not more than 10%. It is only to that extent that the disability is likely to effect his earning capacity. The appellant at the time of accident was 22 years old. His income was assessed as Rs.2000/- per month whereas he stated that he was running a dairy and was earning Rs.5000/- per month. 10% of Rs.5000/- comes to Rs.500/-. The annual loss will be  $\text{Rs.500} \times 12 = \text{Rs.6,000/-}$ . Applying the multiplier of '18' the amount comes to Rs.1,08,000/- which is allowed to claimant Kamal Singh on account of loss of earning capacity in future.

Accordingly, the appeal filed by appellants-claimants is partly allowed and the award dated 06.06.2003 passed by the Tribunal is modified. Appellant-claimant Veerpal is held entitled to enhanced compensation of Rs.15,000/- in addition to the amount awarded by the Tribunal and appellant-claimant Kamal Singh is allowed enhanced compensation of Rs.18,000/- in addition to the amount awarded by the Tribunal. The enhanced amount of compensation shall be deposited by respondent No.2- insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants 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. The recovery right given by the Tribunal to respondent No.2-insurance company shall remain as it is.

**(SNEH PRASHAR)**  
**JUDGE**

**24.02.2016.**  
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