

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

(1)

**FAO No.2264 of 2005
Date of decision : 08.02.2016**

Shano Devi

.....Appellant

Versus

Tara Bahadur and others

...Respondents

AND

(2)

**FAO No.2265 of 2005
Date of decision : 08.02.2016**

Chuni Ram @ Chunni Lal

.....Appellant

Versus

Tara Bahadur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Ms. Amandeep Kaur, Advocate for
Mr. Ashwani Arora, Advocate for appellants
in both the appeals.

Mr. R.C. Kapoor, Advocate for respondent No.3
in both the appeals.

DARSHAN SINGH, J.

This judgment shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 28.02.2005, passed by learned Motor Accidents Claims Tribunal, Chandigarh.

2. As per the case of the appellants-claimants on 08.04.2003 at about 10:30 a.m., appellant-claimant Chuni Ram alias Chunni Lal appellant of FAO No.2265 of 2005 was driving scooter No.CHJ-200 while proceeding towards Zirakpur from Tribune Chowk, Chandigarh. Appellant-claimant Shano Devi of FAO No.2264 of 2005 was pillion-rider on the said scooter. When they reached near Hallomajra Chowk, a car bearing registration No.CH-03C-3079 hit their scooter from behind. The said car was being driven rashly and negligently by respondent No.1 Tara Bahadur. As a result of which both the appellants suffered injuries.

3. Appellant-claimant Shano Devi claimed the compensation to the tune of Rs.5,00,000/- along with interest and claimant Chuni Ram alias Chunni Lal claimed the compensation to the tune of Rs.10,00,000/-.

4. The aforesaid claim petitions filed by the appellants were contested by respondent No.3-New India Assurance Company Ltd.

5. Learned Tribunal awarded the compensation to the tune of Rs.60,000/- to appellant-claimant Shano Devi and Rs.1,05,000/- to appellant-claimant Chuni Ram alias Chunni Lal.

6. Dissatisfied with the aforesaid amount of compensation, both the appellants have preferred this appeal.

7. I have heard Ms. Amandeep Kaur, Advocate for Mr. Ashwani Arora, Advocate, learned counsel for the appellants in both the

appeals, Mr. R.C. Kapoor, Advocate for respondent No.3 in both the appeals and gone through the paper-book carefully.

8. Learned counsel for the appellants contended that appellant Shano Devi has suffered 36% permanent disability qua upper limb but the learned Tribunal has not properly assessed the amount of compensation and very less amount of compensation has been awarded. She further contended that similarly appellant Chuni Ram alias Chunni Lal has suffered 15% disability. He has been awarded only Rs.15,000/- as compensation towards permanent disability in lump sum. Thus, she contended that the mode of calculation of the compensation was not in accordance with law and the just and appropriate compensation has not been awarded.

9. On the other hand, learned counsel for the respondent-Insurance Company contended that the appellant claimant Shano Devi was only a housewife. The disability suffered by her was only qua particular limb and not qua whole body. Similar is the position in case of Chuni Ram. Thus, he contended that learned Tribunal has awarded the just and appropriate compensation under all the heads.

10. I have duly considered the aforesaid contentions.

11. Firstly, I take up the case of appellant-claimant Shano Devi. She has been awarded a total sum of Rs.60,000/- on account of the injuries suffered by him. Appellant-claimant Shano Devi is the housewife. Her age was about 32 years at the time of the accident. She suffered fracture in her right upper limb in addition to other injuries on her body. Ex.P40 is the disability certificate wherein her permanent

physical disability has been assessed as 36% with respect to the right upper limb. The learned Tribunal has awarded a sum of Rs.35,000/- as compensation towards medical treatment, special diet, transportation as well as permanent disability. He has not awarded the compensation separately under all the heads. That was not the correct way to assess the compensation.

12. This fact is not disputed that the claimant has not placed on record any bill or receipt to establish the treatment charges but at the same time, this fact is not disputed that she remained hospitalized for two days. She has suffered the fracture, so she must have obtained the treatment for the injuries suffered by her. So, in my opinion she will be entitled to a sum of Rs.11,000/- towards medical and treatment charges.

13. As the claimant has suffered the fracture, she must have needed special diet, so she will be entitled to a sum of Rs.4000/- towards special diet. She was taken to hospital and even thereafter she must have to go to the hospital for follow up treatment. So, she will be entitled to a sum of Rs.2400/- towards transportation charges.

14. The claimant has suffered 36% disability as per the disability certificate Ex.P40. The Hon'ble Supreme Court in case ***Raj Kumar Vs. Ajay Kumar and another 2011 ACJ 1*** has laid down that future loss of earning cannot be assessed on the basis of percentage of the permanent disability but that has to be assessed on the basis of percentage of functional disability i.e. effect or impact of such permanent disability on his earning capacity. In that case the claimant has suffered 45% permanent disability but the Hon'ble Apex Court has considered the

permanent functional disability to the extent of 25% and loss of future earning capacity as 20%. In the instant case claimant Shano Devi is a housewife. The learned Tribunal has assessed her notional income between Rs.2500/- to Rs.3000/-. We can take into consideration her notional income to be Rs.3000/- per month in order to compute the compensation on account of permanent disability. As the claimant was only a housewife having no income and only her notional income has been taken into consideration, so, in my opinion due to the permanent disability she must have suffered the loss of the notional income to the extent of 10%. So, the monthly loss comes to Rs.300/- and the annual loss comes to Rs.3600/-. She was of 32 years of age at the time of the accident. So, the multiplier of 16 shall be applicable. So, the amount of compensation under this head comes to Rs.57,600/-.

15. No interference is warranted to the compensation awarded under the other heads. So, now the compensation to claimant Shano Devi shall be as under : -

1.	Medical treatment	-	11,000/-
2.	Special diet	-	4000/-
3.	Transportation	-	2400/-
4.	Permanent disability	-	57,600/-
5.	Loss of income	-	8000/-
6.	Pain and sufferings and mental agony	-	17000/-
7.	Total	-	1,00,000/-

16. Now we take up the case of appellant-claimant Chuni Ram alias Chunni Lal. He was 35 years of age at the time of the accident and was working a cart-puller. The learned Tribunal has taken his income

at the rate of Rs.3000/- per month. He has suffered 15% permanent disability with respect to the right lower limb. As the claimant was working as a cart-puller, he has suffered the disability of the right lower limb which will badly affect his physical efficiency to pull the cart. So, the functional disability of the claimant and the consequential impact/effect of his earning capacity shall be 10% of his income i.e. Rs.300/- per month and Rs.3600/- per annum. At the time of the accident, he was about 35 years of age. The claimant has not led any definite evidence about his age. So, the multiplier of 15 shall be applicable. So, the amount of compensation on account of disability comes to Rs.54,000/- (3600 x 15). The total amount of compensation payable to claimant Chuni Ram alias Chunni Lal appellant is worked out as under:-

1.	Medical and treatment charges	-	30,000/- (as assessed by the learned Tribunal)
2.	Permanent disability	-	54,000/-
3.	Loss of income	-	25,000/- (as assessed by the learned Tribunal)
4.	Special diet	-	12,000/- (as assessed by the learned Tribunal)
5.	Transportation	-	5000/- (as assessed by the learned Tribunal)
6.	Pain and sufferings	-	18000/- (as assessed by the learned Tribunal)
7.	Total	-	1,44,000/-

17. Thus, keeping in view my aforesaid discussion both the appeals are hereby partly allowed. The compensation awarded to appellant claimant Shano Devi in FAO No.2264 of 2005 is hereby increased from Rs.60,000/- to Rs.1,00,000/- and the compensation

awarded to Chuni Ram alias Chunni Lal appellant in FAO No.2265 of 2005 is increased from Rs.1,05,000/- to Rs.1,44,000/-. The appellant shall be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realization. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

08.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**