

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

FAO No. 343 of 2006 (O&M)

Date of decision : 03.06.2016

Main Pal

.....Appellant

Versus

Dayanand and others

....Respondents

FAO No. 344 of 2006 (O&M)

Diwan Singh

....Appellant

versus

Dayanand and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Naren Pratap Singh, Advocate
for the appellant.

Mr. R.C. Kapoor, Advocate
for respondent No. 3.

LISA GILL, J.

This order shall dispose of FAO Nos. 343 and 344 of 2006 as they both arise out of common award dated 20.10.2005 passed by the learned Motor Accident Claims Tribunal (Fast Track Court), Bhiwani (hereinafter referred to as the 'Tribunal').

Appellants, Main Pal in FAO No. 343 of 2006 and Diwan

Singh in FAO No. 344 of 2006, pray for enhancement of

compensation awarded to them on account of injuries sustained by them in the accident, which took place on 26.01.2001. There is no dispute about the appellants' receiving injuries in the accident, which took place on 26.01.2001, when they were travelling in Tanker No. DL-1G-A/9514 to Chappar Ranghran, Tehsil Tosham, District Bhiwani. When they reached near Government High School, Bapora a Dumper No. HR-46/7889 approached from Tosham side at a very high speed, driven in a rash and negligent manner by its driver Dayanand and struck against the tanker pushing it to the right side. The tanker turned turtle on the side of the road. The injured were taken to General Hospital, Bhiwani and were medically examined. FIR No. 44 dated 26.01.2004 was registered against the respondent-driver, Dayanand.

The appellants preferred claim petitions under Section 166 of Motor Vehicles Act claiming compensation for the injuries suffered by them in the abovesaid accident.

The claim was resisted by the respondents and the following issues were framed by the learned Tribunal on the basis of the pleadings of the parties :-

1. Whether the accident had taken place on 26.01.2001 due to rash and negligent driving of Dumphar No. HR-46/7889 by respondent No. 1? OPP.
2. To what amount of compensation, the petitioner is entitled and if so from whom? OPP.
3. Whether respondents are not entitled to pay compensation in view of the objections raised by them in their respective written statements? OPR.
4. Relief.

The learned Tribunal on considering the facts and circumstances of the case held that the accident in question took place on 26.01.2001 because of the rash and negligent driving of the offending tanker by its driver - Dayanand and the claimants sustained injuries in this accident. This finding is informed to have attained finality.

Appellant - Main Pal was awarded a sum of ₹15000/- i.e. ₹10,000/- on account of fracture, pain and suffering. ₹2000/- for special diet and conveyance charges and ₹3000/- for medical expenses.

Appellant – Diwan Singh was awarded a sum of ₹10,000/- i.e. ₹4,000/- on account of pain and suffering. ₹2000/- for special diet and conveyance charges and ₹4000/- for medical expenses.

Learned counsel for the appellants pray for enhancement of compensation awarded to the appellants on account of injuries suffered by them.

I have heard learned counsel for the parties and have gone through the file. It is to be noted that the record of this case is not available as it was burnt in fire which occurred in January, 2011. Learned counsel for the parties also express their inability to produce the same.

FAO No. 343 of 2006

Appellant - Main Pal suffered a fracture of the right tibia as per treatment chart Ex. P6 and he remained hospitalised for a day i.e. from 26.01.2001 to 27.01.2001. He thereafter received outdoor patient treatment from PGIMS, Rohtak as reflected in Exs. P3, P4

and P5. It is observed that bills regarding medical expenditure were not produced.

Learned counsel for the appellant submits that a meagre amount has been awarded to the appellant who necessarily suffered a loss of income as well because he was immobilised due to fracture of right tibia. Appellant - Main Pal did not suffer any permanent disability. Learned counsel for the appellant has submitted that the appellant is an agriculturist and has suffered loss of income for the said period. It cannot be denied that a person, who has suffered a fracture of the right tibia would not be able to attend his normal duties for atleast a period of three months. There is no evidence on record about the income, which appellant – Main Pal might be earning. Therefore, it would be appropriate to assess the appellant's income to be that of daily wager in the year 2001, which was approximately ₹2000/-. A sum of ₹6000/- is, thus, awarded on account of loss of income (₹2000 x 3). The appellant is entitled to a sum of ₹15,000/- on account of pain and suffering instead of ₹10,000/-. Medical expenses assessed at ₹3000/- by the learned Tribunal are maintained while awarding a sum of ₹5000/- on account of special diet, attendant charges and transportation instead of ₹2000/-. The appellant is entitled to a sum of ₹29,000/- instead of ₹15,000/- as awarded by the learned Tribunal.

Amount of compensation already awarded to the appellant shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 6.5% per cent per annum from the date of filing of the petition till realization.

FAO No. 344 of 2006

It is mentioned in the impugned award that as per Medico Legal Report Ex. P7, the appellant suffered three injuries. However, there is no record from which the nature and extent of injuries can be ascertained. The appellant remained admitted in the hospital at the first instance from 26.01.2001 to 30.01.2001 and was admitted again due to the injuries on 07.02.2001 till 12.02.2001. Appellant - Diwan Singh did not suffer any permanent disability and there is nothing to indicate loss of income on this account. As per the x-ray report, Ex.P14, he did not suffer any fracture. In the facts and circumstances of the case, the appellant is entitled to a sum of ₹10,000/- on account of pain and suffering instead of ₹4,000/- as awarded by the learned Tribunal. The appellant would also be entitled to a sum of ₹5,000/- on account of special diet, attendant and conveyance charges instead of ₹2,000/-. Medical bills to the tune of ₹240/- only (Ex.P9 to Ex.P13) have been proved on record. Keeping in view the fact that there is no evidence on record to show any amount higher than ₹4000/- as awarded by the learned Tribunal on medical expenses, the same is maintained. Appellant – Diwan Singh is, thus, entitled to a sum of ₹19,000/- instead of ₹10,000/- as awarded by the learned Tribunal.

Amount of compensation already awarded to the appellants shall stand deducted from the amount calculated as above. Appellant shall be entitled to interest at the rate of 6.5% per cent per annum from the date of filing of the petition till realization.

With the abovesaid modification in the amount of compensation, both the appeals are partly allowed.

June 03, 2016
rts

(Lisa Gill)
Judge