

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

Date of Decision: 05.05.2016.

FAO No.4786 of 2011

Dharam Pal son of Ramji Lal

....Appellant.

VERSUS

Deva Nand and others

....Respondents.

WITH

FAO No.4787 of 2011

Dharam Pal son of Kundan Singh

....Appellant.

VERSUS

Deva Nand and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Anand Kumar Bishnoi, Advocate for the appellants.

Mr. Gaurav Verma, Advocate for respondents No.1 to 3.

Mr. Rajbir Singh, Advocate for respondent No.4.

SNEH PRASHAR, J.

The above captioned two first appeals had arisen from an award dated 04.02.2011 passed by learned Motor Accident Claims Tribunal, Karnal (for short, "the Tribunal") in MACT Case Nos.50 and 51

of 2009 by virtue of which claimants-appellants Dharam Pal son of Ramji Lal and Dharam Pal son of Kundan Singh were awarded compensation for having suffered injuries in a motor accident. Both the appeals shall stand disposed of by this common judgment.

The facts are that on 08.10.2008 at about 7:30 p.m., claimants-appellants Dharam Pal son of Ramji Lal and Dharam Pal son of Kundan Singh were going from Kurukshetra to Karnal by means of car bearing registration No.HR-05V-5691. When they reached near village Kadargarh, a tractor-trolley bearing registration No.HR-05K-5691 (hereinafter referred to as “the tractor-trolley”) being driven rashly, negligently and in a high speed by respondent No.1-Deva Nand, came from opposite side and struck against their car. As a result of accident, the claimants-appellants sustained injuries.

A First Information Report No.228 dated 10.10.2008 under Sections 279, 337 and 338 of the Indian Penal Code in respect of the accident was registered against respondent No.1 at Police Station Indri.

Appellants-claimants filed two separate claim petitions under the provisions of Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation by impleading driver, owner and insurer of the offending tractor-trolley as respondents.

The respondents contested the petitions but considering the evidence adduced by the parties, learned Tribunal allowed both the petitions and awarded compensation to the tune of Rs.2,24,128/- to claimant-Dharam Pal son of Kundan Singh and Rs.8,53,262/- to claimant-Dharam Pal son of

Ramji Lal holding all the respondents jointly and severally liable to pay compensation alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization.

Feeling dissatisfied with the quantum of compensation, appellants-claimants preferred these appeals.

The submissions made by learned counsel for the parties have been heard and record perused.

FAO-4786-2011

Learned counsel for the appellant argued that the appellant sustained multiple grievous injuries on various parts of the body namely (i) multiple fractures of ribs, (ii) severe lung injury with respiratory distress, (iii) bilateral hemothorax, (iv) generalized surgical emphysema, (v) fracture mandible, (vi) comminuted sub trochentric fracture left femur, (vii) fracture left patella, (viii) fracture tibial platean (left), (ix) fracture shaft femur (right), (x) comminuted tibial platean fracture (right) and (xi) anterior barton fracture right lower and radius. He remained hospitalized w.e.f. 09.10.2008 to 01.12.2008 at Apollo Hospital, Delhi and then from 01.12.2008 to 29.12.2008 at P.G.I.M.S., Rohtak and during this period he was operated upon several times. He spent approximately Rs.50,00,000/- on his treatment. However, learned Tribunal awarded only a sum of Rs.6,63,000/- and Rs.76,262/- towards treatment and medicine charges. Due to the injuries sustained in the accident, he has become permanently disabled to the extent of 42%, but learned Tribunal awarded only Rs.84,000/- under this head. Nothing was awarded to the appellant on

account of loss of income and the pain and suffering undergone by him. The amount of Rs.30,000/- awarded under the heads of hospitalization, special diet, attendant and transportation is also on the lower side.

Indeed, the appellant remained hospitalized for more than two and half months firstly at Delhi and then at Rohtak and during this period he was operated upon several times. The amount of Rs.30,000/- awarded on account of hospitalization, special diet, attendant and transportation and Rs.6,63,000/- allowed towards medical expenses and Rs.76,262/- against bills Ex.P10, Ex.P11, Ex.P29 to Ex.P32 and Ex.P194 to Ex.P205 need no modification. However, in addition to expenditure on his own transportation, the appellant must have spent some amount on the transportation and boarding-lodging of his family members who were attending on him during the period of his hospitalization. As such, an amount of Rs.10,000/- is awarded under the said head,

As regards the disability to the extent of 42% suffered by the appellant, learned Tribunal rightly awarded Rs.84,000/- which is just and adequate. The appellant himself admitted during his evidence that he is getting Rs.23,000/- as pension. No evidence was led by the appellant to prove that in addition to the pension he had some other source of income also. Since he continued to receive pension during the period of hospitalization, he suffered no loss of income. But for loss of enjoyment of amenities in life, a further amount of Rs.30,000/- is allowed to him.

The appellant suffered multiple grievous injuries and remained hospitalized from 09.10.2008 to 01.12.2008 and 01.12.2008 to 29.12.2008.

Considering the nature of injuries suffered by him and the period of his hospitalization, an amount of Rs.50,000/- is awarded to the appellant for the pain and suffering undergone by him.

In the above premise, the appellant-Dharam Pal son of Ramji Lal is held entitled to enhanced compensation of Rs.90,000/-.

FAO-4787-2011

Learned counsel for the appellant argued that the appellant sustained multiple grievous injuries on various parts of the body including fractures left pelvis, shaft femur and knee cap etc. He remained hospitalized w.e.f. 08.10.2008 to 11.10.2008 at Haryana Nursing Home, Karnal. He also took treatment from various other doctors and spent a huge amount on his treatment. However, learned Tribunal awarded only a sum of Rs.1,77,497, Rs.4807 and Rs.9824/- towards treatment and medicine charges. Due to the injuries sustained in the accident, he has become permanently disabled to the extent of 15%, but learned Tribunal awarded only Rs.30,000/- under this head. Nothing was awarded to the appellant on account of loss of income. The amount of Rs.2,000/- awarded under the heads of hospitalization, special diet and attendant is also on the lower side and nothing was awarded the appellant on account of pain and suffering undergone by him.

Indeed, the appellant remained hospitalized w.e.f. 08.10.2008 to 11.10.2008 at Haryana Nursing Home, Karnal and during this period he was operated upon. He suffered multiple grievous injuries. Considering the nature of injuries suffered by him and the period of his hospitalization, an amount of Rs.30,000/- is awarded to him for the pain and suffering

undergone by him. In addition to expenditure on his own transportation, the appellant must have spent some amount on the transportation and boarding-lodging of his family members who were attending on him during the period of his hospitalization, therefore, the amount of Rs.2,000/- awarded on account of hospitalization, special diet and attendant is enhanced to Rs.15,000/-. The amount Rs.1,77,497, Rs.4807 and Rs.9824/- allowed by learned Tribunal against bills Ex.P144 to Ex.P159, Ex.P183 to Ex.P193 and Ex.P182, towards treatment and medicine charges needs no modification.

As regards disability to the extent of 15% suffered by the appellant, learned Tribunal rightly awarded Rs.30,000/- which is just and adequate. The appellant had retired as Branch Manager of Cooperative Bank and to prove his income after retirement from the agricultural land owned by him, he produced acknowledgments Ex.P133, Ex.P134 and Ex.P162 to Ex.P167 of income tax department to support his contention that he was earning Rs.40,000/- per month. Learned Tribunal noted that the father's name of the appellant was missing and his residential address was not shown by him in the present petition. In any case, from the documents it transpired that the agricultural income of the appellant for the assessment year 2010-2011 i.e. after filing the petition was Rs.4,90,000/- whereas in the year 2009-2010 it was Rs.3,50,000/- and in the year 2008-2009 it was Rs.3,20,000/-. Meaning thereby that the income was increasing every year. The appellant with his hard work may be multiplying his income every year but the fact is that he remained under treatment and might have engaged some person to look after the agricultural pursuit. Assessing the payment

made by him in that regard as Rs.5000/- per month and assuming that he may have remained confined to bed for atleast five months for recovery, an amount of Rs.25,000/- is awarded to him on account of loss in income. For loss of enjoyment of amenities in life, a further amount of Rs.20,000/- is allowed to him.

In the above premise, the appellant-Dharam Pal son of Kundan Singh is held entitled to enhanced compensation of Rs.88,000/-. The rate of interest allowed by learned Tribunal shall remain the same.

Accordingly, both the appeals filed by appellants are partly allowed and the award dated 04.02.2011 passed by learned Tribunal is modified. The enhanced amount of compensation shall be paid to the appellants within 45 days from the date of receipt of certified copy of this judgment failing which the appellants 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.

(SNEH PRASHAR)
JUDGE

05.05.2016.

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