

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

(1)

FAO No.4918 of 2011 (O&M)

Date of decision : 23.08.2016

Hoshiar Singh

.....Appellant

Versus

Mohinder Singh Chauhan and others

...Respondents

(2)

FAO No.5899 of 2011 (O&M)

Date of decision : 23.08.2016

Rampal

.....Appellant

Versus

Mohinder Singh Chauhan and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Narender Yadav, Advocate for
appellant in FAO No.4918 of 2011 and for
respondent No.4 in FAO No.5899 of 2011.

Mr. Parmod Parmar, Advocate for
appellant in FAO No.5988 of 2011 and for
respondent No.3 in FAO No.4918 of 2011.

Mr. Manoj Kaushik, Advocate for
respondents No.1 & 2 in both the appeals.

Service of respondent No.4 in in FAO No.4918 of 2011 and
respondent No.3 in FAO No.5899 of 2011
already dispensed with.

DARSHAN SINGH, J.

CM-22452-CII-2011 in
FAO-5899-2011

There is delay of 97 days in filing the FAO No.5899 of 2011. The appellant has filed an application under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay in filing the appeal is hereby condoned.

Main Appeals

This judgment shall dispose of both the appeals mentioned above which have been arisen out of the same award dated 10.03.2011 passed by the learned Motor Accidents Claims Tribunal, Jhajjar (hereinafter called the “Tribunal”) whereby deceased injured Mohinder Singh Chauhan through his legal representatives has been awarded compensation to the tune of Rs.4,65,000/- on account of the injuries suffered by him in the motor vehicular accident which took place on 28.04.2007.

2. FAO No.4918 of 2011 has been filed by Hoshiar Singh, the owner of the offending vehicle and FAO No.5899 of 2011 has been preferred by Rampal the driver of the said vehicle to assail the award.

3. I have heard learned counsel for the parties and gone through the record of the case meticulously.

4. Learned counsel for the appellants contended that Mohinder Singh Chauhan has filed the claim petition under Section 166

of the Motor Vehicles Act, 1988 for grant of compensation on account of the injuries suffered by him in the motor vehicular accident which took place on 28.04.2007. They contended that during the pendency of the claim petition, Mohinder Singh Chauhan has died in another motor vehicular accident on 10.03.2010 and, thereafter his legal representatives were brought on record.

5. They contended that as the claimant had died, the legal representatives of the injured-claimant were only entitled for compensation which was loss of estate. The learned Tribunal was not justified in granting the compensation towards the non-pecuniary losses *i.e.* the compensation on account of grievous injuries, compensation on account of permanent disability and compensation on account of pain and suffering. Thus, they contended that the amount of compensation awarded by the learned Tribunal against law.

6. On the other hand, learned counsel for respondents No.1 & 2 contended that the claimant has suffered serious injuries in this accident. He suffered 40% permanent disability and also spent huge amount on his treatment. He also suffered loss of income. Thus, he contended that the award passed by the learned Tribunal does not call for any interference.

7. I have duly considered the aforesaid contentions.

8. It is an admitted fact that the claim petition was filed by injured Mohinder Singh Chauhan for grant of compensation on account of the injuries suffered by him in the motor vehicular accident which took

place on 28.04.2007. It is also not disputed that during the pendency of the present claim petition said Mohinder Singh Chauhan has died in another motor vehicular accident. So, Mohinder Singh Chauhan, the claimant has died during the pendency of claim petition not due to the injuries received in this accident but on account of another motor vehicular accident and thereafter, the present claim petition was pursued by his legal representatives.

9. In order to determine the amount of compensation to the victim of the accident the Court has to determine the pecuniary and non-pecuniary losses. It is settled principle of law that the compensation on account of personal suffering and disability dies with the claimant. The legal representatives of the claimant can only pursue the claim petition towards loss of estate. Thus, where the claimant dies during the pendency of the claim petition, his legal representatives can survive the claim only with respect to loss of estate.

10. The maxim '*actio personalis moritur cum persona*' relates only to the personal or bodily injuries and not to the loss caused to the estate of the deceased by the tort-feasor. It is only the cause of action in respect of the damages to the estate of the deceased which survives and passes over to his legal representatives. Reference can be made to cases ***Madhuben Maheshbhai Patel Since Decd. Through Heir Vs. Joseph Francis Mewan and another 2015 AAC 2676, Kanhiyalal (deceased) through LRs. Vs. Vishnu Giri and others 2009 ACJ 942, Baby and others Vs. K. Venugopal and others 2009(1) ACC 934 and Ramu (since deceased) through L.R. Vs. H. Ramachandran and another 2007 ACJ***

1588.

11. In view of the aforesaid legal position, the legal representatives of deceased Mohinder Singh Chauhan in this case were entitled only for loss of estate. The learned Tribunal has awarded the compensation as under:-

Sr. No.	Head of compensation	Amount of compensation in rupees
1.	Grievous injuries	40,000
2.	40% permanent disability	2,00,000
3.	Medical and treatment expenses	1,85,000
4.	Special diet, attendant charges and loss of income	20,000
5.	Pain and suffering	20,000
Total		4,65,000

12. The compensation awarded by the learned Tribunal on account of grievous injuries and pain and suffering was purely personal to the deceased claimant. His legal representatives are not entitled to compensation under these heads as these non-pecuniary amounts cannot be stated to be loss of estate.

13. The Tribunal has awarded Rs.2,00,000/- as compensation on account of permanent disability in lump sum without disclosing the criteria adopted by it. Learned counsel for the appellants have stated that claimant Mohinder Singh Chauhan has died in another motor vehicular accident on 10.03.2010. So, he has survived only for three years after this accident. Deceased Mohinder Singh Chauhan was a student of LL.B. 1st year, so he was only a student of law. So, the notional income of the deceased claimant is taken to be Rs.5000/- per month *i.e.* Rs.60,000/- per

annum. He has suffered 40% permanent disability. 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 has suffered total 40% permanent disability. 25% of the disability suffered by him is taken to be the functional disability. So, the loss of earning capacity on account of permanent disability for three years *i.e.* the period for which the claimant survived after the accident, comes to Rs.45,000/-. So, only Rs.45,000/- can be considered to be loss to estate on account of permanent disability suffered by the claimant.

14. Thus, the legal heirs of the deceased claimant shall be entitled to the compensation detailed as under:

Sr. No.	Head of compensation	Amount of compensation in rupees
1.	Medical and treatment expenses	1,85,000
2.	Loss of future earning on account of permanent disability	45,000
3.	Expenditure incurred on special diet, attendant charges and loss of income	20,000
Total		2,50,000

15. Thus, keeping in view my aforesaid discussion, both the appeals are hereby partly allowed. The amount of compensation payable

to the respondents No.1&2-legal representatives of deceased claimant is reduced to Rs.2,50,000/- from Rs.4,65,000/- as awarded by the Tribunal. They shall be entitled to interest on the reduced amount of compensation from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the reduced amount of compensation and apportionment amongst the claimants shall remain as determined by the learned Tribunal in the main award.

23.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No