

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

Date of Decision: 21.03.2016.

FAO No.6702 of 2012 (O&M)

Ram Mehar		Appellant.
	VERSUS	
Ram Kumar and others		Respondents.

WITH

FAO No.6703 of 2012 (O&M)

Dalbir		Appellant.
	VERSUS	
Ram Kumar and others		Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. J.S. Rozera, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate for respondents No.1 and 2.

Mr. S.S. Sidhu, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-32316-CII-2012 in
FAO-6702-2012

Allowed as prayed for.

CM-32317-CII-2012 in
FAO-6702-2012

There being delay of 23 days in filing the appeal, an application under Section 5 of the Limitation Act for condonation of delay

was filed by the appellant.

Considering the averments made in the application, the delay is condoned and the application is disposed of.

CM-32518-CII-2012 in
FAO-6703-2012

Allowed as prayed for.

CM-32520-CII-2012 in
FAO-6703-2012

There being delay of 26 days in filing the appeal, an application under Section 5 of the Limitation Act for condonation of delay was filed by the appellant.

Considering the averments made in the application, the delay is condoned and the application is disposed of.

FAO-6702-6703 of 2012 (O&M)

The above captioned two first appeals had arisen from an award dated 04.06.2012 passed by learned Motor Accident Claims Tribunal, Panipat (for short, “the Tribunal”) in MACT Case Nos.194 and 195 of 2011 by virtue of which claimants-appellants Ram Mehar and Dalbir 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 27.02.2011 at about 12:00 p.m., claimant-Ram Mehar alongwith his nephew Dalbir and niece Seema was going from Panipat to village Khukhrana by means of his Car bearing No.HR-06V-8121. When they reached near G.G.S. Public School at Assandh Road,

Panipat, a car bearing registration No.DL-3CBM-4229 (hereinafter referred to as “the offending car”) being driven rashly, negligently and in a high speed by respondent No.1-Ram Kumar, came and struck against their car. As a result of accident, the claimants-appellants sustained injuries.

First Information Report No.201 dated 28.02.2011 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 Model Town, Panipat.

Appellants-claimants Ram Mehar and Dalbir filed two separate petitions invoking the provisions of 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation by impleading driver, owner and insurer of the offending car 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.1,62,000/- to claimant-Ram Mehar and Rs.13,000/- to claimant-Dalbir holding all the three respondents jointly and severally liable to pay compensation alongwith interest at the rate of 7% 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.

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Learned counsel for the appellant argued that appellant-Ram

Mehar sustained multiple grievous injuries on various parts of the body particularly on chest, right leg and left hip. He remained hospitalized w.e.f. 27.02.2011 to 14.03.2011 firstly at Ravindra Hospital, Panipat and then at Prem Hospital, Panipat and spent approximately Rs.2,00,000/- on his treatment. He is still under treatment and will incur more expenses on the same. Receipts of the hospital charges paid by him and the bills issued against the medicines purchased are Ex.P3, Ex.P7 to Ex.P19, Ex.P23 to Ex.P36 and Ex.P38 to Ex.P75 which are of an amount of Rs.1,36,910. However, learned Tribunal awarded only a consolidated sum of Rs.70,000/- under the head of cost of medicine. From the disability certificate Ex.P37 issued by Board of Doctors of General Hospital, Panipat proved by Dr. Pardeep Kumar, Medical Officer, it is evident that the appellant on account of fracture Acetabulum right side and fracture sub trochanter left side suffered disability to the extent of 19%, but learned Tribunal assessing future loss of earning capacity as 10% awarded only Rs.72,000/- under this head. The amount awarded on account of pain and suffering, transportation and special diet is also on the lower side.

Perusal of the award shows that it was noticed by learned Tribunal that PW1 Dr. Ashutosh Kalra proved the bill Ex.P1 vide which he charged the appellant Rs.10,500/-. PW4 Inder Singh Saini of Saini Medical Hall proved bill Ex.P3 which is for an amount of Rs.21,527/-. The bill Ex.P19 of Rs.63,000/- which includes the amount of bills Ex.P11, Ex.P12, Ex.P14, Ex.P17 and Ex.P49 proved by PW5 Anil Kumar. Another important witness in this regard is PW6 Prem Kumar who proved bills

Ex.P23 to Ex.P36. The total of the bills referred to above comes to Rs.1,21,893/-. The bills Ex.P38 to Ex.P75 of an amount of Rs.15,097/- were simply tendered in evidence by the appellant.

Observing that mere marking of documents as exhibits will not dispense with the formal proof of the same even in the proceedings of summary nature, learned Tribunal rightly did not consider the bills tendered in evidence. However, it can be said without hesitation that against the other bills, referred to above the total of which comes to Rs.1,21,893/-, learned Tribunal erred in awarding a consolidated amount of Rs.70,000/-. The bills were proved by the appellant by examining the concerned witness. For the reason that the bill did not bear signatures of the appellant or because the doctor who treated the appellant had left job of the hospital and could not be examined, the amount paid by the appellant against receipts as hospital charges and bills of medicines duly proved should not have been reduced. Accordingly, the amount of Rs.70,000/- awarded under the head of treatment and costs of medicine is enhanced to Rs.1,22,000/- (to make it round figure).

As regards the disability to the extent of 19% suffered by the appellant, that was not qua the whole body. The functional disability, which would affect the earning capacity of the appellant as he claimed to be an agriculturist was rightly assessed as 10% by the learned Tribunal. Taking his annual income as Rs.48,000/- and applying the multiplier of '15' to 10% of the said amount i.e. Rs.4800/- learned Tribunal rightly awarded the amount of Rs.72,000/- under the head of loss of earning capacity which

needs no modification.

The appellant suffered multiple grievous injuries and remained hospitalized for 15 days i.e. from 27.02.2011 to 14.03.2011. Considering the nature of injuries suffered by him and the period of his hospitalization the sum of Rs.10,000/- awarded for the pain and suffering undergone by the appellant is enhanced to Rs.30,000/-. 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.5000/- awarded by learned Tribunal is enhanced to Rs.10,000/-. The amount of Rs.5000/- awarded towards special diet needs no modification.

As the appellant suffered multiple injuries including two grievous injuries for which he underwent surgery he must have been confined to bed for atleast four months and during that period may not have been able to do his normal work. His income was assessed as Rs.4000/- per month and accordingly an amount of Rs.16,000/- is awarded to him on account of loss of income.

In the above premise, the appellant-Ram Mehar is held entitled to enhanced compensation of Rs.93,000/-.

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Appellant Dalbir was the other victim of the accident that took place on 27.02.2011. He was awarded consolidated amount of Rs.13,000/- on account of injuries suffered by him. Deposing through his affidavit

Ex.PW3/A the appellant stated that he suffered grievous injuries in his thigh and on right Acetabulum. PW1 Dr. Ashutosh, who treated the appellant, stated that the appellant was admitted in his hospital on 27.02.2011 with fracture neck femur. He charged Rs.3500/- from the appellant against receipt Ex.P2. Indeed, no other medical bill was produced to prove expenditure on treatment but the fact remains that the appellant sustained grievous injury and remained hospitalized for about five days. Learned Tribunal erred in not compensating the appellant for the pain and suffering undergone by him, expenditure on treatment, medicine and loss in income. The appellant may not have produced any receipt/bill for proving purchase of medicine etc. but having suffered grievous injury it becomes needless to say that he must have remained under treatment for 6-8 weeks and must have spent good amount on that count.

For the pain and suffering undergone by the appellant, he is allowed an amount of Rs.15,000/-. As expenditure on treatment and medicine, a further amount of Rs.15,000/- is allowed. Since the grievous injury sustained by the appellant was fracture neck femur, it is obvious that he may not have been able to resume his daily work for atleast four months. His income was assessed by learned Tribunal as Rs.4000/- per month and accordingly an amount of Rs.16,000/- is allowed to him for loss of income. The appellant must have spent on his own transportation and transportation, boarding-lodging of his family members who were attending on him during the period of his hospitalization. He also required nutritious diet for recovery, therefore, an amount of Rs.10,000/- is allowed under the said

heads. The amount of Rs.56,000/- will be inclusive of the amount of Rs.13,000/- allowed by learned Tribunal.

Accordingly, both the appeals filed by appellants Ram Mehar and Dalbir are partly allowed and the award dated 04.06.2012 passed by learned Tribunal is modified. The enhanced amount of compensation shall be deposited by the respondents 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

21.03.2016.
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