

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

Date of Decision: 30.03.2016.

FAO No.2872 of 2013

Jagir SinghAppellant.

VERSUS

Jagjit Singh and othersRespondents.

WITH

FAO No.2890 of 2013

Kuldeep SinghAppellant.

VERSUS

Jagjit Singh and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.S. Mamli, Advocate for the appellants.

Mr. M.B. Jain, Advocate for respondent No.3.

SNEH PRASHAR, J.

The above captioned first appeals had arisen from an award dated 01.04.2013 passed by Motor Accident Claims Tribunal, Kurukshetra (for short, “the Tribunal”) in MACT Case Nos.41 and 42 of 2012 by virtue of which claimants-appellants Kuldeep Singh and Jagir Singh were awarded

compensation. Both the appeals shall stand disposed of by this common judgment.

The facts are that on 30.01.2012, claimants-Kuldeep Singh and Jagir Singh were going to Cheeka via Pehowa by means of Alto car bearing registration No.HR-41B-7970. The car was being driven by Jagir Singh and Kuldeep Singh was sitting beside him on the front seat. At about 6:30 p.m. when they reached near village Harigarh Kingan, a bus bearing registration No.HR-64-0771 (hereinafter referred to as “the offending bus”) being driven rashly, negligently and in a high speed by Jagjit Singh (respondent No.1), came from the opposite direction and dashed into their car. Because of the impact, the car fell into ditches and both the occupants received multiple serious and grievous injuries.

The First Information Report No.10 dated 01.02.2012 under Sections 279 and 337 of the Indian Penal Code in respect of the accident was registered against respondent No.1 at Police Station Cheeka.

Appellants-claimants Jagir Singh and Kuldeep Singh filed two separate petitions invoking the provisions of 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation 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 partly allowed both the petitions and awarded compensation to the tune of Rs.1,33,000/- to claimant-Kuldeep Singh and Rs.2,40,000/- to claimant-Jagir Singh along with interest at the rate of 7.5% per annum from the date of filing the

petition till realization. All the three respondents were jointly and severally held liable to pay compensation and it was directed that respondent No.3-insurance company shall indemnify the insured.

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

The submissions made by Mr. R.S. Mamli, learned counsel for the appellants and Mr. M.B. Jain, learned counsel for respondent No.3-insurance company have been heard and record perused.

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Learned counsel for the appellant argued that appellant-Jagir Singh sustained multiple grievous injuries including fracture neck femur right side and fracture shaft femur right side for which he had to undergo operation. He became disabled due to the injuries, but learned Tribunal awarded only Rs.15,000/- for loss of income and did not consider his functional disability which directly effected his earning capacity. He remained hospitalized and spent huge money on his treatment, attendant, transportation and special diet etc. but learned Tribunal allowed only Rs.15000/- under these heads. The amount awarded on account of pain and suffering is also inadequate and the interest allowed by learned Tribunal is on the lower side.

On the other hand, learned counsel for the respondent-insurance company submitted that the compensation awarded by learned Tribunal covers all pecuniary and non pecuniary counts on which the appellant had suffered loss due to the injuries sustained by him.

Since the appellant failed to bring on record any document to prove his occupation and earnings, learned Tribunal did not assess his income but awarded Rs.15,000/- on account of loss of income which does not appear to be appropriate. There being no substantive evidence to prove the occupation of the appellant, considering him as a casual labourer, his income is assessed as Rs.5,000/- per month. According to the disability certificate Ex.P14, the injuries suffered by the appellant resulted in making him disable by 20%. Since the appellant was a casual labourer and was doing manual work, there remains no doubt that the disability suffered by him would adversely affect his earning capacity. In view of the law laid down in **Raj Kumar vs. Ajay Kumar and another, 2011(2) R.C.R. (Civil) 101** the functional disability qua whole body of the appellant is taken as 10% which will amount to loss of earning capacity to the tune of Rs.500/- per month i.e. Rs.6,000/- per annum. The appellant was 34 years old when he met with the accident. Applying the multiplier of '16' the amount comes to Rs.96,000/-. Accordingly, the amount of Rs.40,000/- awarded by learned Tribunal for the disability suffered by the appellant is enhanced to Rs.96,000/-.

PW1 Dr. Vikas Goel testified that appellant-Jagir Singh was admitted in his hospital on 30.01.2012 with injuries on his person suffered in the accident. He was suffering from fracture neck femur right side and fracture shaft femur right side for which he had to undergo operation. He developed respiratory problems for which he was referred to Forties Hospital, Mohali on 01.02.2012. He was again admitted in his hospital on

06.02.2012 and was discharged on 16.02.2012.

The total expenditure of treatment medicines etc. proved through bills by the appellant was allowed by learned Tribunal. But since the appellant had suffered two serious fractures and was operated upon, he may not have been able to attend to his normal work for atleast five months, therefore, the amount of Rs.15,000/- awarded on account of loss of income is enhanced to Rs.25,000/-. The amount of Rs.15,000/- awarded towards transportation, special diet, service of attending is enhanced to Rs.20,000/- as in addition to expenditure on his own transportation, the appellant must have also spent some amount on the transportation and boarding-lodging of his family members who were attending on him during the period of his hospitalization. The amount of Rs.20,000/- awarded towards pain and suffering being on the lower side, because the appellant had sustained grievous injuries and suffered two fractures, the said amount is enhanced to Rs.40,000/-.

In the above premise, the appellant-Jagir Singh is held entitled to enhanced compensation of Rs.91,000/-.

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Appellant Kuldeep Singh was the other victim of the accident that took place on 30.01.2012. Though vide award dated 01.04.2013 an amount of Rs.1,33,000/- was awarded as compensation by the Tribunal, but during the course of arguments, learned counsel for the appellant very fairly conceded that vide order dated 23.04.2013 learned Tribunal having noticed that the disability of the appellant was wrongly taken as 37% while passing

the award dated 01.04.2013 whereas according to the disability certificate Ex.P15 the disability suffered by the appellant was only 3%, had reduced the compensation to Rs.65,000/-. The amount of Rs.6000/- awarded on account of loss of amenities of life due to the disability suffered by the appellant calls for no intervention. As proved by PW1 Dr. Vikas Goel the appellant suffered fracture femur right during the accident and was operated upon for the same. He was discharged on 09.02.2012 in satisfactory condition which means he remained hospitalized for 9 days. Considering the gravity of the injury suffered by the appellant the amount of Rs.10,000/- awarded towards pain and suffering is enhanced to Rs.20,000/-. The amount of Rs.5000/- awarded towards transportation and attendant etc. is enhanced to Rs.10,000/-. The amount of the medical bills produced by the appellant already stands reimbursed by learned Tribunal. Since the grievous injury sustained by the appellant was fracture femur right, it is obvious that he may not have been able to resume his daily work for atleast two months and considering the appellant as a casual labourer the amount of Rs.10,000/- awarded on account of loss of income is adequate. In the above premise, appellant-Kuldeep Singh is held entitled to enhanced compensation of Rs.15,000/-.

Accordingly, both the appeals filed by appellants-Jagir Singh and Kuldeep Singh are partly allowed and the award dated 01.04.2013 passed by learned Tribunal is modified. The enhanced amount of compensation shall be deposited by respondent No.3-insurance company within 45 days from the date of receipt of certified copy of this judgment

failing which the appellants-claimants 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

30.03.2016.
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