

206.

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

FAO No.3256 of 2013 (O&M)

Date of decision:26.04.2016

Parkasho Devi

... Appellant

versus

Dinesh Saini and others

.... Respondents

II. FAO No.2014 of 2014 (O&M)

Baisakhi Ram

... Appellant

versus

Dinesh Saini and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vivek Goyal, Advocate,
for the appellant.

Mr. Ram Kumar Saini, Advocate,
for respondents 1 and 2.

Mr. Satpal Dhamija, Advocate,
for respondent No.3.

K.Kannan, J. (Oral)

CM No.13769-CII of 2013 in FAO No.3256 of 2013

For the reasons stated in the application, delay of 121
days in filing the appeal is condoned.

Application stands disposed of.

CM Nos.7244-45-CII of 2014 in FAO No.2014 of 2014

For the reasons stated in the applications, delays of 239 days in refiling and 117 days in filing the appeal are condoned.

Applications stand disposed of.

FAO Nos.3256 of 2013 and 2014 of 2014

1. Both the appeals are connected and they relate to the injury suffered to husband and wife in a motor accident that took place on 02.10.2011. The subject of claim by the husband is the subject matter of appeal in FAO No.2014 of 2014 and the appeal in FAO No.3256 of 2013 is at the instance of the wife.

2. The husband is reported to have been admitted at LNJP Hospital first, later shifted to PGI, Chandigarh and again took treatment at the hospital at Kurukshetra. The petitioner produced bills which were exhibited as P33 and P38 that aggregated to ₹5,140/- but the Tribunal discredited them and allowed for a consideration of ₹1,100/- only. It provided for ₹2,000/- for pain and suffering and ₹3,000/- for attendant charges, special diet and transportation.

3. Considering the fact that the petitioner had remained hospitalization at three different places and brought through the relevant records, I find no reason for suspecting the documents Exs.P33 and P38 and allow for the amounts covered through them. I will modestly increase the component of pain and suffering to

₹2,500/- and taking note of three places where he took treatment, it must have involved him in transportation charges. I will also provide for attendant charges and special diet as well and tabulate them as under:-

Date of accident: 02.10.2011			
Age:			
Period of hospitalization:			
Occupation & income :			
	Heads of Claim	Tribunal	High Court
Sr. No.		Amount ₹	Amount ₹
1.	Loss of income from to		
2.	Medical expenses:		
i)	Medicines		5,140
ii)	Hospital charges		
iii)	Attendant charges	3,000	2,000
iv	Special diet		1,000
v	Transportation		2,000
3.	Pain & suffering	2,000	2,500
4.	Disability (%) & compensation		
5.	Income as assessed by the Tribunal (a)		
6.	% loss of earning capacity (b)		
7.	Multiplier (c)		
8.	Loss of earning capacity (axbxc)		
9.	Reduction in life expectancy		
10.	Loss of prospect of marriage		
	Total		12,640

The aggregate of compensation shall be ₹12,640/-.

4. As regards the claim by the wife, the MLR showed that she had defused swelling on the right side clavicle region and she was advised x-ray. There was also swelling at parietal region for which x-ray was directed to be taken. The disability certificate issued by the doctor who has examined was to the effect that there

had been fracture of mandible and fracture of clavicle. The doctor had assessed the disability at 10%. The Tribunal had observed that the Medical Board had not been constituted and an Orthopedic Surgeon cannot speak about the disability. I would discard this reasoning as wholly perverse, for, Orthopedic Surgeon is very much competent to speak about the disability and there is no statutory mandate for assessment of disability only by a Medical Board and not by private practitioner. I will rework the compensation under various heads taking the disability certificate as sufficiently proved and detailed as under:-

Date of accident: 02.10.2011			
Age:			
Period of hospitalization:			
Occupation & income :			
	Heads of Claim	Tribunal	High Court
Sr. No.		Amount ₹	Amount ₹
1.	Loss of income from to		
2.	Medical expenses:		
i)	Medicines	12,280	12,280
ii)	Hospital charges		
iii)	Attendant charges		2,000
iv	Special diet	3,000	2,500
v	Transportation		2,000
3.	Pain & suffering	3,000	7,500
4.	Disability (10 %) & compensation		20,000
5.	Income as assessed by the Tribunal (a)		
6.	% loss of earning capacity (b)		
7.	Multiplier (c)		
8.	Loss of earning capacity (axbxc)		
9.	Reduction in life expectancy		
10.	Loss of prospect of marriage		
	Total	18,280	46,280

The aggregate of compensation shall be ₹46,280/-. The liability shall be on the Insurance Company in both the cases.

5. The Tribunal has already assessed the negligence to be attributable to the scooterist and the pillion rider and apportioned liability between the claimants and the respondent at 30:70. I retain the same. Consequently, there shall be abatement of the claim to the extent of 30% over the amounts assessed. Consequently, the amount payable to the husband in FAO No.2014 of 2014 shall be ₹8,848/- which I round off to ₹8,850/- with interest at 9% from the date of petition till date of payment and in FAO No.3256 of 2013, the amount shall be ₹32,396/- rounded off to ₹32,400/- with interest at 9% from the date of petition till date of payment.

6. Both the appeals are allowed to the above extent.

(K.KANNAN)
JUDGE

26.04.2016
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