

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

FAO No.369 OF 2013
DATE OF DECISION : 6TH MAY, 2016

Charan Singh

.... Appellant

Versus

Sehzad Ali & others

.... Respondents

FAO No.1002 OF 2013

Mukesh Kumar & others

.... Appellants

Versus

Sehzad Ali & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes/No
2. To be referred to the Reporters or not ? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

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Present : Mr. G. K. Chawla, Advocate
for the appellant(s).

Mr. S. K. Yadav, Advocate
for respondents No.1 and 2.

Mr. N. K. Manchanda, Advocate
for respondent No.3-Insurance Company.

* * * *

DARSHAN SINGH, J.

1. This judgment shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 03.09.2012 passed by learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred as 'the Tribunal') vide which Charan

Singh the appellant of FAO No.369 of 2013 had been awarded compensation to the tune of ₹1,33,200/- on account of injuries suffered by him and in FAO No.1002 of 2013 claimants Mukesh Kumar etc. have been awarded compensation to the tune of ₹1,10,000/- on account of death of Smt. Maya Devi in the motor vehicular accident which took place on 22.05.2011.

2. Both these claim petitions have been preferred by the appellant-claimants for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and have carefully gone through the paper book and record of the court below.

4. Learned counsel for the claimant in FAO No.369 of 2013 contended that appellant-claimant Charan Singh has suffered 25% permanent disability as a result of the injuries in this accident. The learned Tribunal has not computed the compensation by taking into consideration his income and by applying multiplier. He has been awarded the compensation of ₹50,000/- in lump sum which is highly inadequate. He further contended that claimant Charan Singh has not been awarded any compensation towards loss of income, transportation charges, special diet and attendant charges. The compensation awarded on account of pain and suffering is also less.

5. He further contended that the learned Tribunal has awarded only ₹1,10,000/- as compensation on account of the death of Smt. Maya Devi wife of the claimant-Charan Singh. Learned Tribunal has not taken into consideration the fact that deceased Maya Devi was a working lady and was also rendering service to her family

as house wife. So her income to the tune of ₹7,500/- per month should have been taken into consideration and 15% future prospects should be added. He further contended that no compensation has been awarded on account of loss of consortium. The compensation awarded on account of funeral expenses is also less.

6. On the other hand, Mr. N. K. Manchanda, Advocate learned counsel for the respondent No.3-insurance company contended that injured-claimant Charan Singh has been awarded adequate compensation. He was an old man and was not having any income that is why the learned Tribunal has awarded the lump sum amount of compensation for permanent disability. Just compensation has been awarded to the claimant under other non-pecuniary heads.

7. He further contended that the deceased Maya Devi was also an old lady. The learned Tribunal has awarded compensation of ₹1,10,000/- on account of loss of estate, loss of love and affection and loss of consortium. He contended that claimants Mukesh Kumar, Rakesh Kumar and Pritam were living separate. The claimants were dependant on the income of the deceased. The future prospects also can not be added to her alleged income. Thus, he contended that no further enhancement in the compensation will be justified.

8. I have duly considered the aforesaid contentions. Firstly, I take up the case of appellant-claimant-Charan Singh in FAO No.369 of 2013. The claimant has been awarded compensation of ₹1,33,200/- on account of injury suffered by him in this accident. Claimant-Charan Singh had suffered fracture femur right side and

fracture inter condylar femur right side. He was operated upon and remained admitted in the hospital w.e.f 22.05.2011 to 27.05.2011, which is evident from the discharge summary Exhibit P-15. From the statement of PW-12 Dr. Virender Baswana, Medical Officer, General Hospital, Gurgaon it comes out that claimant-Charan Singh has suffered 25% permanent disability on account of the injury right thigh. His disability certificate is Exhibit P-19. The learned Tribunal has awarded compensation of ₹50,000/- on account of permanent disability it is not the correct way to pay the compensation under this head. The learned Tribunal should have determined the income of the claimant and then should have applied the multiplier taking into consideration the functional disability. The claimant was 58 years of age at the time of accident. He has alleged that he was working as Registered Medical Practitioner but he could not produce any documentary evidence with respect to his profession and income. However, keeping in view the fact that claimant-Charan Singh was hail and hearty he could have easily earned ₹5,000/- per month i.e. ₹60,000/- per annum.

9. The Hon'ble Supreme Court in case ***Raj Kumar v. Ajay Kumar & Anr., (2011) 1 SCC 343***, has laid down that entire percentage of permanent disability cannot be taken into consideration to compute the compensation. Only that percentage of disability, which has made impact on the future earning capacity of the victim, can be taken into consideration. In the instant case the claimant has suffered 25% permanent disability of a particular limb which could not

be considered to be disability for whole body. It also cannot be taken that this permanent disability will have impact on the earning capacity of the claimant to the extent of 25%. Thus the functional disability which will have impact on the future earning capacity of claimant-Charan Singh is taken to be 15%. The multiplier of 9 shall be applicable as per the age of the claimant so the compensation payable to claimant-Charan Singh on account of permanent disability comes to ₹81,000/- ($60,000 \times 15 \times 9 \div 100$).

10. Claimant-Charan Singh has been awarded ₹7,500/- on account of the pain and suffering. He has suffered two fractures and has also undergone surgery so the amount awarded to him by the learned Tribunal on account of pain and suffering is inadequate and is enhanced to ₹12,500/-.

11. Claimant-Charan Singh shall be further entitled to ₹10,000/- towards loss of income for two months. He will be further entitled to a sum of ₹10,000/- on account of transportation charges, special diet and attendant charges. In this way the claimant-Charan Singh will be entitled to ₹1,89,181/- as compensation on account of injury suffered by him instead of ₹1,33,200/- awarded by the Tribunal.

12. Now I am taking up FAO No.1002 of 2013. In this case learned Tribunal has awarded only ₹1,10,000/- as compensation on account of death of Smt. Maya Devi in this accident. The compensation awarded by the learned Tribunal is highly inadequate and the correct legal position has not been taken into consideration. The learned Tribunal has simply awarded the compensation on

account of the loss of estate, loss of love and affection and loss of consortium. Smt. Maya Devi deceased was mother of the claimants No.1 to 3 and wife of claimant No.4-Charan Singh. She was about 51 years and 10 months of age as per her date of birth (01.07.1959) mentioned in employment application Exhibit P-17. She was working as helper in M/s. Welspun Poly Buttons Pvt. Ltd., Behrampur Road, Village Khandsa and was earning ₹4520/- per month. She was also a house wife. Learned Tribunal has not taken into consideration the income of the deceased simply on ground that none of the claimants were dependant on her income. From the statement of PW-11 R. C. Singh, Personal Officer, it comes out that deceased Maya Devi was working in their company as helper in packing department and was getting ₹4520/- per month as salary. She has joined their company in October, 2003. He has placed on file the certified copy of her salary certificate Exhibit P-16 and employment application Exhibit P-17. From the aforesaid oral as well as documentary evidence, it comes out that deceased Maya Devi was a working lady and was getting ₹4520/- per month as salary. In view of her age 15% of her income was to be added towards future prospects. Thus total salary comes to ₹5,198/- (4520 +678). In addition to that she was also rendering the services as house wife. So the income of the deceased can safely be taken to be ₹6,000/- per month.

13. The learned Tribunal has computed the compensation only for loss to estate, loss of love and affection and funeral expenses and has not computed the amount of compensation by determining

the loss of dependency taking into consideration the income of the deceased and applying the suitable multiplier on the ground that claimants No.1 to 3, sons of the deceased, were living separate, but the approach of the learned Tribunal was erroneous because claimants No.1 to 3 are the class I legal heirs of the deceased. The Hon'ble Apex Court in case ***Mrs. Hafizun Begum versus Md. Ikram Heque and others, 2007(3) RCR (Civil) 691***, by taking into consideration the provisions of Section 166 (1)(c) of the Motor Vehicle Act, has laid down that all or any of the legal representatives of deceased becomes entitled to compensation and any such legal heir can file the claim petition. The claimants clearly falls within the definition of the legal heir/legal representatives of deceased Maya Devi and were competent to file the claim petition. Reference can be made to the case ***Goutham Bafna and Ors versus J. Pramod Kumar Bansal and Anr., 2011 ACJ 1360***. Moreover, there is no denial to the fact that deceased Maya Devi was living with claimant No.4-Charan Singh her husband. He was taking the benefit of her salary and services as a house wife. So the amount of compensation is required to be assessed, taking into consideration the income of the deceased, deduction towards her personal and living expenses and loss of dependency by applying suitable multiplier. The income of the deceased has been determined by this Court to be ₹6,000/- per month. She was living with her husband alone, so she must be spending 50% of her income towards her personal and living

expenses. The remainder comes to ₹3,000/- i.e. ₹36,000/- per annum.

14. As per the age of the deceased multiplier of 11 shall be applicable. So the loss of dependency comes to ₹3,96,000/-.

15. Claimant-Charan Singh being husband of the deceased shall be entitled to ₹1,00,000/- on account of loss of consortium. The claimants shall also be entitled to a sum of ₹25,000/- towards funeral and transportation charges. In this way the appellant-claimants of FAO No.1002 of 2013 shall be entitled to the compensation to the tune of ₹4,21,000/- on account of death of Maya Devi in this accident, instead of ₹1,10,000/- awarded by the learned Tribunal.

16. Keeping in view my aforesaid discussion, both the appeals are hereby partly allowed. Claimant Charan Singh-appellant in FAO No.369 of 2013, shall be entitled to ₹1,89,181/- as compensation on account of injury suffered by him instead of ₹1,33,200/- awarded by the Tribunal. In FAO No.1002 of 2013 the appellants-claimants shall be entitled to ₹4,21,000/- as compensation on account of death of Maya Devi in this motor vehicular accident, instead of ₹1,10,000/- awarded by the learned Tribunal. They will be further entitled to interest at the rate determined by the learned Tribunal on the enhanced amount from the date of filing of petition till realization. The liability to pay the enhanced amount of compensation, apportionment and disbursement shall be as per the award passed by the learned Tribunal.

6th MAY, 2016
'raj'

(DARSHAN SINGH)
JUDGE