

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

Date of Decision: 27.04.2016.

FAO No.2341 of 2014 (O&M)

ChameliAppellant.

VERSUS

Sombir and othersRespondents.

WITH

FAO No.2678 of 2014 (O&M)

Vijay PalAppellant.

VERSUS

Sombir and othersRespondents.

AND

FAO No.2679 of 2014 (O&M)

RajenderAppellant.

VERSUS

Sombir and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. K.S. Dhanora, Advocate for the appellants.

Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madaan, Advocate for respondent No.3.

SNEH PRASHAR, J.

The above captioned three first appeals had arisen from an award dated 09.01.2014 passed by learned Motor Accident Claims Tribunal, Hisar (for short, “the Tribunal”) in MACT Case Nos.95 of 03.09.2012, 17 of 05.09.2012 and 94 of 07.09.2012 by virtue of which claimants-appellants Chameli, Rajender and Vijay Pal were awarded compensation for having suffered injuries in a motor accident. All the three appeals shall stand disposed of by this common judgment.

The facts are that on 22.03.2012, the appellants-claimants alongwith Birkha and others were going to village Bidhnoi by means of vehicle bearing registration No.HR-12J-0146. At about 10:30/11:00 a.m., on the request of one Birkha, who wanted to urinate, the said vehicle was stopped on the side of the road. In the meantime, a vehicle bearing registration No.HR-39B-9075 (hereinafter referred to as “the offending vehicle”) being driven rashly, negligently and in a high speed by respondent No.1-Sombir, came from Hisar side and struck against the vehicle of the appellants. As a result of accident, the claimants-appellants sustained injuries.

A First Information Report No.63 dated 23.03.2012 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 Siwani.

Appellants-claimants Chameli, Vijay Pal and Rajender filed three 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 on various grounds but considering the evidence adduced by the parties, learned Tribunal partly allowed all the three petitions and awarded compensation to the tune of Rs.71,427/- to claimant-Chameli, Rs.9,49,584/- to claimant-Rajender and Rs.74,877/- to claimant-Vijay Pal holding all the three respondents jointly and severally liable for payment 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 Mr. K.S. Dhanora, learned counsel for the appellants and Mr. D.K. Prajapati, learned counsel for the respondent No.3 have been heard and record perused.

FAO-2341-2014

Learned counsel for the appellant argued that appellant-Chameli sustained multiple injuries on various parts of the body and Ex.P5 is her Bed Head Ticket. She remained hospitalized w.e.f. 22.03.2012 to 29.03.2012 at Arora Orthopaedic Hospital, Hisar and spent approximately Rs.2,00,000/- on her treatment. She is still under treatment and would incur more expenses on the same, however, learned Tribunal did not adequately compensate under this head. The amount awarded on account of special diet, attendant charges, pain and suffering, transportation and loss of income etc. is also on the lower side.

Appellant-Chameli has duly proved the bills Ex. P116 to Ex.P123, Ex.P126, Ex.P128, Ex.P130, Ex.P131, Ex.P137 and Ex.P140. The total of the bills referred to above comes to Rs.9427/- and the said amount has already been allowed to the appellant by learned Tribunal. The appellant suffered multiple injuries and remained hospitalized for seven days i.e. from 22.03.2012 to 29.03.2012. Considering the nature of injuries suffered by her and the period of her hospitalization, the sum of Rs.25,000/- awarded by learned Tribunal for the pain and suffering undergone by the appellant and the amount of Rs.21,000/- awarded on account of loss of income for three months, is just and adequate. In addition to expenditure on her own transportation, the appellant must have spent some amount on the transportation and boarding-lodging of her family members who were attending on her during the period of her hospitalization, therefore, the amount of Rs.5000/- awarded by learned Tribunal as transportation expenses is enhanced to Rs.10,000/-. The amount of Rs.11,000/- awarded towards special diet and attendant charges is enhanced to Rs.16,000/-.

In the above premise, the appellant-Chameli is held entitled to enhanced compensation of Rs.10,000/-.

FAO-2678-2014

Appellant Vijay Pal was the other victim of the accident that took place on 22.03.2012. Learned counsel for the appellant argued that appellant-Vijay Pal sustained multiple grievous injuries on various parts of the body including two fractures. He remained hospitalized w.e.f. 22.03.2012 to 25.03.2012 at Arora Orthopaedic Hospital, Hisar and spent

approximately Rs.2,00,000/- on his treatment. He has still not recovered and would need more expenses for future treatment which has not been considered by the Tribunal. In addition to the same, the amount awarded on account of pain and suffering, transportation, loss of income and special diet and attendant charges etc. is on the lower side.

Appellant-Vijay Pal suffered fracture of both bones right forearm. Ex.P6 is the Bed Head Ticket and Ex.P7 is the medical report of the appellant which prove the nature of injury suffered by him. The amount of Rs.12,877/- being the treatment charges spent by the appellant have already been allowed to him. The appellant suffered a grievous injury and remained hospitalized for three days i.e. from 22.03.2012 to 25.03.2012. Considering the nature of injury and the period of his hospitalization, the sum of Rs.25,000/- awarded by learned Tribunal for the pain and suffering undergone by him and the amount of Rs.21,000/- awarded on account of loss of income for three months, is just and adequate. 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.11,000/- awarded towards special diet and attendant charges is enhanced to Rs.16,000/-.

In the above premise, the appellant-Vijay Pal is held entitled to enhanced compensation of Rs.10,000/-.

FAO-2679-2014

Appellant-Rajender was the third victim of the accident that took place on 22.03.2012. Learned counsel argued that appellant-Rajender sustained multiple grievous injuries on various parts of the body and suffered 70% permanent disability on account of non-functional right lower limb in mid leg region. The disability certificate Ex.P159 was duly proved by the appellant. Because of the disability the appellant has been incapacitated to work and earn a living for himself and his family. He remained hospitalized w.e.f. 22.03.2012 to 26.06.2012, 16.09.2012 to 18.09.2012 and 22.12.2012 to 02.01.2013 at Arora Orthopaedic Hospital, Hisar and spent approximately Rs.3,00,000/- on his treatment. He is still under treatment and will need money for future treatment, but learned Tribunal has not taken into consideration the said facts. The amount awarded on attendant charges, special diet and pain and suffering is also on the lower side.

Perusal of the award shows that appellant-Rajender produced medical bills Ex.P13 to Ex.P115, Ex.P143, Ex.P147, Ex.P158, Ex.P161 to Ex.P163 all amounting to Rs.1,75,364/- to prove expenditure incurred by him on his treatment. The said total amount of Rs.1,75,364/- being treatment charges have already been allowed to the appellant by learned Tribunal.

As regards the disability to the extent of 70% suffered by the appellant, since he was labourer by profession and a vital portion of his body i.e. right lower limb in mid leg region has been disabled permanently

to the extent of 70%, it is obvious that he would suffer loss in future earning capacity. Learned Tribunal rightly assessed his functional disability to the extent of 70% i.e. equivalent to the disability suffered by him. Taking his monthly income as Rs.6600/- and applying the multiplier of '13' to 70% of the said amount i.e. Rs.4620/-, learned Tribunal rightly awarded the amount of Rs.7,20,720/- under the head of loss of earning capacity which needs no modification.

The appellant suffered multiple grievous injuries and remained hospitalized for about 100 days i.e. from 22.03.2012 to 26.06.2012, 16.09.2012 to 18.09.2012 and 22.12.2012 to 02.01.2013. Considering the nature of injuries suffered by him and the period of his hospitalization the sum of Rs.25,000/- awarded for the pain and suffering undergone by the appellant is enhanced to Rs.50,000/-. The amount of Rs.17,500/- allowed as attendant charges and Rs.11,000/- awarded on account of special diet by learned Tribunal is just and adequate and need no change.

Needless to say that the injuries have shaken the physical structure of the appellant. For the disfigurement/disability suffered by him and for loss of amenities of life, a further amount of Rs.50,000/- is awarded to the appellant as compensation.

In the above premise, the appellant-Rajender is held entitled to enhanced compensation of Rs.75,000/-.

Accordingly, all the above captioned three appeals are partly allowed and the award dated 09.01.2014 passed by learned Tribunal is modified. The enhanced amount of compensation shall be paid to the

appellants 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

27.04.2016.
jitender