

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

FAO No. 2218 of 2002 (O&M)
Date of Decision: May 23, 2017

Anuj @ Raju

..Appellant(s)

Versus

Madan Lal and others

..Respondent(s)

with

FAO No. 2219 of 2002 (O&M)

Nirmala Devi

..Appellant(s)

Versus

Madan Lal and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Parminder Kaur, Advocate (Amicus Curiae) and
Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the appellant(s).

Mr. R.N. Singal, Advocate
for respondent no.3.

ANITA CHAUDHRY, J.

An accident took place on 13.11.1999, which led to
filing of four claim petitions. These are two appeals arising out of
the same accident, the appellants had suffered injuries.

Anuj along with his parents and sister was travelling in a three-wheeler. Respondent no.1 came in another three-wheeler from behind and hit the three-wheeler and all the occupants suffered injuries. Two persons died on the way to the hospital. Anuj and his mother were taken to Civil Hospital, Shahabad from where they were referred to PGI, Chandigarh. Anuj was 8 years old and was studying in 2nd standard. He suffered disability to the extent of 10%. It was claimed that a sum of Rs.60,000/- was spent on his treatment. His leg was operated on the day of the accident. There was a fracture of the right thigh, left tibia and partial stiffness of both the knee joints and the disability was given as 10% and the opinion given by the Medical Board was that it was likely to improve with physiotherapy. The Tribunal considered the bills, which were only to the tune of Rs.4,438/- and the admission of the child in PGI for about five days and awarded a lump sum amount of Rs.65,000/-.

With respect to the injuries suffered by Nirmala Devi it noted that there was fracture of the left femur and dislocation of the hip joint and dislocation of the right hip joint and crush injury of right leg below knee. It was claimed that they had spent Rs.80,000/- to 90,000/- on the treatment and there was disability to the extent of 25% and she would require another operation for removal of K-nail. Nirmala was a house-wife and her income was taken to be Rs.3,000/- per month and her contribution to the family was taken as Rs.2,000/- per month and Rs.24,000/- was allowed for loss of income for eight months. Since, the bills placed on record were only

to the tune of Rs.23,554/-, therefore, a sum of Rs.50,000/- was allowed for the bills and for special diet and another sum of Rs.25,000/- was allowed for pain and suffering. An award of Rs.1,49,000/- was passed.

I have heard both the sides.

The submission on behalf of Anuj was that the child had suffered a disability at a young age and there was a fracture and the cast would be removed only after three months and the amount awarded was on the lower side. It was urged that the child would have missed school for a number of months and there would be loss of study and no amount had been awarded for pain and suffering and the child will have to suffer for the stiffness for the rest of his life.

With respect to Nirmala's case it was urged that an addition of 50% should have been made to the income and the calculation should have been made by using the multiplier method. It was urged that no amount had been awarded for special diet, for the attendant, loss of amenities and future treatment and the amount be properly enhanced. Reliance was placed upon ***Raj Kumar Vs. Ajay Kumar and another 2011(2) RCR (Civil) 101.***

The submission of the respondent was that the Tribunal keeping the price index of the year of incident had awarded adequate compensation and had awarded amount higher than the bills submitted keeping scope for future expenditure. It was urged that the disability caused to the child was temporary in nature and

they had not got the disability certificate even after three years and it was to be shown that the disability was permanent.

Taking up FAO-2218-2002, Anuj @ Raju, the child was 8 years, he had suffered fracture and there was stiffness in both the knees and the Medical Officer had stated that the disability was 10%, which was likely to improve with physiotherapy. This fact is recorded in the disability certificate Ex.P-4. Even till the hearing of this appeal the claimants have not placed any other certificate to show that disability remained or there was any improvement. The Tribunal had awarded a lump sum amount of Rs.65,000/-, though the manner in which the amount was calculated was not detailed. The claimants were able to place bills only to the tune of Rs.4,468/-. The treatment was taken in PGI, Chandigarh. No record was produced to reveal that the child had missed school. The incident took place in November 1999. Keeping the little evidence available, I would award the following compensation:-

Actual amount spent on medicines	: Rs.4,438/-
Compensation for pain and suffering	: Rs.15,000/-
Attendant charges (Rs.1000 x 3)	: Rs.3,000/-
Physiotherapy	: Rs.10,000/-
Temporary disability	: Rs. 50,000/-
Transportation	: Rs.5,000/-
Future treatment	: Rs.10,000/-
Total	: Rs. 97,438/-

The total of above comes to Rs.97,438/-. The Tribunal had allowed Rs.65,000/-, which would be deducted and the

remaining amount of Rs.32,438/- would be payable to Anuj @ Raju with interest @ 6% from May, 2002.

Taking up FAO-2219-2002, Nirmala Devi had suffered disability to the extent of 25%. She had sustained multiple injuries including fracture of the left femur, dislocation of the right hip and injury on the right leg below the knee. She underwent an operation with respect to injury no.2 i.e. fracture shaft femur and inter locking nail was fixed on 14.12.1999. She was discharged four days later with direction to follow up as an out-patient. The Medical Officer had stated that she would require another operation for removal of the K-nail.

The submission on behalf of the appellant is that the income of the injured was taken as Rs.3,000/- per month but an addition of 50% should have been made towards future prospects and then the multiplier should have been applied to find the disability. It was urged that no amount had been allowed for special diet, attendant and loss of amenities and very less amount had been awarded for pain and sufferings.

The submission on the other hand was that the Tribunal had already allowed a higher amount as the medical bills were only to the tune of around Rs.24,000/- but she was allowed Rs.50,000/- and considering the price index of 1999 the amount allowed for pain and suffering was more than adequate.

The Tribunal had considered the income of Rs.3,000/- and the injured was taken as a house-wife. No addition in the

income can be made nor any deduction could have been made as the income was taken on notional basis. An addition of 50% should have been made as there was a disability and making an addition of 50%, the income would be Rs.4,500/- per month. The injured had suffered a disability of 25%. The functional disability would be lesser which I take as 15%. The amount for the disability would be Rs.675 x 12 x 16 = 1,29,600/-. The amount which is payable to Nirmala Devi would be as under:-

Disability	: Rs.1,29,000/-
Medical bills (actual)	: Rs.24,000/-
Attendant charges (Rs.1500 x 3)	: Rs.4,500/-
Physiotherapy (2000x4)	: Rs.8,000/-
Special diet	: Rs.10,000/-
Pain and sufferings	: Rs.25,000/-
Total	: Rs. 200,500/-

The total of above comes to Rs.2,00,500/-. The Tribunal had allowed Rs.1,49,000/-, which would be deducted and the remaining amount of Rs.51,500/- would be payable to Nirmala Devi with interest @ 6% from May, 2002.

Both the appeals are partly allowed.

(ANITA CHAUDHRY)
JUDGE

May 23, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No