

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

(1)

**FAO No.1815 of 1997
Date of decision : 25.08.2017**

Gufran Ali alias Goofar Ali

..... Appellant

VERSUS

Navnit Kumar and others

..... Respondents

(2)

FAO No.1816 of 1997

Sunil Kumar Jaggi

..... Appellant

VERSUS

Navnit Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Lakhinder Bir Singh, Advocate
for the appellant.

None for the respondents.

SUDHIR MITTAL, J.

By this judgment, two FAOs No.1815 and 1816 of 1997 are being decided together as common questions of law and fact are involved therein.

The accident took place on 12.09.1993 at about 4.30 p.m. near Kelvinator Chowk, Faridabad. The injured are Gufran Ali and Sunil Kumar. Both of them were riding a motorcycle, which was driven by Gufran Ali. They were being followed by Jugal Kishore father of Sunil Kumar, who was riding his scooter. Near Kelvinator Chowk, the motorcycle being driven by Gufran Ali, was hit by a speeding Maruti Van bearing registration No.DNJ-5087 being driven by Navnit Kumar-respondent No.1. Serious injuries were

sustained by both Gufran Ali and Sunil Kumar. The learned Motor Accidents Claims Tribunal, Faridabad (for short “the MACT, Faridabad”) vide its Award dated 08.02.1997, awarded a sum of ₹3,50,000/- as compensation to Gufran Ali and ₹75,000/- as compensation to Sunil Kumar. Interest @ 12% per annum was awarded on the compensation amount from the date of claim petition till realization, but, a sum of ₹25,000/- granted to Gufran Ali for future treatment, was not to yield any interest.

Aggrieved by the said Award, the claimants have preferred these two appeals.

No cross appeals have been filed either by the owner or driver of the Maruti Van or by the insurance company.

The only question for determination in these two appeals is whether the learned MACT, Faridabad granted just and proper compensation to the claimants or not? In my opinion, inadequate compensation has been granted to the claimants. The case of each claimant is being considered separately on account of difference in nature of injuries suffered by each of them.

Compensation payable to Gufran Ali:-

The claimant Gufran Ali was aged 22 years on the date of accident. He was working as a Supervisor in M/s Shahana Enterprises at Faridabad and was drawing a monthly salary of ₹1800/-. The salary certificate of Gufran Ali has been proved by PW-17-Navrattan Gupta and is Ex. P-107 on record. The said salary certificate further states that Gufran Ali, has been unable to join service after the date of accident on account of

serious brain injury. Irfan Ali (father of Gurfan Ali) has appeared as PW-10 and the relevant part of his deposition is reproduced below:-

“He met with an accident on 12.09.1993. He suffered a head injury and his head was fractured at 3-4 places during the accident. His left arm was also fractured. His left leg was also fractured. After the accident, he was removed to B.K. Hospital, Faridabad. Later on, he was referred to AIIMS, New Delhi. He remained admitted in AIIMS, New Delhi from 12.09.1993 to 08.11.1993. He was operated for his head injury on 12.09.1993 itself because due to the fracture in the head, all the material had come out and the same was set right. The second operation was conducted on 18.09.1993. After the accident my son Gufran Ali remains lying on the cot. He cannot identify anybody. He cannot even tell that he has to answer the call of nature. He urinates and excretes on the cot itself. He cannot walk or stand. We have to turn him on the cot by our own hands and he cannot move his limbs. Today he has been brought to the Court in a wheel chair. While bringing to the Court, he fell down even from the wheel chair. My son cannot speak at all and he no memory of past. I have been consulting one Om Banerjee a Neuro Surgeon at AIIMS, New Delhi from time to time. He has opined that it cannot be stated as to when Gufran Ali is likely to recover or become normal. After the accident, my son developed stone in urinary bladder. That stone was removed by operation conducted by Dr. Ashok Chawla of Faridabad. The right side of my son is completely paralyzed. My son can take only liquid diet such as milk, soup, juice, etc. and he cannot take any solid diet. His treatment is still going on. I have to take him to AIIMS, New Delhi, on every date the doctors give. Now I take him to AIIMS after every three or six months. The doctor at AIIMS has stated that another major operation of my son might be necessary in

future. I have to take my son to Delhi either by own car or by a taxi.”

Ex. P-101 is the discharge certificate of Gufran Ali from AIIMS, New Delhi. According to this certificate, Gufran Ali had suffered compound head injury, Lt frontal depressed fracture, Lt front parietal contusion, Rt parietal fracture, Haemepereesis, chest infection, UTI, tear anterior cruciate and medical collateral ligaments. His condition, at the time of discharge, as stated in this certificate, was poor. He was being fed through tubes and was voiding through condom drainage. His right side was paralyzed and the long term prognosis was guarded. Ex. P-102 is a treatment card of Cardiothoracic and Neurosciences Centre, AIIMS, New Delhi. This card shows that Gufran Ali was being provided speech therapy, had no control of his own bladder and that he was severely disabled. The analysis of this evidence shows that Gufran Ali had been rendered invalid for life. He was not having control of his bowel movements, was paralyzed on the right side, was unable to speak and had lost his memory. There are no prospects of marriage for this young-man, nor is it possible for him to earn his livelihood. The quality of life till he remains alive has been severely compromised. He requires assistance even for his daily needs and has become a burden on his parents instead of being in a position to look after them in their old age.

A disability certificate Ex.P-108 has been produced on record, according to which, Gufran Ali has suffered 50% disability on account of paralysis of the right side. However, there is a note in the left margin of this certificate, which states that for mental deficiency he needs to be assessed by

a specialist. This certificate has been issued by the Civil Surgeon, Faridabad and has been proved on record by PW-18 Dr. P.S. Yadav. It takes into account only the physical disability of Gufran Ali. It does not take into consideration the fact that his mental faculties have been severely compromised. The effect on the brain of Gufran Ali is brought out by Ex.P-101 and Ex.P-102 referred to above, according to which, Gufran Ali is in a vegetative state. This documentary evidence is corroborated by the oral evidence in the shape of the statement of his father, who has deposed as PW-10. The evidence on record clearly establishes that Gufran Ali will never be able to earn his living till he is alive, would need assistance in respect of his daily needs and that he will require constant medical attention. Therefore, for all practical purposes, Gufran Ali is completely disabled and is required to be treated as such.

Learned counsel for the appellant has referred to a judgment of Hon'ble Supreme Court in **"Kavita Versus Deepak and others", Civil Appeal No.5945 of 2012,** wherein, it has been held as follows:-

"18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

Keeping in view the dictum of **Kavita's case** (supra), the compensation is assessed as follows:-

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| (a) Medical expenses (as awarded by the Tribunal): | ₹14,000/- |
| (b) Loss of earning (taking a multiplier of 18) | ₹3,88,800/- (1800x12x18) |
| (c) Future medical expenses @ ₹5,000/- p.m,
(physiotherapy and treatment, taking age of 50
years as life span) | ₹16,80,000/- (5000x12x28) |
| (d) Attendant charges @ ₹800/- p.m. | ₹2,68,800/- (800x12x28) |
| (e) Physical and mental pain and agony | ₹3,00,000/- |
| (f) Loss of amenities and loss of expectation of life | ₹3,00,000/- |
| (g) Total compensation | ₹29,51,600/- |

The compensation assessed as above would be paid by respondent No.3-Insurance Company, within a period of three months, from the receipt of certified copy of this judgment. The amount in excess of the Award of the learned Tribunal, shall carry interest @ 7.5% per annum from the date of filing of claim petition till the date of payment.

Compensation payable to Sunil Kumar:-

Sunil Kumar was running a Tailor Shop, which he had taken on a monthly rent of ₹840/-. He was earning ₹4,000/- per month from this profession. According to the evidence of PW-2 and PW-9, it is established that Sunil Kumar could not carry on his business for six months from the date of the accident. There is no challenge to the finding of the learned Tribunal that his monthly income was ₹4,000/- and that the actual expenditure incurred by him on his medical treatment was ₹30,000/-. Thus,

following the principles laid down in **Kavita's case** (supra), the compensation for Sunil Kumar is assessed as follow:-

(a)	Loss of income (4000x6)	₹24,000/-
(b)	Monthly rental for shop (840x6)	₹5,100/-
(c)	Medical expenses (as calculated by the Tribunal)	₹30,000/-
(d)	Pain and suffering	₹1,00,000/-
(e)	Special diet (the jaw was fractured)	₹10,000/-
(f)	Conveyance	₹3,000/-
(g)	Total compensation	₹1,72,100/-.

The enhanced amount would carry interest @ 7.5% from the date of filing of claim petition till the date of actual payment. Respondent No.3-Insurance Company is directed to make payment by way of demand draft within a period of three months, from the date of receipt of certified copy of this judgment.

The appeals are allowed in the above terms.

(SUDHIR MITTAL)
JUDGE

August 25, 2017
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No