IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 12.12.2017

1. **FAO No.1207 of 1998(O&M)**

Surender Kumar …..Appellant

VERSUS

Rustam and others .....Respondents

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2. **FAO No.1450 of 1998(O&M)**

Dharam Chand …..Appellant

VERSUS

Rustam and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate for the appellant.

Mr. S.S. Sidhu, Advocate for respondent No.3.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1207 and 1450 of 1998 as these have emerged out of the same award dated 17.02.1998 passed by the Motor Accidents Claims Tribunal, Gurgaon (in short 'the Tribunal') whereby compensation has been awarded in respect of injuries sustained by Surender Kumar, Dharam Chand and others in a motor vehicular accident that took place on 05.01.1992.

FAO No.1207 of 1998

The Tribunal has assessed compensation to the tune of Rs.1,55,000/-, detailed hereunder:-

Compensation on account of permanent disability at the rate of Rs.6,000/- per annum with the multiplier of 16	Rs.96,000/-

Costs of treatment	Rs.40,000/-
Conveyance Charges	Rs.5,000/-
Special diet	Rs.10,000/-
Pain and suffering as well as enjoyment of life	Rs.4,000/-

Counsel for the appellant has submitted that Surinder, the injured victim suffered permanent disability to each knee to the extent of 15% i.e. 30% of both knees, therefore, loss of income is liable to be assessed at the rate of 30%. Another submission made by counsel is that compensation awarded under various heads i.e. conveyance charges, special diet, pain and suffering as well as enjoyment of life is liable to be enhanced.

Counsel representing the insurance company, on the other hand, has supported the assessment made by the Tribunal with the submission that the Tribunal has assessed loss of future income by treating functional disability to the extent of approximately 18% though there is no medical evidence in this regard.

The Tribunal has allowed reimbursement of medical expenses to the extent of Rs.40,000/-. Counsel for the appellant has not made any submission justifying increase under this head. Accordingly, compensation on account of expenses on treatment is ordered to be affirmed. The Tribunal has awarded an amount of Rs.5,000/- on account of conveyance charges and another sum of Rs.10,000/- for special diet. The occurrence in question pertains to January 1992. Taking into consideration value of Indian Rupee at that time, compensation awarded qua conveyance charges and special diet cannot be treated on lower side.

The Tribunal has awarded an amount of Rs.4,000/- for pain and suffering as well as enjoyment of life. As per case history Ex.PK, appellant suffered fracture of femur patella with tibial condyle and radius. He had undergone surgery in Moolchand Hospital. As per disability certificate Ex.PY, there is restriction in the movement of knees and disability of each knee is 15%. Taking into account nature of injuries sustained coupled with the disability left due to injuries, claimant shall be entitled to an amount of Rs.15,000/- qua pain and suffering as well as loss of amenities of life.

The Tribunal has not awarded any compensation for loss of income during period of treatment and recovery. In view of nature of injuries sustained, claimant is awarded an amount of Rs.5,000/- for loss of income during period of treatment and recovery.

So far as the plea of the claimant for enhancement of compensation qua loss of future income, the injured was doing the business of sale of clothes. The Tribunal has treated functional disability to the extent of approximately 17/18% qua permanent disability of 30% i.e. 15% each knee. There is no material on record to assess income of the victim more than at the rate of Rs.3000/- per month. The Tribunal has rightly applied multiplier method to assess loss of income to the extent of Rs.96,000/-. No justification for increase in future income is made out. The additional amount of Rs.16,000/- shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization.

FAO No.1450 of 1998

With regard to injury sustained by Dharam Chand, the Tribunal has assessed compensation to the tune of Rs.1,44,000/;- detailed hereunder:-

Compensation on account of loss due to permanent disability at the rate of Rs.12,000/- per annum with the multiplier of 6	Rs.72,000/-
Compensation on account of costs of treatment and conveyance charges	Rs.55,000/-
Special diet	Rs.5,000/-
Pain and suffering	Rs.7,000/-
Enjoyment of life	Rs.5,000/-

The Tribunal has assessed loss of income per annum to the tune of Rs.12,000/- and applied a multiplier of 6. The injured victim claimed that he was 55/56 years old at that time. Under the circumstances, admissible multiplier would be 9. Thus, loss of income qua disability comes to Rs.12,000/- x 9 = Rs.1,08,000/-.

The injured has suffered disability to the extent of 75% as his right leg from knee was amputated. Compensation awarded by the Tribunal for special diet is increased to Rs.10,000/-. The claimant is allowed an amount of Rs.10,000/- qua services of an attendant . He shall be entitled to an amount of Rs.35,000/- for pain and suffering and loss of amenities of life. Compensation for medical treatment and conveyance charges allowed by the Tribunal is affirmed. In view of the above, additional amount of Rs.74,000/- shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

DECEMBER 12, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no