

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

FAO No. 337 of 2002 (O&M)
Date of Decision: December 06, 2017

Yog Raj alias Yogeshwar

..Appellant(s)

Versus

Munshi Ram and others

..Respondent(s)

with

FAO No. 340 of 2002 (O&M)

Sham Lal

..Appellant(s)

Versus

Munshi Ram and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashok Jindal, Advocate
for the appellant(s).

Mr. Abhishek Goyal, Advocate and
Mr. Pardeep Goyal, Advocate
for respondent no.3-insurance company.

ANITA CHAUDHRY, J.

These are two appeals filed by the claimants seeking enhancement in the award dated 03.09.2001, passed by the Motor Accident Claims Tribunal, Bathinda (here-in-after referred to as the Tribunal).

Few facts need to be detailed first. Yog Raj and Sham Lal were going to Sri Ganga Nagar from Ludhiana on 18.03.1999 in a Maruti car. The car was driven by Yog Raj. One other person Rohtash was also travelling in the same car. At about 10:00 PM a tractor came from the opposite side and hit a matador coming from Bathinda side.

The Matador struck against the tractor and the tractor struck against the car, as a result all the occupants of the Maruti car sustained injuries.

Yog Raj was 50 years old and was working as a driver with Sham Lal Gupta. It was pleaded that he was getting a salary of Rs.2,000/- per month. Sham Lal had also suffered injuries and suffered a disability.

The Tribunal on assessing the evidence had awarded compensation but the claimants are aggrieved with the amount allowed.

FAO-337-2002

The counsel for the appellant had urged that Yog Raj was earning Rs.3,000/- per month and he became permanently disabled and suffered disability to the extent of 60% and though the appellant had spent Rs.2 lacs on his treatment but the Tribunal had allowed Rs.37,851/- on account of amount spent on medicines only and a sum of Rs.60,000/- was allowed for disability and Rs.30,000/- for pain and suffering. It was urged that the compensation on account of loss of salary was also on the lower side and with 60% disability the injured would not be in a position to drive a vehicle and has affected his income. It was urged that the Tribunal had failed to award any amount for the attendant or for special diet and also for physiotherapy. It was urged that as per the judgment rendered by the Apex Court, there should be some addition on account of future prospects even in the case of injury.

The submission on the other hand was that the accident had taken place in 1999 and considering the amount, the Tribunal had

already allowed a higher amount. It was urged that the hospitalization is twice but not more than 10 days and the minimum wages were less than Rs.2,000/- per month even for the skilled worker and exaggerated amount has been claimed.

The minimum wages of a skilled worker in that year was not more than Rs.1,787/- per month. Even if the income is taken as Rs.2,000/- per month and considering the age of Yog Raj, the addition towards future prospects would only be 10% and with that addition the total income comes to Rs.2,200/- per month and if the disability of 60% is calculated the amount payable for the disability would be Rs.1320 x 12 x 13 = Rs.2,05,920/-. I find that the Tribunal has failed to award any compensation for the attendant or for special diet or for the physiotherapy, therefore, the amount that was payable would be as under:-

Sr. No.	Head of Compensation	Amount
1.	Disability	Rs.2,05,920/-
2.	Pain and suffering	Rs.40,000/-
3.	Purchase of medicines (actual)	Rs.35,491/-
4.	Cost of medicines (for bills Ex. A-11 & A-12)	Rs.2,360/-
5.	Loss of income for six months (Rs. 2000 x 6)	Rs.12,000/-
6.	Physiotherapy (Rs. 2000 x 6)	Rs.12,000/-
7.	Attendant Charges (Rs. 2000 x 6)	Rs.12,000/-
8.	Special diet	Rs.7,500/-
	TOTAL	Rs.3,27,271/-

The Tribunal had allowed Rs.1,50,000/-, which would be deducted and the remaining amount would be paid by the insurance company with interest @ 6% from the date of filing of appeal till realization.

FAO-340-2002

The submission on behalf of the appellant is that Sham Lal was 45 years old and was a commission agent and his income was over Rs.30,000/- per month and he had suffered disability of 30% and the treatment was long and he had suffered a disability and there was shortening of leg by half inch and the Tribunal had failed to assess the income nor had awarded sufficient amount on all the heads. It was urged that the claimant was entitled to additional amount for special diet, for the attendant and for physiotherapy. It was urged that the income has to be assessed and then an addition towards future prospects be made.

The submission on the other hand is that no evidence had been led to show that the claimant was earning Rs.30,000/- per month. It was urged that the shortening of leg would not stand in the way and there would only be loss of amenities but no loss in the income. It was urged that that the Tribunal has already allowed compensation on account of loss of business and adequate compensation has been allowed for the amount spent on the treatment. It was urged that exaggerated claim was made and Sham Lal had stated that he had spent Rs.60,000/- on his treatment but bills to the tune of only Rs.14,000/- were produced.

The record of this file had been burnt in the fire accident but some records had been produced at the time of arguments. The disability certificate had also been made available.

Except for the oral statement, the claimant did not lead any evidence to support the fact that he was earning Rs.30,000/- per month or that he was a commission agent but had he been a commission agent, he would have been registered and could have easily produced his records. The hospitalization was only for 8 – 9 days at one time and 2 – 3 days subsequently. The disability certificate shows that there was shortening of the limb by half inch and he would have unable to sit on the ground and the movement of the spine was also limited. The claimant had the opportunity to produce his records to show the amount of loss in the income but failed to show the difference in the income. There is no evidence regarding his income and I would take the income to be Rs.5,000/- per month. There is no loss in the income. As there was a fracture, the claimant would not have been able to attend to his work for few months and would have taken the services of a physiotherapist and an attendant to help in the daily chores, therefore, I would award the following compensation:-

Sr. No.	Head of Compensation	Amount
1.	Loss of amenities	Rs.1,00,000/-
2.	Pain and suffering	Rs.50,000/-
3.	Treatment expenses	Rs.14,028/-
4.	Loss of income for six months (Rs. 5000 x 6)	Rs.30,000/-
5.	Physiotherapy (Rs. 2000 x 6)	Rs.12,000/-
6.	Attendant Charges (Rs. 2000 x 6)	Rs.12,000/-
7.	Special diet	Rs.7,500/-
	TOTAL	Rs.2,25,528/-

The Tribunal had allowed Rs.75,000/-, which would be deducted and the remaining amount would be paid by the insurance

company with interest @ 6% from the date of filing of appeal till
realization.

December 06, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No