

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

Date of Decision-22.08.2017

1. FAO No.3708 of 2005(O&M)

Vijay Kumar ... Appellant

Versus

Baljinder Singh and others ... Respondents

2. FAO No.3535 of 2005(O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Vijay Kumar and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.K. Jain, Advocate and
Mr. Akshay Jain, Advocate
for the appellant in FAO No.3708 of 2005 and
for respondent No.1 in FAO No.3535 of 2005.

Mr. Suman Jain, Advocate
for the appellant in FAO No.3535 of 2005 and
for respondent No.3 in FAO No.3708 of 2005.

Ms. Divya Godara, Advocate
for respondents No.2 and 3 in FAO No.3535 of 2005.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, FAO No.3708 of 2005 titled Vijay Kumar Vs. Baljinder Singh and others and FAO No.3535 of 2005 titled New India Assurance Co. Ltd. Vs. Vijay Kumar and others are being disposed of. Since both the appeals have arisen out of one accident, therefore, the facts are being noticed cumulatively.

[2]. The vehicular accident took place on 20.06.2002 at about 3:30 PM when Vijay Kumar was a pillion rider on the ill fated motorcycle driven by Surjit Singh (respondent No.4) met with an accident with the offending tractor driven by Baljinder Singh (respondent No.1) in a rash and negligent manner. A criminal case was registered in the Police Station, Sirsa against respondent No.1 Baljinder Singh. Vijay Kumar on account of injuries suffered by him filed a petition under Section 166 of the Motor Vehicles Act claiming compensation.

[3]. Motor Accident Claims Tribunal, Sirsa (for short 'the Tribunal') vide award dated 26.04.2005 awarded a sum of Rs.4,00,000/- to the injured Vijay Kumar along with interest from the date of filing of the claim petition till final realization of the amount.

[4]. FAO No.3708 of 2005 came to be filed against the inadequacy of the compensation granted to Vijay Kumar. Assurance Company has also filed FAO No.3535 of 2005 on the ground that no vehicular accident took place and the Assurance Company was not liable. In the light of stand taken by the Assurance Company, it would be appropriate to decide FAO No.3535 of 2005 at the first instance.

FAO No.3535 of 2005

[5]. Learned counsel for the Assurance Company submitted that no other vehicle was involved in the accident. The injured was a

pillion rider on the motorcycle and motorcycle hit on the road side due to own fault of the driver of the motorcycle. FIR was registered against an unknown person.

[6]. The Tribunal came to the conclusion that in terms of written statement filed by the Assurance Company, no such ground was taken. As per the stand taken by respondents No.1 to 3, they raised preliminary objections and also contested the claim petition on merits. It was asserted that respondent No.4-Surjit Singh was driving the ill fated motorcycle in a rash and negligent manner while injured Vijay Kumar was the pillion rider. Respondent No.1/Baljinder Singh was driving the offending tractor on a moderate speed on extreme left hand side. When the tractor reached near PWD Rest House, Barnala Road, Sirsa, the ill fated motorcycle came from behind and hit in the stationary tractor. In this manner, the accident was not denied, but the manner in which the accident took place was pleaded to be on different frequency. The driver and owner of the tractor i.e. respondents No.1 and 2 further asserted that respondent No.1 Baljinder Singh (driver of the tractor) was having a valid and effective driving licence and the same was insured with respondent No.3. The Assurance Company asserted that on the fateful day, respondent No.1/Baljinder Singh and respondent No.4/Surjit Singh were not holding the valid and effective driving licences and the offending tractor and motorcycle were being driven in utter violation of the insurance policy and traffic rules.

[7]. From the aforesaid stand taken by respondent No.3/Assurance Company, the factum of accident was admitted and now the Assurance Company cannot turn around and say that the injured received the injuries due to accident of the motorcycle on the road side and not with the tractor. Having not taken such a ground in the written statement, Assurance Company cannot orally plead that too at the appellate stage without there being any foundation in the written statement. Secondly, the driver of the offending vehicle i.e. respondent No.1 Baljinder Singh had admitted while appearing as RW 1 that he was facing trial in a criminal case for the accident in question in the Court of Chief Judicial Magistrate, Sirsa. In respect of his alleged plea of false implication, no complaint was ever moved by him before the higher authorities. The negligence on the part of driver of the motorcycle was not proved with reference to any evidence on record. In view of above, the Tribunal came to the conclusion that the accident took place due to rash and negligent driving of driver of the tractor i.e. respondent No.1.

[8]. In the light of findings recorded by the Tribunal with reference to material on record, it cannot be argued by the learned counsel for the Assurance Company that the accident had not taken place with the tractor. It was not the case pleaded by the Assurance Company, rather the case was pleaded wherein involvement of both the vehicles was shown. The stand taken by the Assurance Company was that both the vehicles were being driven in utter

violation of traffic rules and both the drivers were not having valid and effective driving licences.

[9]. In the light of aforesaid observations and the stand taken by the Assurance Company during the proceedings before the Tribunal, I find that the appeal filed by the Assurance Company is not legally sustainable. FAO No.3535 of 2005 is accordingly dismissed.

FAO No.3708 of 2005(O&M)

[10]. Vijay Kumar was 30 years of age and was a Mason by profession. The Tribunal Assessed his income to be Rs.6000/- per month. He got crushed injuries on both legs and as a result of that, his legs were amputated. In the accident, Vijay Kumar received multiple serious and grievous injuries. He was shifted to Civil Hospital, Sirsa and then, he was referred to better institute for specialized treatment. He was admitted in Maharaja Aggarsain Institute of Medical Research and Education, Agroha, where he remain admitted for about 6 months. The claimant alleged that he had spent more than Rs.2,00,000/- towards his treatment and medicines etc. His both legs below the knees were amputated in order to save his life. After the accident, Vijay Kumar (appellant) became totally disabled. His wife had already expired. He was the only earning member in the family and due to disability, he was totally incapacitated from doing work. He had to leave the job of Mason because of his permanent disability to the tune of 100%. The

family of the injured was comprising of old and aged mother and his daughter who were solely dependent upon him.

[11]. During pendency of the appeal, an application i.e. CM No.8090-CII of 2014 under Order 41 Rule 27 CPC was filed to prove on record the disability certificate of the claimant issued on 22.03.2006 i.e. after passing the award dated 26.04.2005. The Coordinate Bench of this Court passed the following order on 01.09.2016:-

“Heard.

This is application filed by applicant-appellant (claimant) under Section 41 Rule 27 of CPC to prove on record the disability certificate of claimant issued on 22.03.2006 i.e. after passing of award dated 26.04.2005.

Learned counsel for the applicant-appellant submits that as a result of injury suffered in the accident, both the legs of the claimant have been amputated under knee, as such, production of this disability certificate is material.

Reply of the application has not been filed. Production of disability certificate is a material piece of evidence, which will effect the merits of the claim made by the claimant, as such, this application is allowed.

Case is fixed for 19.10.2016 for recording of evidence in proof of this disability certificate.

File be put up before the Registrar (Administration). The applicant-appellant will submit the list of witnesses to be summoned before the Registrar (Administration) who will summon the witnesses for 19.10.2016. After production of evidence by the claimant, the Registrar (Administration) will give an opportunity to the other party

to produce any evidence in rebuttal, if so desired. He may also give adjournment in this appeal as per his convenience. After completion of the entire process, file be listed on 12.12.2016.”

[12]. Thereafter, statement of Dr. Joginder Singh, Senior Medical Officer (Retired) was recorded in the context of disability certificate Ex.A-1. Right to cross-examination was given to the Assurance Company and in fact, Dr. Joginder Singh was cross-examined by learned counsel for the Assurance Company also. From the statement of Dr. Joginder Singh, Senior Medical Officer, it came on record that the Board had assessed the disability of the injured to the extent of 100% on account of amputation of right leg upper 1/3rd=70% and gangrene of left leg with VIC=50%, total 100%. The said disability was shown to be functional and permanent in nature, which was not likely to improve in future. The possibility of left leg having been amputated on account of gangrene was not ruled out and that is why, permanent disability to the tune of 100% was noticed in respect of both the legs. The witness was examined and cross-examined before the Registrar Administration of this Court as per permission accorded for leading additional evidence at appellate stage. In view of above, it can be noticed that the injured had received 100% permanent disability as per disability certificate dated 22.03.2006 proved on record by means of additional evidence under Order 41 Rule 27 CPC.

[13]. Apparently, the injured was 30 years of age at the time of accident and his income was Rs.6000/- per month from the work of Mason. The Tribunal has assessed an amount of Rs.1,80,000/- on account of permanent disability to the tune of 90% on the basis of disability certificate Ex.P1 adduced on record at the relevant time. An amount of Rs.25,000/- was awarded towards medical bills/prescription etc. in view of bills Ex.P-2 to Ex.P-19 and Ex.PW-3/1 to Ex.PW-3/42. An amount of Rs.10,000/- was awarded towards special diet during treatment and period of recovery. An amount of Rs.25,000/- was awarded towards transportation and pain and sufferings. An amount of Rs.1,60,000/- was awarded towards attendant during period of admission, treatment, recovery and keeping in view 90% permanent disability. In this way, total amount of compensation was assessed to be Rs.4,00,000/-.

[14]. In **Govind Yadav Vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817**, the Hon'ble Apex Court after considering all pros and cons in detail assessed the compensation in case of permanent disability of the injured.

[15]. In **K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312**, the Hon'ble Apex Court held that in case of permanent disability, the injured is entitled to grant of compensation towards permanent disability as well as loss of earning capacity. The determination of compensation for loss of earning capacity on the basis of multiplier method was held to be

proper. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be viewed with some objective standards. There cannot be a flight in fancy. The award should correspond to reasonableness and should be in consonance with conventional sum. The endeavour should be to award just compensation keeping in view the suffering of the injured person.

[16]. In **S. Manickam s. Metropolitan Transport Corporation Ltd, 2013(3) RCR (Civil) 696**, it was ruled by the Hon'ble Apex Court that the determination of just compensation cannot be equated to a bonanza. It has to be based on application of fair and equitable principles. Reasonable approach should be adopted. Compensation towards permanent disability and loss of earning capacity, both were endorsed to the effect that the victim is entitled to separate claims towards permanent disability as well as loss of earning capacity.

[17]. In **G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another, 2013(3) RCR (Civil) 934**, the Hon'ble Apex in case of grievous injuries of the injured in pelvic region ruled that in case of nature of injury, rendering the injured to be impotent, adequate compensation has to be awarded towards all heads like expenses incurred in treatment including hospitalization, future medical expenses towards hospitalization, medicines, attendant charges etc, pain suffering and trauma, loss of amenities, prospects of marriage,

loss of expectation of life and loss of future earning. In aforesaid case, the Hon'ble Apex Court awarded a sum of Rs.20.20 lacs.

[18]. In case of **Rekha Jain Vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996**, the Hon'ble Apex Court in case of 30% disability of face of a film actress held that in the circumstances of the case, the disability should be treated to be 100% functional disability. Loss was assessed on multiplier method keeping in view the age of the victim. As against compensation of 2 lacs assessed by the Tribunal, the Apex Court assessed the compensation of Rs.42,50 lacs.

[19]. In case of **Neerupam Mohan Mathur Vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422**, it was held by the Hon'ble Apex Court that in case of permanent disability on account of amputation of limb, compensation towards non pecuniary damages has to be awarded. In the said case, on account of amputation of one arm, the services of the claimant were terminated by the employer. There was loss of 100% earning capacity of the claimant. The order of High Court in assessing 70% loss of income was upheld by the Apex Court. An amount of Rs.1 lac towards pain, suffering and trauma was assessed. An amount of Rs.2 lacs was assessed towards loss of amenities and additional amount of Rs.1 lac was assessed towards loss of expectation of life i.e. shortening of the normal longevity.

[20]. In case of **Yadava Kumar Vs The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,** the Hon'ble Apex Court highlighted that a distinction has to be drawn between the damages and compensation. Damages are given for injuries which the injured suffered, whereas compensation is to be paid for atonement of the injury caused and to put back the injured as far as possible in the same manner, as if injury has not taken place. Court should be liberal in determination of quantum of compensation to be paid to the victim towards future loss of income and other heads.

[21]. The Tribunal has assessed an amount of Rs.1,80,000/- (Rs.2000/- per percentage of permanent disability) on account of permanent disability to the tune of 90% on the basis of disability certificate Ex.P1 adduced on record at the relevant time. An amount of Rs.2,00,000/- (Rs.2000/- per percentage of permanent disability) can be computed on account of permanent disability to the tune of 100% as proved by way of additional evidence in the High Court. Permanent disability in addition to Rs.2000/- per percentage can further be considered for loss of future income on account of 100% permanent disability of the injured in view of precedents cited above. The injured was 30 years of age and his monthly income was Rs.6000/-. Since the permanent disability was assessed to be 100%, the loss can be assessed to be 100% for the purpose of future income. Therefore, an amount of Rs.72,000/- per annum

(6000X12=72,000) can be computed. Keeping in view the age of the injured, a multiplier of 17 can be applied in view of ratio laid down in **Smt. Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77.** In this way, an amount of Rs.12,24,000/- (72,000X17=12,24,000) would come out for future loss of income on account of 100% permanent disability of the injured. Therefore, an amount of Rs.14,24,000/- (12,24,000+2,00,000=14,24,000) can be computed under both the heads of permanent disability and loss of future income. The Tribunal has awarded an amount of Rs.25,000/- towards medical bills/prescription etc. The aforesaid assessment was made on the basis of bills Ex.P-2 to Ex.P-19 and Ex.PW-3/1 to Ex.PW-3/42. In my view, in case of day to day expenses, there is every possibility of some other hidden expenses. Taking into consideration a realistic approach, I think that an amount of Rs.50,000/- would be just and appropriate under this head. The Tribunal has assessed an amount of Rs.10,000/- only towards special diet. In my view, taking into consideration the period during which the injured remain hospitalized and nature of injuries on the person of the injured, this amount needs to be enhanced. As per photo Annexure A-2 attached along with the application under Order 41 Rule 27 CPC before this Court, both the legs of the injured were amputated. At the time of issuance of disability certificate, left leg was having gangrene and thereafter, it was amputated as per photo of the injured Annexure A-2 brought on record. The period of confinement would have resulted in more expenses towards special

diet for hailing of the wounds and bones. In my considered opinion, this amount needs to be enhanced to Rs.50,000/-.

[22]. The Tribunal has awarded an amount of Rs.25,000/- under two heads i.e. transportation and pain and sufferings. In my opinion, an amount of Rs.25,000/- towards transportation and pain and sufferings is totally on the lower side. A person who has lost both his legs and has become incapacitated and permanently disabled to the tune of 100% cannot be equated with an amount of Rs.25,000/- for transportation and pain and sufferings. The injured himself has suffered agony during the period of confinement and the aforesaid heads cumulatively needs to be enhanced to the tune of Rs.1,25,000/-. The Tribunal has assessed an amount of Rs.1,60,000/- towards attendant during treatment, admission and for future services of attendant keeping in view 90% permanent disability. I think this amount is also on the lower side in order to meet out past, present and future exigencies based on 100% permanent disability of the injured. There cannot be any straight jacket formula for accessing such an eventual happening on the basis of expenses. For that, some guess work has to be done. The injured was only 30 years of age at the time of accident. Keeping in view the longevity, in my considered opinion, a lump sum amount of Rs.3,00,000/- can be assessed under this head, so as to meet out past, present and future exigencies towards attendant charges of the injured. The Tribunal has not granted anything towards future

enjoyment of life and further marriage prospects of the injured keeping in view his age to be 30 years at the time of accident. In my considered opinion, an amount of Rs.1,00,000/- would suffice to meet out the exigency towards future loss of enjoyment and marriage prospects of the injured.

[23]. In view of aforesaid determination, following calculations can be made on comparative data:-

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in appeal	Difference
1.	Permanent disability	1,80,000/- (Rs.2000/- per percentage)	14,24,000/- (Rs.2000/- per percentage + loss of future income on account of permanent disability)	12,44,000/-
2.	Medical bills/treatment	25,000/-	50,000/-	25,000/-
3.	Special diet	10,000/-	50,000/-	40,000/-
4.	Transportation and pain and sufferings	25,000/-	1,25,000/-	1,00,000/-
5.	Attendant charges (past, present and future)	1,60,000/- (Assessed on the basis of 90% permanent disability)	3,00,000/- (Assessed on the basis of 100% permanent disability as proved by way of additional evidence in the High Court)	1,40,000/-

