

In the High Court of Punjab and Haryana at Chandigarh

1. F.A.O No. 4388 of 2010 (O&M)
Date of Decision: 23.2.2017

Ratinder KaurAppellant

Versus

Jai Pal Singh and othersRespondents

2. F.A.O No. 4389 of 2010 (O&M)

Gurdev Singh Brar (deceased) through LR's.Appellant

Versus

Jai Pal Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ankur Gupta, Advocate
for the appellants.

Mr. Vishal Aggarwal, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

These are two appeals arising out of an accident which occurred on 25.9.2007 in which Ratinder Kaur and Gurdev Singh received injuries. Two separate clam petitions were filed which were partly allowed. Aggrieved by the award passed by Motor Accidents Claim Tribunal, Panchkula, the claimants have filed these appeals. I propose to take up both the appeals together.

Ratinder Kaur is wife of Gurdev Singh Brar. Both of them

were travelling in their Esteem car from Sector-33, Chandigarh and were

returning to Panchkula. The car was driven by Gurdev Singh. At about 11.50 P.M., when they were near the Transport Chowk and Gurdev Singh was about to turn his car towards Panchkula, an Innova car driven by respondent No. 1 came from Grain Market side and hit the car from the front resulting in injuries to them.

In the claim petition filed by Ratinder Kaur, it was pleaded that she suffered fracture on both her arms and nerve of the left arm was cut and the movement was affected and she could not do household chores. She was 65 years old at the time of the accident. It was pleaded that she was a housewife and she remained admitted in PGI, Chandigarh for over a month and claim of Rs. 20,00,000/- was made.

Gurdev Singh was 70 years old and had retired from the administrative services. It was pleaded that he was taken to PGI and then admitted in Apollo Hospital, Ludhiana from 27.10.2007 to 31.10.2007 and then for three days from 29.11.2007 to 30.11.2007 and had spent Rs. 1,33,733/- approximately and the treatment was still continuing. It was pleaded that he could not stand on his own legs and had to be supported by two people and had engaged two attendants. It was pleaded that he had suffered a head injury and fracture of the left leg.

The claim was resisted by the respondents. It was pleaded that the claim was exaggerated and the claimants be put to the strict proof about the amount spent on the treatment. It was pleaded that Gurdev Singh himself was negligent while driving and false FIR had been lodged to claim compensation.

The Tribunal held respondent No. 1 negligent and responsible

for the accident with respect to the injuries suffered by Ratinder Kaur and it

was noted that she was admitted for over a month in PGI, Chandigarh and had suffered fracture of both bones of the right forearm and external fixation was done for the fracture of the shaft humerus and the median nerve was repaired with plastic surgery and skin grafting. The disability was assessed at 25%. Her income was taken as 5,000/- per month for the services rendered to the family and the following amount was allowed:-

1.	<i>Pain and suffering undergone by the claimant</i>	<i>Rs. 40,000.00</i>
2.	<i>Medical expenses incurred on the hospital charges and medicines.</i>	<i>Rs. 35,215.00</i>
3.	<i>Loss of earning during hospitalisation</i>	<i>Rs. 5,000.00</i>
4.	<i>Expenses incurred on Special diet</i>	<i>Rs. 5,000.00</i>
5.	<i>Expenses incurred attendant and transportation</i>	<i>Rs. 10,000.00</i>
6.	<i>Permanent disability to the extent of 25%</i>	<i>Rs. 50,000.00</i>
	<i>Total</i>	<i>Rs. 1,45,215.00</i>

With respect to the injuries suffered by Gurdev Singh, the Tribunal noted that Gurdev Singh was admitted in PGI only for a day. After a month he was admitted in Apollo Hospital from 27.10.2007 to 31.10.2007 and then for three days again in November 2007. The treatment record of the Apollo Hospital was produced. It noted that the patient was diabetic and he had fracture of both the bones of the left leg. It also noted that when Gurdev Singh was admitted in the hospital, the doctors had noted deformity of the leg and that was no injury but only complaint of pain was made and there was no injury on the head, skull and bones etc. It noted that no complication was noted by the doctors from PGI and since the discharge

was on the next day and there was no admission in the hospital for over a month, therefore the treatment which was taken in the Apollo Hospital was not for the injuries suffered in the accident and he was already suffering from several other diseases which were noted by the Tribunal in para 19 of the award. It noted that the treatment taken in April 2008 was for hypertension severe diabetes and the diseases related to age. It noted that the disability assessed at 70% did not relate to the injuries suffered in the accident. The disability was taken at 20% and the following amount was awarded :-

1. Pain and suffering undergone by the claimant	Rs. 40,000.00
2. Medical expenses incurred on the hospital charges and medicines.	Rs. 5,000.00
3. Expenses incurred on Special diet	Rs. 3,000.00
4. Expenses incurred attendant and transportation	Rs. 5,000.00
5. Permanent disability to the extent of 20%	Rs. 40,000.00
Total	Rs. 93,215.00

Gurdev Singh died during the pendency of the appeal in 2012 and his legal heirs were brought on record namely the widow and the children.

The submission on behalf of appellant Ratinder Kaur was that there were bills Mark-1 to Mark-47 but the Tribunal did not allow the bills Mark 18 to 24, 26 and 29 to 46 which were to the tune of Rs. 38,716/- for the reasons that the medicines had been purchased from Ludhiana. It was urged that the husband was getting treatment in Ludhiana, therefore, the wife was staying with him at Ludhiana and those should have been allowed.

It was urged that the amount awarded for the disability, attendant charges, pain and suffering was very less and some amount should have been awarded for loss of amenities and future expenses considering that fracture had occurred in old age which would create complications. It was submitted that though Gurdev Singh had died, the legal heirs were entitled to the amount spent on the treatment and the Tribunal had disallowed bills Mark-48 to Mark-134 which were to the tune of Rs. 2,06,473/- and only a small sum of Rs. 5,000/- were allowed.

The submission on behalf of the insurance company while relying upon ***Ramesh versus Bansi Lal and others, 2014(77) R.C.R. (Civil) 876*** and ***Naresh Kumar versus Kartar Singh and others RCR (Civil) 70*** was that it was the duty of the claimants to show that medicines had been prescribed to Ratinder Kaur. It was urged that Ratinder Kaur and her husband were living in Panchkula and the admission of the husband is towards the end of October for three days but some of the bills are of December, January and February and it is not their case that they were living in Ludhiana even after the treatment of the husband or that it was their ordinary place of residence and those had rightly been ignored. It was urged that the compensation has to be assessed determining the extent of disability that would affect the earning capacity or rob a person of the amenities of life and adequate amount was allowed for both the claimants. It was urged that since one of the claimants had died therefore the legal heirs could not be awarded more compensation on the heads asked for as those were personal to the deceased.

Dealing with the appeal filed by Ratinder Kaur first, the MLR

The patient had complained of pain in both the upper limbs with bleeding of the left arm but there was no ENT bleed/seizure nor history of abdominal pain and respiratory distress. The discharge and follow up card Ex. C-9 shows that Ratinder Kaur remained admitted for one month and two days in PGI, Chandigarh and the bills were marked as they were tendered in evidence by the counsel. Some of the medicines had been purchased in Chandigarh. There were some bills Mark-18 to 24 of medicines which were purchased from Ludhiana. In some of the slips, the name of the doctor had been mentioned as Dr. M.S.Dhillon which was missing in others and the claimant had failed to produce the prescription slip. A perusal of the bills show that some of the medicines purchased vide Mark-22, 23, 26, 29 and 30 are medicines for the blood pressure and unrelated to the injuries.

Ratinder Kaur had sustained a compound fracture of the left humerus with fracture of both bones of the right forearm with nerve injuries and stiffness of the left shoulder and the doctors had assessed the disability to the extent of 25% and the Tribunal had awarded Rs. 50,000/- assessing the quantum at the rate of Rs. 2,000/- per percent. When a disability is assessed it has to be converted in terms of a disability qua the whole body and the Tribunal could provide for compensation at Rs. 2,000/- per percentage as was done in *Naresh Kumar's* case (supra). In the present case, there was no loss in the earnings but a case of mal-union and fracture which would cause some difficulty in the use of the arm and would require to be compensated only for pain and suffering under the non-pecuniary heads and loss of amenities. Ratinder Kaur was 65 years at the time of accident. If the functional disability had to be assessed, it could not be more

7 = 84,000/-. The Tribunal had allowed Rs. 50,000/-, therefore, an addition of Rs. 34,000/- needs to be made for the permanent disability. The admission in the hospital was for over a month and the Tribunal had allowed Rs. 10,000/- for the attendant. I would add Rs. 10,000/- more as the services of the attendant would have been required for some more time and Rs. 10,000/- more should be added for special diet and Rs. 5,000/- for transportation. Ratinder Kaur is, thus, entitled to an increase of Rs. 59,000/- which would be payable to her by the insurance company with interest @ 6% from the filing of the appeal i.e. 17.5.2010 till realization.

The appeal filed by Ratinder Kaur is partly allowed.

Gurdev Singh had died during the pendency of the appeal but not on account of the injuries suffered in the accident. The legal heirs would only be entitled to the enhancement if any found only on account of loss to the estate as the action for personal injuries, short of causing death abates with the death of the deceased or the injured and does not survive to the legal heirs. However, if the action is initiated by an injured person for compensation with respect to the items which involved the loss to his property, to that extent the right to sue would survive to the legal representatives when he dies during the pendency of an action and the loss to the estate would not abate on his death.

The submission on behalf of appellant Gurdeep Singh was that the bills of over Rs. 2,00,000/- had not been allowed and had wrongly been rejected and the amount spent on the treatment should have been awarded.

The discharge and follow up card of Gurdev Singh is Ex. C-18 which pertains to April 2008 much after the accident. It records about the

accident which had taken place six months back and about his inability to

get up from the bed and difficulty in lifting the lower limb. He was admitted in the neurological department and had been prescribed medicines including Eptoin and was advised physiotherapy and visit to the diabetic clinic. The patient was suffering from neurological disability and was unable to walk without assistance but these are not because of the accident.

Gurdev Singh had stepped into the witness box and had tendered his affidavit Ex. C/B. He had mentioned that he had retired from Government of Punjab and was entitled for medical reimbursement from his office but he had not submitted any claim from the Punjab Government. He had stated that he had sustained injuries on the left leg which was fractured besides a head injury and multiple injuries. He was admitted in PGI for a month i.e. 26.9.2007 to 27.10.2007 and had a lot of complications. He proved MLR Ex. C-14 which refers to pain in the left leg which was deformed. There is a reference to advice for x-ray of the left leg and both bones of the left leg besides the skull, chest and pelvis. According to the history recorded, there was no bleeding/seizure/abdominal pain or respiratory distress.

The claimant had stated that he had developed complications and he was admitted in the Apollo Hospital from 27.10.2007 to 31.10.2007 and was operated upon. He had stated that he was again operated in November 2007 and remained in the hospital for two days and produced the discharge summary Ex. C-15. According to him he had spent Rs. 2,06,473.34 and he could not stand on his legs and had to use a walker and had kept an attendant. He had stated that his disability was to the extent of 70% and introduced the disability certificate Ex. C-95. He had also stated

that he had to go for physiotherapy and acupressure treatment to relief him

of the pain for about an year. He had also stated that he did not intend to apply for medical reimbursement from his department.

Dr. D.K.Pathak CW-3 proved the disability certificate Ex. CW3/1.

Dr. Abhishek Garg PW-4 brought the summoned record from the Apollo Hospital and stated that Gurdev Singh was admitted in the hospital on 27.10.2007 and was discharged two days later and was again admitted for two days in November. He admitted that the patient was admitted in the hospital after one month of the accident. He stated that the procedure that was done was of the right frontal and parietal burr hole and for evacuation of chronic SDH.

A burr hole procedure is conducted to remove a hemorrhage from around the brain. The claimant was seeking expenses for the injuries he had sustained in the accident. A doctor from PGI, department of Orthopedics had been summoned who had brought the patient record and after seeing Ex. C-18. He had stated that Gurdev Singh was admitted for a day and there was fracture of both bones of left side and splintage was done and he was discharged next morning and was called for OPD but admitted that Gurdev Singh was not operated in their department.

The accident had taken place on 25.9.2007. Gurdev Singh was taken to PGI along with his wife as per the statements made by the claimants. Gurdev Singh remained there only for a day. The OPD card was not produced. There is no evidence with respect to the amount deposited in the hospital for the treatment taken. There was no reason why the documents could not be produced. It appears that the documents had been

of the patient was already deformed. It was to be proved by the claimants that he had sustained a fracture in that leg in the accident. Gurdev Singh was driving the car that evening and another vehicle had hit their car. Had there been any fracture and considering the age and as Gurdev Singh was suffering from a number of ailments, he could not have been discharged in a day. He was diabetic and had heart ailments which are evident from the subsequent record produced on the record. The OPD card relating to Gurdev Singh is Ex. C-18 but this admission is in April 2008 and refers to other ailments not connected with the injuries. He was admitted in the hospital then the complaint of lower limb weakness and was suspected to be a case of temporal neuropathy. The admission in the hospital later is after a month in Ludhiana and that too unrelated to the accident. The Tribunal had rightly declined to allow those bills. The disability also did not relate to the injuries caused in the accident. The doctors had not found any swelling even after five hours of the accident. The MLR only refers to the pain in the left leg. The patient had been advised x-ray. It was for the claimants to show that there was a fracture.

Claimant Gurdev Singh had died during the pendency of the appeal. The death was not on account of the injuries suffered in the accident. Therefore, the appeal would abate and the legal representatives would only be entitled to increase if any towards loss to the estate.

The loss that was caused on various heads were considered by the Tribunal and the amount had already been awarded. The appellants have been unable to show that they were entitled to some more amount towards the amount spent on the purchase of the medicines. No further

it is not loss to the estate and the action dies on his death and it does not survive and abates to the legal representatives. The appellants are not entitled to any enhancement.

The appeal filed by Gurdev Singh Brar (deceased) through LRs is dismissed.

FAO-4388-2010 titled 'Ratinder Kaur vs. Jai Pal Singh and others' is partly allowed. FAO-4389-2010 titled 'Gurdev Singh Brar (deceased) through LRs vs. Jai Pal Singh and others' is dismissed.

(ANITA CHAUDHRY)
JUDGE

February 23, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No