

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

**FAO No. 863 of 2012 (O&M)
Date of Decision: April 03, 2017**

Lakha Singh

..Appellant(s)

Versus

Ashok Kumar and others

..Respondent(s)

with

FAO No. 2328 of 2012 (O&M)

Mahavir Parsad

..Appellant(s)

Vs.

Ashok Kumar and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Mr. Suvir Dewan, Advocate
for respondent no.3-Insurance Company.

ANITA CHAUDHRY, J.

**CM-3758-CII-2012 in
FAO863-2012
with
CM-10090-CII-2012 in
FAO-2328-2012**

For the reasons set out in the applications, same are
allowed as prayed for and delay of 20 days in filing both the appeals is
condoned.

MAIN CASES:-

These are two appeals arising out of an award dated 28.09.2011, passed by the Motor Accidents Claims Tribunal, Palwal. Both the claimants are aggrieved of the amount allowed to them and are seeking enhancement.

The facts which are essential are being narrated. An accident had taken place on 21.08.2008 at 4:30 PM when Mahavir Parshad and his son Lakha were returning to Pahari (Rajasthan) from Delhi on a motorcycle. Mahavir was driving the motorcycle while Lakha his minor son was on the pillion. When they were near village Galpuri on the national highway, a tractor driven by respondent no.1 came from Palwal side in the wrong direction and hit the motorcycle leading to injuries to both the occupants. It was claimed that left hand of Mahavir was crushed under the wheel of the tractor and he also sustained a fracture on the leg, Lakha suffered a fracture on the left leg and left hand. The tractor was not carrying any number plate. The FIR was lodged two days later.

The Tribunal took into account the treatment bills, which were to the tune of Rs.16,910+4801 and allowed compensation of Rs.25,000/- for the actual amount spent on the treatment besides a sum of Rs.10,000/- was allowed for special diet and transportation and Rs.15,000/- was allowed for pain and sufferings, awarding a total amount of Rs.50,000/-.

As regards Mahavir Parshad, it noted that there was disability to the tune of 90% of the left hand and 50% was taken as the

functional disability noticing that Mahavir was a cloth merchant. The Tribunal found that no evidence was led to show that he used to sell cloth or that he had an income of Rs.7,000 to 8000/- per month. Considering the treatment bills which were to the tune of over Rs.5 lacs, a sum of Rs.5,25,000/- was awarded for the treatment. While assessing the compensation for the disability, it was calculated @ Rs.2,000/- for every 1% taking the disability to be 50%, the amount was calculated at Rs.1 lac. It noted that the claimant had remained in the hospital for 74 days during different periods. A sum of Rs.30,000/- was awarded for pain and suffering and Rs.20,000/- was awarded for special diet and transportation, raising the total to Rs.6,75,000/-.

Coming to the case of Lakha Singh first, the submission raised on behalf of the appellant was that there was a fracture and the appellant had lost precious study time and he had been visiting the hospital for physiotherapy but no amount was awarded for transportation or for the attendant and suitable amount should be added.

The accident had taken place in August, 2008. The minimum wages in that year were around Rs.3,500/- per month. Therefore, the following amount can be added for Lakha:-

Attendant Charges (Rs.3500 x 3)	-	Rs.10,500/-
Transportation Charges	-	Rs.5,000/-
Special Diet	-	Rs.5,000/-
Pain and Suffering	-	Rs.10,000/-
Physiotherapy	-	Rs.5,000/-
Total	=	Rs.35,500/-

This is the amount payable to Lakha with interest @ 6% from the date of filing of appeal till realization.

Coming to the case of Mahavir Parshad, the submission was that the disability was assessed at 90% but the Tribunal had taken the functional disability at 50%, which is on the lower side and the method of calculation was wrong and the multiplier method should have been adopted to calculate the loss. It was urged that even if no evidence was led to show that Mahavir was a cloth merchant, his income can be taken higher than that of a labourer and some amount should be awarded for the attendant as there was a crush injury of the left hand and the amount awarded for pain and suffering was on the lower side.

The record is available and I find that the disability certificate does not refer to any crush injury. The statement of the doctor, however, reveals that nerve had been affected, which left the arm disabled. There was restrictive movement of the hand and the shoulder and the elbow. The treatment of Mahavir was long but no amount has been awarded for the attendant, therefore, some addition need to be made and I would make the following additions:-

Attendant Charges (Rs.3500 x 6 months)	-	Rs.21,000/-
Functional Disability (taking the income to be Rs.4,000/- p.m. and using the multiplier of 14), 2000(50% of the income) x 12 x 14 = 3,36,000 – 1,00,000 (awarded by the Tribunal).	-	Rs.2,36,000/-
Pain and Suffering	-	Rs.50,000/- more
Total	=	Rs.3,07,000/-

As a result, the appellant Mahavir would be entitled to a sum of Rs.3,07,000/- which would be payable as ordered by the

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

Both the appeals are partly allowed.

April 03, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No