

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

**Date of decision: 27.11.2017
FAO No.423 of 2014 (O&M)**

Bharat Singh ...Appellant

Versus

Har Parshad and others ...Respondents

FAO No.4395 of 2014 (O&M)

Raju ...Appellant

Versus

Har Parshad and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Deepa Jain, Advocate for
Mr. Yash Dev Kaushik, Advocate for the appellant.

Mr. Punit Jain, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.423 and 4395 of 2014 as these have emerged out of the same accident/common award passed by the Motor Accidents Claims Tribunal, Faridabad whereby compensation has been awarded in respect of injuries sustained by Bharat Singh and Raju in a motor vehicular accident that took place on 11.05.2011.

FAO No.423 of 2014

The Tribunal has awarded compensation to the tune of

Rs.1,42,000, detailed hereunder:-

1. Pain and sufferings	Rs.15,000/-
2. Medical bills	Rs.42,000/-
3. Special diet and transportation	Rs.10,000/-
4. Attendant charges	Rs.5,000/-
5. Loss of income	Rs.10,000/-
6. Permanent disability	Rs.60,000/- (30 x 2000)

Counsel for the appellant has submitted that compensation awarded by the Tribunal under various heads is grossly inadequate and liable to be enhanced. To bring home her contention, she has highlighted certain facts noticed in para 23 of the award in regard to nature of injuries sustained by the victim, period of treatment as an indoor patient, nature and extent of permanent disability suffered by the injured etc. It is further argued that as the Tribunal has considered the injured to be a casual labour, nature of disability suffered by him is bound to cause loss of income every day/every month, therefore, loss of future income qua disability is liable to be assessed by adopting multiplier method.

Counsel representing the insurance company, on the contrary, has supported the assessment made by the Tribunal with the submission that adequate compensation has been assessed.

I have heard counsel for the parties, perused the paper book particularly the award.

Dr. Vikram Sharma, Orthopedic Surgeon of Gold Field Hospital Chhainsa, Faridabad was examined and deposed (noticed in para

23 of the award) to the following effect:-

“that patient Bharat was diagnosed with compound gr III B # SOF(R) # BB1(R) FAL COM # DE radius and ulna ® side and for which he was operated upon by nailing right femur and DCP left femur and distractor application right radius and was discharged on 21.06.2011. He was again admitted on 22.12.2011 and was discharged on 29.12.2011 meanwhile screw of nailing were removed. He was again admitted on 12.12.2012 with abscess of right thigh for which I & D done and implant of right thigh removed and was discharged on 05.01.2013.”

Perusal of the aforesaid extract makes it evident that the injured remained hospitalised w.e.f. 11.05.2011 to 21.06.2011, 22.12.2011 to 29.12.2011 and 12.12.2012 to 05.01.2013. At the time of first admission, he was operated upon by nailing right femur and DCP left femur and distractor application right radius. During admission for the second time, screws of nailing were removed. On the third occasion, he was admitted due to abscess of right thigh for which I & D was done and implant of right thigh removed. In view of the above, the claimant shall be entitled to an amount of Rs.20,000/- for pain and sufferings, Rs.10,000/- towards attendant charges and Rs.15,000/- for special diet and transportation. The medical reimbursement allowed by the Tribunal is ordered to be affirmed.

The Tribunal has awarded Rs.10,000/- for loss of income and Rs.60,000/- qua permanent disability of 30% @ Rs.2000/- per percent. Taking into consideration the period of hospitalization coupled with nature

of injuries that left injured permanently disabled, claimant shall be entitled to loss of income for the period of treatment and recovery of three months @ Rs.4900/- per month and the amount comes to $\text{Rs.4900} \times 3 = \text{Rs.14,700/-}$.

The injured suffered permanent disability to the extent of 30% due to fracture shaft femur right and bone right forearm and malunited fracture lower and radius right with mannum varus right with painful partial restricted movements right knee, proved by Dr. Ravi Shanker, Orthopedic Surgeon, B.K. Hospital, Faridabad, a member of the medical board constituted for assessing disability of the victim. The Tribunal has treated the injured as a casual labour. In view of the nature and extent of disability coupled with nature of job required to be performed by the victim, his functional disability is assessed at 15%. Loss of future income qua disability comes to $\text{Rs.4900} \times 12 \times 17 \times 15\% = \text{Rs.1,49,940/-}$.

The claimant shall be entitled to an amount of Rs.30,000/- qua loss of amenities of life.

The total compensation comes to Rs.2,81,640/- and the additional amount is Rs.1,39,640/- ($2,81,640 - 1,42,000$) payable with interest @ 7.5% per annum from the date of petition till realization.

FAO No.4395 of 2014

CM No.12477-CII of 2014

For the reasons stated in the application supported by affidavit of Raju, same is allowed. Delay of 8 days in filing the appeal is condoned.

Main Case

The Tribunal has assessed compensation to the tune of Rs.1,63,000/-, detailed hereunder:-

1. Pain and sufferings	Rs.15,000/-
2. Medical bills	Rs.33,000/-
3. Special diet and transportation	Rs.10,000/-
4. Attendant	Rs.5,000/-
5. Loss of income	Rs.10,000/-
6. Permanent disability	Rs.90,000/- (45 x 2000)

Dr. Vikram Sharma, Orthopedic Surgeon, Gold Field Hospital Chhainsa, Faridabad appeared in the witness box and deposed (noticed by the Tribunal in para 25 of the award) to the following effect:-

“that there was fracture sha of femur (left) with supracondler # right femur with boneloss with compd.#BB (R) leg with fracture matacarpl and distel phalaynx (right) great toe for which he was operated upon and nailing was done for left femur. He proved MLR of claimant Raju as Ex.P225”

Dr. Ravi Shanker, Orthopedic Surgeon, B.K. Hospital, Fardiabad, a member of the medical board proved disability of the victim to the extent of 45% on account of operated case of fracture S/C femur right with operated fracture both bone leg right with operated fracture left femoral shaft with restrictions (partial) knee and ankle movements right side with shortening right lower limb by three inch with wasting left thigh.

Taking into consideration the nature of injuries sustained by

the victim leaving him permanently disabled to the extent of 45%, claimant shall be entitled to following compensation:-

1. Pain and sufferings	Rs.20,000/-
2. Special diet and transportation	Rs.15,000/-
3. Attendant charges	Rs.10,000/-

In view of my findings recorded in FAO No.423 of 2014, the claimant shall be entitled to loss of income @ Rs.4900/- per month for a period of three months qua period of treatment and recovery and is calculated at $\text{Rs.4900} \times 3 = 14,700/-$. The injured has suffered disability to the extent of 45%, proved by Dr. Ravi Shanker. The Tribunal has treated the injured as a casual labour. Taking a reasonable view from the materials on record, loss of future income shall be assessed by treating functional disability to the extent of 25% and the same comes to $\text{Rs.4900} \times 12 \times 17 \times 25\% = \text{Rs.2,49,900/-}$

The claimant is awarded an amount of Rs.50,000/- for loss of amenities of life.

The total compensation comes to Rs.3,92,600/- and the additional amount is Rs.2,29,600/- ($3,92,600 - 1,63,000$) payable with interest @ 7.5% per annum from the date of petition till realization.

The appeals are partly allowed in the aforesaid terms.

27.11.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No