

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

FAO No.2237 of 1999
Date of Order: 06.08.2018

Narain Singh

....Appellant

Versus

Jaswant Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. M.K. Bhatnagar, Advocate for the appellant.

Mr. D.P. Gupta, Advocate
for the respondent/Insurance-Company.

B.S.WALIA, J (ORAL)

1. Prayer is for enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') on account of injuries sustained by the appellant in an accident on 25.11.1996 on account of a collision between matador bearing Regd. No.DL-2C/7455 and truck bearing Regd. No.HR29-B/4402.

2. Brief facts of the case leading to the filing of instant appeal are that the appellant was initially treated in Govt. Hospital, Gurgaon (now Gurugram), where he was medico legally examined and following injuries were found on his person:-

1. Abrasion ½” x ½” on bridge.
2. Abrasion on right leg 2”x1”. X-ray was advised.
3. Abrasion left leg 1”x1”. X-ray was advised for this injury.
4. Complained of pain left thigh. X-ray was advised only for this injury.

Subsequently, on the basis of x-ray examination, two fractures i.e. of acetabulum as well as fracture of lower Rami on left side of pelvis were detected.

3. The appellant claimed that from Govt. Hospital, Gurugram, he was referred to Safdarjang Hospital, Delhi, on 27.11.1996, where he remained admitted for one month. Thereafter, he took treatment from SMS Hospital, Jaipur, where he was operated for treating injury in spinal cord and he spent ₹70,000/- to ₹80,000/- on his treatment. The appellant also claimed that he visited SMS Hospital, Jaipur on five occasion and on every visit he hired a taxi from his native place Mohindergarh by paying ₹1000/- to ₹1100/- per trip besides he was not in a position to move without support and had to spend ₹700/- ₹800/- per month for engaging an attendant and that at the time of accident he was getting ₹1500/- per month from the school as he was serving as Head Master and after the accident he could not join duties, thereby suffered loss of salary.

4. The appellant examined Dr. R.K. Sachdev, Medical Officer, General Hospital, Gurugram, as PW-3, who proved on record MLR as Ex.PC, besides Dr. B.B. Aggarwal, Medical Officer, Civil Hospital, Gurugram, as PW-4, who proved on record X-ray examination report as Ex.PC/1, in which fracture of acetabulum as well as fracture of lower Rami were found. Dr. S.P. Sharma, member of the board who had examined the appellant to ascertain the extent of disability gave report Ex.PD declaring the appellant to have sustained 75% permanent orthopedic disability due to traumatic quadriparasis with cervical spinal injury. The aforesaid medical evidence led on behalf of the appellant was not rebutted by the

respondents. Learned counsel contends that in the circumstances, the compensation awarded by the Tribunal is inadequate, therefore, is liable to be enhanced.

5. Per contra, learned counsel for the respondent/Insurance Company contends that no evidence whatsoever was led by the appellant with regard to expenses incurred on the treatment, therefore, the compensation awarded does not warrant enhancement.

6. I have considered the submissions of learned counsel for the parties. It needs mentioning here that during the pendency of the appeal, the appellant, died on 23.10.2003, whereupon his wife, three sons and three daughters moved an application for being impleaded as legal representatives. The said application was allowed by this Court on 27.09.2016. Admittedly, the appellant was 65 years of age at the time of accident, was serving as Head Master in a Private School against monthly salary of ₹1500/-. He sustained four injuries out of which two were fractures as per detail noted above, besides suffered permanent disability of 75% as per disability certificate Ex.PD as also statement of PW-6.

7. The Tribunal awarded ₹50,000/- on account of pain and sufferings, special diet, transportation charges, treatment expenses, loss of income etc. in the background of no evidence having been led by the appellant with regard to expenses incurred on the treatment, transportation, loss of income etc. Admittedly the appellant suffered permanent disability to the extent of 75%, besides sustained two fractures, one of acetabulum and another of lower Rami. Learned counsel for the parties on query clarified that fracture of acetabulum implied fracture of bone connecting

the leg with the hip in pelvis region. At a young age, pain and suffering might be less but at the age of 65, pain and suffering would be much more. Besides 75% permanent disability suffered by the appellant would definitely impact freedom of movement as well as of enjoyment of life, thereby seriously depriving the appellant of amenities of life. In the absence of evidence with regard to actual expenses incurred, the only way left is to resort to guess work with regard to expenses incurred. A perusal of statement of PW-6 reveals that not only did the appellant suffer 75% permanent orthopedic disability but also that the same was due to traumatic quadriparalysis with cervical spinal injury. Therefore, it stands established that the appellant sustained a cervical spinal injury also. Therefore, there is no reason to disbelieve the statement of the appellant that he had took treatment from SMS Hospital, Jaipur for injury to the spinal cord. In the circumstances, I am of the view that compensation of ₹50,000/- awarded in lump sum to the appellant on account of i) pain and suffering, ii) special diet, iii) transportation charges, iv) loss of income etc. is inadequate. Accordingly, I assess the compensation payable on account of pain and suffering at ₹50,000/- as the appellant remained under treatment not only in Govt. Hospital, Gurugram but also at Safdarjang Hospital, Delhi for one month, whereafter he took treatment from SMS Hospital, Jaipur, where he underwent surgery for treating injury in the spinal cord. Although the period he remained admitted in hospital is not mentioned but it has been mentioned that he went to Jaipur from his native village, Moindergarh in a taxi five times for which he paid a sum of ₹1000/- to ₹1100/- per trip. Presuming the trip to be a monthly trip, it is estimated that the appellant

remained under treatment for about 6 months. Accordingly, I assess a sum of ₹2000/- per month as special diet. Consequently, a sum of ₹12,000/- is awarded on account of expenses for special diet. Since, the appellant remained admitted in Govt. Hospital, Gurugram, from where he was referred to Safdarjang Hospital, Delhi, where he remained admitted for one month, besides took treatment from SMS Hospital, Jaipur on five occasions for which he incurred approximately ₹5500/-, I am of the view that consolidated ₹10,000/- be awarded for transportation expenses i.e. local as well as to Jaipur and back. The appellant had categorically stated that he was working in Saini High School, Mohindergarh as Head Master against monthly salary of ₹1500/- and that after the accident he could not join duty and suffered loss of salary. The statement was given on 03.09.1998, whereas he died in October, 2003. Although it is not on record as to from where the appellant had retired yet the fact remains that there is no cross-examination with regard to the statement that he was working as Head Master in Saini High School, Mohindergarh, in 1996 against monthly salary of ₹1500/-. Obviously, Narain Singh was re-employed after his retirement. Accordingly, it can be held that he would be entitled to loss of income at least upto the date of statement i.e. 03.09.1998. Accordingly, appellants are held entitled to loss of income to Narain Singh at the rate of ₹1500/- per month for a period of 22 months i.e. ₹33,000/-. Although a sum of Rs.7800/- was stated to have been spent for attendant charges but no evidence in respect thereto was led. Accordingly, no amount is awarded on aforesaid account. Computed in the manner aforesaid, the compensation payable is enhanced from ₹50,000/- to ₹1,05,000/- Accordingly, the legal

FAO No.2237 of 1999

heirs of the appellant are held entitled to a sum of ₹1,05,000/- along with interest @ 7.5% per annum from the date of claim petition till the date of payment, less amount, if any already paid.

8. Accordingly, appeal is allowed and award is modified to the extent as noted above.

August 6, 2018

rajesh.k.khurana

(B.S.WALIA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No