

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

Date of decision: 04.09.2018

FAO No.2259 of 2003 (O&M)

Miss Rashmi Bajaj ... Appellant

Versus

Sh. Paramjit Singh and others ... Respondents

FAO No.2260 of 2003 (O&M)

Smt. Chander Kalan and another ... Appellants

Versus

Sh. Paramjit Singh and others ... Respondents

FAO No.9035 of 2014 (O&M)

Oriental Insurance Co. Ltd. ... Appellant

Versus

Miss Rashmi Bajaj and others ... Respondents

FAO No.9036 of 2014 (O&M)

Oriental Insurance Co. Ltd. ... Appellant

Versus

Smt. Chander Kalan and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ankur Bali, Advocate
for the claimants.

Mr. Akash Sridhar, Advocate for
Mr. Ashwani Talwar, Advocate
for the insurance company.

Mr. Sanjay Jain, Advocate
for respondent No.2 in FAO No.9035 of 2014
for respondent No.3 in FAO No.9036 of 2014.

Mr. PKS Gill, Advocate
for respondent No.4 in FAO No.9035 of 2014
for respondent No.5 in FAO No.9036 of 2014.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2259 and 2260 of 2003, 9035 and 9036 of 2014 as these have emerged out of award dated 19.10.2002 and 24.10.2013 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been assessed on account of injuries sustained by Ms. Rashmi Bajaj and death of Ms. Sunita Chauhan in a motor vehicular accident that took place on 09.11.1998.

Initially, Chander Kalan and another were awarded compensation to the tune of Rs.2,81,820/- with regard to death of Ms. Sunita Chauhan and Rs.60,000/- to Rashmi Bajaj in regard to injuries sustained by her and liability to pay compensation was fastened to the extent of 50% on the driver, owner and insurer of Tata Sumo No.HR-01-E-4699 whereas the remaining 50% has been imposed upon driver/owner of tractor No.GJC-8625, both the vehicles involved in the accident. Later, owner of the aforesaid tractor filed an application for setting aside the ex parte proceedings and award dated 19.10.2002 and the same was allowed and the second award dated 24.10.2013 was passed whereby liability to pay

compensation has been fastened only against the driver, owner and insurer of Tata Sumo No.HR-01-E-4699.

FAO No.2259 of 2003 has been filed by Ms. Rashmi Bajaj, injured and FAO No.2260 of 2003 by Smt. Chander Kalan and another for enhancement of compensation on account of death of Sunita Chauhan whereas the other two appeals have been preferred by the insurer of Tata Sumo No.HR-01-E-4699 against the award dated 24.10.2013.

FAO No.2259 of 2003

The Tribunal has awarded compensation of Rs.60,000/-, detailed hereunder:-

- | | |
|--|-------------|
| 1. Compensation on account of disfigurement of face | Rs.30,000/- |
| 2. Pain and sufferings | Rs.20,000/- |
| 3. Transportation, medicines purchased from outside, special diet etc. | Rs.10,000/- |

Counsel for the claimant would urge that initially the injured was admitted in Dayanand Medical College and Hospital, Ludhiana on 10.11.1998 and discharged on 12.11.1998. Later, she was admitted in Government Medical College and Hospital, Sector 32 Chandigarh on 12.11.1998 and discharged on 19.11.1998. Rashmi Bajaj appeared in the witness box and stated on oath that she remained on leave for 37 days but the Tribunal has not allowed reimbursement of loss of salary for the leave period. Compensation allowed under other heads is grossly inadequate and liable to be enhanced.

Counsel representing the respondents have supported

assessment made by the Tribunal. It is argued that the claimant did not examine a witness from her department either with regard to her having not got reimbursement of medical expenses or loss of salary of leave period.

The Tribunal has awarded a sum of Rs.30,000/- with the observation that there has been change in her natural appearance which can cause embarrassment to her and affect her matrimonial prospects. Indisputably, no medical evidence has been adduced with regard to disfiguration of face despite her having undergone plastic surgery. The accident pertains to the year 1998. In the given scenario, compensation of Rs.30,000/- qua disfiguration and Rs.20,000/- for pain and suffering does not admit further enhancement. Compensation of Rs.10,000/- allowed by the Tribunal in para 30 of the award also seems to be reasonable particularly in the circumstances that the Tribunal has made an observation that the claimant is trying to conceal the factum of reimbursement of medical expenses to her.

There is no challenge to plea of the claimant that she remained on leave for 37 days on account of sustaining injuries. She remained admitted in the hospital for a period of about 10 days. She was not able to resume her duties for another 20-25 days. Even if the claimant has availed medical leave, there will be discredit of medical leave in her account under this head. The claimant is awarded a sum of Rs.5000/- with regard to loss of leave to her credit, payable with interest @ 6% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FAO No.2260 of 2003

The Tribunal has awarded compensation of Rs.2,81,820/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5033/-
2. Multiplier	7
3. Deduction for personal expenses	1/3 rd
4. Loss of dependency	Rs.2,81,820/-

The deceased was Library Restorer in Government Medical College and Hospital, Sector 32, Chandigarh at gross salary of Rs.5063/- per month and the same is to be taken into account for computing loss of dependency. As the deceased was a government employee, claimants shall be entitled to addition in income for future prospects @ 50%. The deceased was 21 years old at the time of unfortunate occurrence. Admissible multiplier, in the circumstances, would be 18 but deduction for personal expenses 50%. In this manner, loss of dependency is calculated at Rs.8,20,206/- [(Rs.5063 x 12 x 18) + (50% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, claimants shall be entitled to Rs.30,000/-, i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

Total compensation is Rs.8,50,206/- and the additional amount is Rs.5,68,386/- (8,50,206 - 2,81,820), payable with interest @ 6% per

annum from the date of petition till realization, to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO Nos.9035 and 9036 of 2014

Counsel would argue that initially, the Tribunal rightly fastened liability against both the vehicles involved in the occurrence to the extent of 50% each but later due to collusion between the claimants and Hans Raj, owner of tractor No.GJC-8625, Hans Raj filed an application for setting aside the award and could escape his liability to pay compensation to the extent of 50%. It is further argued that author of FIR No.111 dated 09.11.1998 was not examined to discharge onus of issue No.1 with regard to the accident being the result of rashness and negligence on the part of driver of Tata Sumo No.HR-01-E-4699. Counsel would inform that tractor No.GJC-8625 owned by Sh. Hans Raj was not insured and the claimants in order to ensure payment of compensation wanted the whole liability to be fastened upon the driver, owner and insurer of Tata Sumo No.HR-01-E-4699.

Counsel representing the respondents have supported the award dated 24.10.2013 whereby Sh. Hans Raj, owner of the tractor aforesaid has been exonerated of liability to pay compensation. It is further argued that even if the present is a case of composite negligence of two vehicles involved in the occurrence, claimants are left at liberty in law to seek compensation from either of the joint tort-feasers.

Another submission made by counsel is that as driver of

aforesaid tractor has not been impleaded as a party, therefore, he did not get an opportunity to raise any such plea denying negligence attributable to him, the Tribunal has rightly modified the earlier award by upholding plea of the claimants that entire negligence is to be attributed to the driver of Tata Sumo No.HR-01-E-4699.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, driver of tractor involved in the occurrence has not been impleaded as a party. Hans Raj, owner of the tractor was proceeded against ex parte but later the ex parte proceedings and the award were set aside while disposing of application filed by Hans Raj in this regard and he was allowed an opportunity to contest the proceedings. As has been rightly argued by counsel for the respondents, in absence of driver of the aforesaid tractor, no negligence to the tractor driver, can possibly be attributed as was done by the Tribunal in the award dated 19.10.2002. Since driver of the tractor was not impleaded as a party by the claimants who in law are left at liberty to claim compensation from either of the joint tort-feasers, as such, no error much less illegality can be found in the award dated 24.10.2013 whereby the driver, owner and insurer of vehicle No.HR-01-E-4699 have been held to be jointly and severally liable to pay entire compensation to the claimants.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly

dismissed. As the appeals have been decided on merits, applications for condonation of delay are of academic relevance only.

04.09.2018

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Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No

(REKHA MITTAL)
JUDGE