

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4590 of 2003 (O&M)

Baby Kavita

...Appellant

Versus

Sahid and others

...Respondents

AND

FAO No.4903 of 2003 (O&M)

Dharam Pal

...Appellant

Versus

Sahid and others

...Respondents

Date of Decision: March 06, 2018

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Ms.Kamaldeep Kaur, Advocate for
Mr.Adarsh Jain, Advocate
for the injured – appellants.

Mr.D.K.Dogra, Advocate for
respondent No.3 – insurer.

HARINDER SINGH SIDHU, J.

This appeal is filed by the claimants for enhancement of compensation, as awarded by the Motor Accident Claims Tribunal, Faridabad (for short 'the Tribunal') vide its award dated 5.8.2003.

Brief facts as disclosed in the claim petition are that on 22.5.2001 at about 5.00 am, in the area of Kheri Road, Old Faridabad, a vehicular accident took place involving Dumper No.HR-38C-9938 (herein for short

'the offending vehicle'), wherein, Kavita, Dharam Pal (both appellants) and Meena suffered multiple injuries. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On two separate claim petitions having been filed by the injured – claimants, the Tribunal awarded the following compensation:

In case of Injuries to Kavita (FAO-4590-2003) :

Compensation for pain and suffering	Rs.20,000/-
Compensation for expenses on medicines	Rs.71,000/-
Compensation for expenses on special diet, attendant and conveyance	Rs.5,000/-
Compensation to meet unforeseen expenses in the hospital	Rs.2,000/-
TOTAL	Rs.98,000/-

In case of Injuries to Dharam Pal (FAO-4903-2003) :

Compensation for pain and suffering	Rs.15,000/-
Compensation for expenses on medicines	Rs.1,43,000/-
Compensation for expenses on special diet, attendant and conveyance	Rs.5,000/-
Compensation to meet unforeseen expenses in the hospital	Rs.2,000/-
TOTAL	Rs.1,65,000/-

Feeling dissatisfied with the quantum of compensation, the claimants are before this Court.

I have heard Ld. Counsel for the parties and gone through the record with their assistance.

The discharge summary (Ex.P32) was placed on record before the Tribunal, which revealed that Kavita – appellant remained admitted in Escorts Hospital and Research Centre, Faridabad w.e.f 22.5.2001 to 7.6.2001. She had suffered head injury (acute hemorrhagic contusion Lt. Deep frontal and temporal lobes; diffuse cerebral, oedema, diffuse axonal injury Mandible region 3; comminuted fracture right femur) and she was kept in ICU investigated and treated with I/V fluids/ antibiotics/ H2 blockers/ 3 units blood transfused/ Neurosurgery opinion taken and was advised Mannitol & Epsilon, Naotropil, ner idrip, orthopaedics consultation done. Skin traction on thomas splint given for fracture right femur for fracture mandible-circumferential wiring was done but proper reduction not achieved and patient needs to be taken up for reduction whenever fit for G.A. Medical bills (Ex.P2 to Ex.P4, Ex.P33 to Ex.P40, Ex.P58 to Ex.P74, Ex.P7/A to Ex.PW7/A to Ex.PW7/E, Ex.P103 and Ex.P104, amounting to Rs.70,880/- were also proved on record.

Dharam Pal (PW1) deposed before the Tribunal that right leg of his daughter Kavita got fractured and her skull was also fractured. She had taken treatment from Escorts Hospital and Research Centre, Faridabad. He also stated that due to the accidental injuries, her face has also been disfigured. She also sustained head injury and remained in comma for 17 days. This witness also deposed that after the accident, his daughter Kavita – appellant has almost become mental. She had to leave the school and is unable to do her daily work. She has lost charm in life. She cannot marry and her growth has also stopped due to head injury.

The appellant- Kavita was aged about 12 years at the time of

accident and was a student. Considering her injuries, pain and suffering, loss of enjoyment of life, adverse effect of the injuries on her studies and health, reduced scope of her marriage prospects, etc., the compensation of Rs.98,000/- is grossly inadequate. The accident appears to have totally shattered the life of the minor, in her most formative and productive years. The damage and loss suffered by her may take a lot of time to repair. She may carry some scars of this accident for her life. Besides regular future medical consultation and treatment she would also need constant care, support and encouragement of those around her,

Coming to the case of Dharam Pal – injured/appellant, the discharge summary Ex.P29 and P30, revealed that he was first admitted in Escorts Medical and Research Centre, Faridabad on 22.5.2001 and discharged on 12.6.2001. He had received RTA and chest injury fracture right tibia (comminuted), comminuted fracture right scapula and rotator Cuff (haemathorax) for which he was treated in the Hospital. He was again admitted on 30.7.2001 and discharged on 4.9.2001 with non-union segmental fracture BB right leg for which he was operated upon. The bills of the Hospital, purchase of medicines, CT scan, etc. amounting to Rs.1,42,028/- were placed on record.

The injured Dharam Pal while appearing before the Tribunal deposed that after the accidental injuries, he remained admitted in the hospital for 20 days. Later on, he was again admitted for 10 days and a rod was inserted in his right leg. Once again, he remained admitted in the hospital for 07 days. He further deposed that due to accidental injuries, his tongue was damaged and he was rendered incapable to speak properly. He

also stated that he is still under treatment. He also stated that before the accident he used to do agricultural work and earn about Rs. 150/- per day, but after the accident he is unable to do his agricultural work.

The Ld. Tribunal did not award any amount for loss of earnings during treatment and loss of future earnings for the reason that there was no cogent evidence to prove that he was earning Rs.150/- per day as claimed by him and that because of the accident he had been rendered incapable of working and earning. The Tribunal may be right in that there was no evidence about his earnings but it needs to be noticed that in the very nature of things it may not be easy for those doing manual work and employed in the unorganized sector to get evidence of their earnings. However, even if no evidence is produced it may not be proper to deny any compensation under these heads for it can well be presumed that every able bodied person who supports a family, unless he has other means, would be working at least as a labourer. Dharmpal remained under treatment for at least four months requiring repeated admissions to the hospital . Obviously he could not earn during this period. Considering the nature of the injuries i.e., chest injury fracture right tibia (comminuted), comminuted fracture right scapula and rotator Cuff (haemathorax) for which he was treated in Escorts Hospital from 22.5.2001 till 12.6.2001 and non-union segmental fracture BB right leg for which he remained admitted from 30.7.2001 to 4.9.2001 and was operated upon it is understandable that he would not be able to do strenuous labour work for at six months to a year. He needs to be compensated for this at least at the rate of minimum wages payable to an unskilled labourer. The minimum wages for unskilled workers in the State of Haryana as on

1.1.2001 were Rs.1964.58 (rounded off at Rs.1965/-). These wages would be applicable on the date of the accident i.e. 22.5.2001.

In the light of the above and considering the injuries suffered by the appellants, their pain and suffering, as also their long admission in the Hospital, the compensation awarded by the Tribunal appears inadequate. Accordingly, the same is re-assessed as under:-

In case of Injuries to Kavita (FAO-4590-2003) :

Head of compensation	Amount (In Rupees)
Expenses on medicines	71,000/-
Expenses on special diet, attendant and conveyance	50,000/-
Compensation to meet future medical expenses	50,000/-
<i>Damages for pain, suffering and trauma as a consequence of the injuries.</i>	1,00,000/-
<i>Loss of amenities (and/or loss of prospects of marriage).</i>	1,50,000/-
TOTAL	4,21,000/-
Enhanced Compensation	3,23,000/- (421000-98000)

In case of Injuries to Dharam Pal (FAO-4903-2003) :

Head of compensation	Amount (In Rupees)
Loss of income during treatment (six months)	1965x6 = 11790
Future loss of income (one year)	1965x12 = 23580
For pain and suffering	70,000/-
Expenses on medicines	1,43,000/-
Expenses on special diet, attendant and conveyance	50,000/-
Compensation to meet unforeseen expenses in the hospital	10,000/-
TOTAL	3,08,370/-
Enhanced Compensation	1,43,370/- (308370-165000)

The appeal are allowed accordingly. Interest shall be paid on the enhanced amount at the rate of 7.5% per annum from the date of filing of claim application till realisation.

March 06, 2018

(**HARINDER SINGH SIDHU**)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No