

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

FAO No.10505 of 2014 (O&M)
Date of decision:09.01.2018

Rajesh ... Appellant
Vs.

Surender and others ... Respondents

FAO No.4549 of 2015 (O&M)

Anil Kumar ... Appellant
Vs.

Surender and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. N.K.Malhotra, Advocate
for the appellant (in FAO No.10505 of 2014) .

Mr. Saurabh Dalal, Advocate
for the appellant (in FAO No.4549 of 2015).

Mr. Deepak Girotra, Advocate
for respondents No.1 and 2.

Mr. Punit Jain, Advocate
for respondent No.3.

AMIT RAWAL J. (Oral)

C.M.No.14486-CII-2015 in FAO No.4549 of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 155 days in filing the appeal, is condoned.

C.M. stands disposed of.

FAO Nos.10505 of 2014 and 4549 of 2015 (O&M)

This order of mine shall dispose of two appeals bearing Nos.10505 of 2014 filed on behalf of Rajesh and 4549 of 2015 on behalf of Anil Kumar, who sustained injuries while travelling in Omni Van in a motor vehicular accident which allegedly took place on 05.05.2011 at 9.00 a.m at Beri Kalanaur Road near village Masudpur falling within the area of Police Station, Kalanaur. The said vehicle was being driven by Rajesh.

Mr. N.K. Malhotra, learned counsel for the appellant (in FAO No.10505 of 2014) submits that Rajesh Kumar, who was having his own vehicle and working as driver earning an income of ₹15,000/- per month before the accident. Unfortunately, he has suffered a fracture on the lower limb and as per the disability certificate, Ex.P.69, he has suffered disability to the extent of 30%. The Motor Accident Claims Tribunal has awarded the compensation which comes under the following heads:-

- i) Transportation : ₹10,000/-
- ii) Special Diet : ₹3,000/-
- iii) Pain and Suffering : ₹10,000/-

Learned counsel further submits that MACT has awarded a sum of ₹1.02 lacs for the medicines and ₹60,000/- under the head of permanent disability total of which comes to ₹1,85,000/- by applying the ratio decidendi culled out in **Sarwan Kumar vs. Balbir Singh and others 2007 (2) PLR 143** but the Tribunal has not awarded any compensation on

account of loss of amenities.

Mr. Saurabh Dalal, learned counsel for the appellant (in FAO No.4549 of 2015) submits that both legs of Anil Kumar were fractured. He was admitted in Chawla Nursing Home Hissar from 05.05.2011 to 19.05.2011 and operated upon by the doctor four times. The claimants had spent a sum of ₹5 lacs on the treatment. In support of his case, he has examined PW2-Dr. Gaurav Sachdeva, Senior Resident, Department of Ortho PGIMS Rohtak and as per the disability certificate Ex.P66, proved through the aforesaid doctor, disability was found to the extent of 35%, whereas, a sum of ₹5,000/- has been awarded for the special diet, ₹10,000/- for transportation, ₹10,000/- for pain & suffering and ₹1,65,000/- for medical expenses, total of which comes to ₹2,60,000/- but the Tribunal not has awarded any compensation on the loss of amenities.

Mr. Puneet Jain, learned counsel for respondent No.3 submits that compensation awarded by the Tribunal vis-a-vis disability on the basis of the formula culled out in Sarwan Kumar (supra), is perfectly legal and justified and thus, urges this Court for dismissal of the appeals.

I have heard learned counsel for the parties and appraised the paper book and of the view that disability certificates Ex.P69 in Rajesh and Ex.66 in Anil Kumar's case, are not in dispute. The compensation awarded to the tune of ₹60,000/- in Rajesh's and ₹70,000/- in Anil Kumar's case by applying formula of ₹2000/- for 1% disability is correct. Vis-a-vis compensation awarded under the head of pain and suffering, I am of the

view that the compensation on account of pain and suffering is liable to be enhanced. Instead of ₹10,000/-, it should have been ₹25,000/- so therefore, there is an increase of ₹15,000/- in Rajesh's case. Similar is the view in Anil Kumar's case and special diet in Rajesh's case, instead of ₹3,000/-, it should have been ₹5,000/-.

Both the appeals stand disposed of in the aforementioned terms.

(AMIT RAWAL)
JUDGE

January 09, 2018
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Whether Speaking/Reasoned

Whether Reportable

Yes/No

Yes/No