

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

1. **FAO No.10550 of 2014 (O & M)**
Date of Decision:-20.3.2018

Rajnesh

...Appellant

Versus

Mubarik and others

...Respondents

2. **FAO No.10015 of 2014 (O & M)**

Shyam Wati

...Appellant

Versus

Mubarik and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Vikas Kumar, Advocate
for the appellant.

Mr. M.B. Jain, Advocate and
Mr. Punit Jain, Advocate
for respondent No.3-insurance company.

REKHA MITTAL J.(Oral)

This order will dispose of FAO No.10015 and 10550 of 2014 as these have emerged out of same award dated 28.10.2013 passed by Motor Accidents Claims Tribunal, Palwal, whereby compensation has been awarded on account of death of Simla @ Suman and injuries sustained by Shyam Wati, Murti Devi, Rajnesh and Smt. Roshni in a motor vehicular accident that took place on 31.10.2010.

FAO No.10015 of 2014 has been filed by Shyam Wati injured for enhancement of compensation whereas FAO No.10550 of 2014 has been filed by

Rajnesh for the same relief.

CM No.29088-CII of 2014

Prayer in this application is for condoning delay of 310 days in filing the appeal.

In view of averments made in the application coupled with that provisions of the Motor Vehicles Act for grant of compensation are benevolent social legislation to save the victim from financial loss caused due to accident, the application is allowed, delay of 310 days in filing the appeal stands condoned subject, however, to the condition that in case the compensation is enhanced, the applicant-appellant shall not be entitled to interest for the period of delay.

FAO No.10550 of 2014

With regard to the injuries sustained by Rajnesh, the Tribunal awarded compensation of Rs.1,09,420/-, detailed hereunder :-

i)	Monthly income of Rajnesh at the time of accident	Rs.4500/-
ii)	Increase in the salary on account of future prospects at the rate of 50% as per Sarla Verma's case	Rs.2250/-
iii)	Total monthly income comes to	Rs.6750/-
iv)	Annual income for the purpose of compensation	Rs.6750x12= Rs.81000/-
v)	After applying the multiplier of '17'the compensation amount comes to	Rs.81000x17=Rs .13,77,000/-
vi)	Permanent disability account	Rs.82,620/-
vii)	Transportation charges	Rs.5000/-
viii)	Attendant charges	Rs.5000/-
ix)	Special diet	Rs.5000/-
x)	Loss of income	Rs.1800/-
xi)	Pain and suffering	Rs.5000/-
xii)	Enjoyment of amenities in life	Rs.5000/-

Counsel for the appellant would argue that claimant has sustained multiple grievous injuries, fracture of left 5th to 8th rib, fractures on 4th and 5th metatarsal bones and proximal phalanx of 5th digit, fracture of lower 1/3 shaft of tibia or fibula in right leg. She remained admitted in Sun Flag Hospital & Research Centre, Faridabad from 31.10.2010 to 09.11.2010 and 07.12.2010 to 08.12.2010. It is further argued that on account of injuries sustained, she has become disabled to the extent of 6%. Further argued that compensation awarded by the Tribunal under various heads is on lower side and needs enhancement.

Counsel representing the insurance company has refuted contention of counsel for the appellant by contending that the Tribunal has awarded an amount of Rs.82,620/- towards permanent disability by adopting multiplier method and extending benefit of future prospects @ 50% without any finding that disability to the extent of 6% is functional in nature and how it has resulted in loss of income to the extent of 6%.

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

The claimant did not examine treating doctor to prove nature of injuries and treatment given during hospitalisation. Perusal of document Ex.P-145 would reveal that as per medico legal report conducted in Government Hospital, Palwal, the injured had lacerated wound on right foot measuring 0.5 x7 inches and she complained of pain and swelling left rib for which she was advised x-ray. As per x-ray report (Ex.P-9) there was fracture of left 5th to 8th ribs and x-ray right ankle AP and LAT showed fracture of lower 1/3rd shaft of tibia and fibula. Taking into consideration nature of injuries sustained by the victim coupled with the period of hospitalization, compensation awarded by the Tribunal with regard to

loss of income, pain and sufferings, enjoyment of amenities of life appears to be on lower side. However, as the claimant has been allowed higher compensation with regard to permanent disability to the extent of 6%, claimant is awarded an additional amount of Rs.10,000/- in all alongwith interest @ 7.5% per annum from the date of petition till realization except for the period of delay of 310 days in filing the appeal.

The appeal is partly allowed in the aforesaid terms.

FAO No.10015 of 2014

The Tribunal has awarded compensation of Rs.30,149/-, detailed in para 36 of the award, reads thus :-

Amount of Medical Bills	:	Rs.4699/-
Transportation charges	:	Rs.5000/-
Attendant charges	:	Rs.5000/-
Special Diet	:	Rs.5000/-
Loss of Income	:	Rs.450/-
Pain and suffering	:	Rs.5000/-
Enjoyment of amenities in life	:	Rs.5000/-

Counsel for the claimant would argue that compensation awarded by the Tribunal under various heads is on lower side and needs enhancement. It is argued that the injured/victim remained hospitalized for a period of three days i.e. from 31.10.2010 to 02.11.2010 in Sun Flag Hospital & Research Centre, Faridabad and she got fracture on 9th left rib and head injury. It is further argued that the claimant has filed application under Order 41 Rule 27 CPC for additional evidence in order to produce the disability certificate issued by the medical board, assessing disability to the extent of 3%. It is further argued that claimant is entitled to compensation for disability.

Counsel representing the insurance company has supported assessment made by the Tribunal on the premise that adequate compensation has been awarded. However, claimant may be allowed reasonable compensation qua disability.

The injured/victim remained hospitalised for a period of three days. She sustained fracture 9th rib left side. It is not clear as to what type of head injury was suffered by her. She has not examined treating doctor to prove nature of injuries. However, as the injured/victim was discharged from hospital on 2.11.2010, it can be safely presumed that she did not sustain serious injuries in the accident.

The Tribunal has rightly reimbursed medical expenses on the basis of bills marked as exhibits. Similarly, compensation awarded for transportation, attendant charges, special diet, pain and sufferings, enjoyment of amenities of life is ordered to be affirmed. The claimant remained hospitalised for a period of three days and she would have taken some more time to recover from her medical condition. The Tribunal assessed her income at Rs.4500/- per month. She is awarded loss of income for a period of one month i.e. Rs.4500/-.

Claimant has produced original disability certificate and same is taken on record. The disability certificate has been issued on 02.7.2014 in respect of an injury sustained in 2010. The percentage of disability is 3% but nothing has been mentioned in the certificate that the same is permanent or otherwise. However, it remains a fact that disability continued till 2014, in respect of injury sustained in October 2010. Claimant is awarded an amount of Rs.6000/- in respect of disability. Additional amount of Rs.10,500/- shall be payable with interest 7.5% per annum from the date of petition till realization except for the period of delay of 264 days in filing the appeal.

The appeal is partly allowed in the aforesaid terms.

March 20, 2018
Vijay Asija

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No