

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4484 of 2014 (O&M)
Date of Decision: August 06, 2018

Jai Bhagwan ...Appellant

Versus

Malkiat Singh and another ...Respondents

AND

2. FAO No.5231 of 2014 (O&M)

Rimpy Devi ...Appellant

Versus

Malkiat Singh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. Rajbir Singh Arya, Advocate
for respondent No.1.

None for respondent No.2.

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HARINDER SINGH SIDHU, J.

This order shall dispose of two appeals namely FAO No.4484 and 5231 of 2014 both filed by the injured-claimants for enhancement of compensation as awarded by the Motor Accidents Claims Tribunal, Karnal (for short "the Tribunal") vide its award dated 1.5.2014.

In the claim petitions, it had been pleaded that on 6.12.2010, Jai Bhagwan alongwith his daughter Rimpy was going on Hero Honda Splendor(Motorcycle) No. HR-05V-1097. At about 12.30 PM, when he

reached near the fields of Jeet Ram in village Sikri, District Karnal, an Alto Car bearing registration No.HR-99-GHO-8757-HQ(TP) (herein after referred to as 'offending vehicle') came which was being driven at a high speed and in a rash and negligent manner. On seeing it, the claimant stopped his motorcycle. However, the offending vehicle struck against his motorcycle from the front side. Claimant Jai Bhagwan alongwith his daughter fell down on the metalled road. Jai Bhagwan suffered injuries on his legs, arms, head and private parts. His daughter suffered injuries on her head and left thigh. The motorcycle was also badly damaged. The injured claimants were got admitted in G.H. Nilokheri for treatment. However, considering the seriousness of injuries, they were both referred to Karnal. FIR No. 394 dated 9.12.2010 under sections 279,337, 338 and 427 IPC was registered against respondent No.1, the driver -cum-owner of the offending vehicle. Report under section 173 Cr.P.C. was also filed.

The learned Tribunal on the basis of evidence concluded that the accident has been caused due to the rash and negligent driving of respondent No.1.

The claimant-Jai Bhagwan was awarded compensation of Rs.2,14,000/-, which included Rs.74,000/- as expenses incurred on his treatment at Virk Hospital, Karnal, Rs.30,000/- on account of pain and suffering, Rs.5000/- for special diet, Rs.5000/- as cost of transportation, Rs.25,000/- on account of disability and Rs.25,000/- towards loss of income and Rs.50,000/- for medicines purchased.

The claimant Rimpay was awarded a total compensation of Rs.52,500/- which included Rs.10,000/- on account of pain and suffering, Rs.5,000/- for special diet, Rs.5,000/- for transportation, Rs.5000/- for

temporary disability, Rs.10,000/- for loss of present and future income, Rs.14,500/- for treatment and Rs.3,000/- for purchase of medicines.

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

FAO No.4484-2014 :

Learned counsel for the claimant – appellant Jai Bhagwan contended that the compensation awarded is inadequate. The Tribunal has wrongly concluded that the disability suffered by the claimant was not permanent and awarded a meagre amount of Rs.25,000/- as loss of income (past and future). Though bills for medicines and other various tests amounting to about Rs.6,00,000/- were tendered, but the Tribunal only awarded Rs.50,000/- for the medicines and other expenses. He contended that the amount awarded for pain and suffering is also inadequate. No amount has been awarded for future medical expenses.

On the other hand the Ld. Counsel for the respondents contended that adequate compensation had been awarded.

Having heard Ld. Counsel I feel that the compensation needs to be enhanced.

The claimant- Jai Bhagwan appearing as PW2 stated that he had sustained multiple and grievous injuries on his body particularly on both his arms, head, private parts and right thigh. His right lower leg had been fractured from two places and the left leg had been fractured at three places. Immediately after the accident, he was shifted to Government Hospital, Nilokheri where he was medico-legally examined and considering the seriousness of the injuries, he was referred to Hospital in Karnal. The

appellant got admitted in Virk Hospital Karnal, from where he got

treatment. He remained admitted in the hospital from 6.12.2010 to 17.12.2010. He spent about Rs.8,00,000/- on his treatment including medicines, special diet, transport etc. Before the accident he was hale and hearty, but on account of the injuries sustained by him, his physical frame has been shattered. He remained bedridden for 12 months. He was an agriculturist by profession and was also running a milk dairy. As a result of the accident he has sustained permanent disability. He cannot walk properly and also cannot perform hard labour required in agriculture. He is still under the treatment of doctors.

Besides himself, the claimant also examined Dr. B.S. Virk as PW-3, who deposed that the claimant was admitted in his hospital on 6.12.2010 with the history of roadside accident. He had suffered fractures. He was operated for the same and was discharged on 17.12.2010. He stated that he received Rs.66,000/- as charges and expenses for the treatment. The claimant was again admitted on 21.3.2011 for which he was charged Rs.3,000/-. He was again admitted on 30.8.2011. He was once again admitted on 12.3.2012 and discharged on 13.3.2012. He proved the discharge cards and cash receipts. He also stated that the patient had purchased the medicines from outside and that he was still under his treatment. The Tribunal has awarded a sum of Rs.74,000/- which Dr. Virk proved that he had charged for the treatment.

The claimant had placed on record medical bills showing that he had purchased medicines worth Rs.6,40,222/-. The learned Tribunal only awarded a consolidated sum of Rs.50,000/- on account of cost of purchase of medicines holding that these bills had only been tendered by the claimant through the statement of counsel and he had not led any admissible

evidence to prove that the medicines had in fact been purchased by him. The Tribunal also noted that there was nothing in the deposition of Dr. Virk that all these medicines had been prescribed by him.

In my view this amount needs to be increased. No doubt Dr. B.S. Virk in his deposition has not specifically stated or proved that all the medicines claimed to have been purchased by the claimant had been prescribed by him but he had clearly stated that the claimant had been purchasing medicines from outside. In view thereof and considering that he had suffered multiple fractures and undergone at least four surgeries at different intervals for which he remained hospitalized for at least two weeks and that Dr. Virk has also testified that he had purchased medicines from outside and was still under follow up treatment, it would be realistic to award a sum of Rs.1,00,000/- on account of purchase of medicines.

The claimant had placed on record disability certificate Ex.P196. As per this, he had suffered 42% disability. The disability recorded in this certificate is as under:-

“Old Case of RSA with operated case of right hip with operated case of right shaft femur with operated case both legs right and left and operated case of right radius lower end and operated case left wrist with implant in situ and right and left thigh and right leg and right wrist with ostomoyelist right leg limping unable to bear weight, right hip and right L-L.”

PW-3 Dr. Vinod Kumar, S.M.O. Govt. Hospital, Karnal deposed that on 1.5.2013 he along with other members of the Board had examined Jai Bhagwan for assessment of disability. On examination, he was found to be a case of roadside accident with operated case of both legs right and left and operated case of right radius lower end and operated case left

wrist with implant in situ and right and left thigh and right leg and right wrist with ostomoyelist right leg limping unable to bear weight, right hip and right lower limb. The disability was assessed at 42%. He stated that if the disability is assessed with regard to whole body it comes to approximately 28%. He categorically denied the suggestion that the disability would be reduced with time and physiotherapy.

In view of this, the finding of Tribunal that the disability is not permanent, does not appear to be correct. The further finding of the Tribunal that the disability would always improve with the passage of time as the claimant was only 48 years is also incorrect in view of the deposition of PW-3 where he denied the suggestion that the disability would be reduced with time or physiotherapy. Thus, the compensation of Rs.25,000/- assessed by learned Tribunal on account of the disability is wholly inadequate.

The case of the claimant was that he was an agriculturist. The Tribunal has assessed the monthly income of the injured – appellant at Rs.5000/- treating him as an unskilled worker. The accident had occurred on 6.12.2010 and he was examined by the medical board for assessment of disability on 1.5.2013 i.e. about two and a half years after the accident and it was found that his right leg was limping and unable to bear weight. This and his condition as mentioned in the disability certificate i.e., being operated case of both legs right and left and operated case of right radius lower end and operated case left wrist with implant in situ and right and left thigh and right leg and right wrist with ostomoyelist, clearly reveals that the claimant has been rendered incapacitated to perform hard labour which is necessary for agricultural operations. This has impacted his future earning

capacity. The functional disability is accordingly assessed at 70%. As there is no evidence as to his earnings, his income has to be assessed as per the minimum wages of an unskilled labourer and the compensation is being computed accordingly. As per the Labour Department, Government of Haryana, the minimum wages for unskilled labour at the time of accident i.e. December, 2010 was Rs.4348.21 paise per month. Thus, the monthly income of the claimant – injured is assessed at Rs.4350/- per month (rounded off). The loss of future income is to be assessed by applying the multiplier method.

In view of the fact that the claimant had remained hospitalized as an indoor patient for about two weeks and had undergone repeated surgeries for treatment of his fractures the compensation on account of pain and suffering and cost of transportation is enhanced to Rs.50,000/- and Rs. 25,000/- respectively.

Accordingly, the compensation is being reassessed as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Monthly Income	4350/-
(ii)	25% of above (i) to be added as future prospects (injured aged 50 yrs.)	$4350 + (4350 \times 25 / 100) = 5437.50$
(iii)	Future Loss of income (70% functional disability) per month	$5437.5 \times 70 / 100 = 3806.25$
(iv)	Future Loss of income after multiplier of 13 is applied	$3806.25 \times 12 \times 13 = 5,93,775/-$
(v)	Towards cost of medicines	1,00,000/-
(vi)	Hospital Treatment Charges	74,000/-
(vii)	Towards pain and suffering	50000/-
(viii)	Towards loss of amenities of life	100,000/-
	TOTAL	9,17,775/-

Accordingly, the award of the Tribunal is modified to the extent

that the appellant Jai Bhagwan is entitled to a total compensation of Rs.9,17,775/- i.e. Rs.7,03,775/- (917775-214000) over and above the amount awarded by the Tribunal. The enhanced amount shall carry interest @ 7.5% per cent per annum from the date of filing of the claim petition till realization.

FAO No.5231 of 2014 :

On account of the injuries sustained in the accident the claimant Rimpny remained hospitalized for three days i.e., from 6.12.2010 to 8.12.2010. As per her disability certificate, her disability was assessed at 5%. The disability with regard to whole body was assessed at 2.5%.

She was awarded a total compensation of Rs.52,500/- which included Rs.10,000/- on account of pain and suffering, Rs.5,000/- for special diet, Rs.5,000/- for transportation, Rs.5000/- for temporary disability, Rs.10,000/- for loss of present and future income, Rs.14,500/- for treatment and Rs.3,000/- for purchase of medicines.

The compensation awarded seems to adequate. Hence, there is no merit in this appeal and the same is dismissed.

Conclusion :

As a result, FAO No.4484 of 2014 is allowed in the manner, as indicated above and FAO No.5231 of 2014 is dismissed.

August 06, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No