

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 812 of 2003 (O&M)
Date of decision : 3.4.2019

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Richh Pal Singh

.....Appellant

vs.

Joginder Singh and others

.....Respondents

2) FAO No. 813 of 2003 (O&M)

...

Swaran Singh

.....Appellant

vs.

Joginder Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Vinod K. Kanwal, Advocate for the appellant(s)

Mr. D.R. Bansal, Advocate for respondent No.2.

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H. S. Madaan, J.

By this common judgment, I intend to dispose of two appeals i.e. bearing FAO No. 812 of 20113 titled as 'Richh Pal Singh vs. Joginder Singh and others' and FAO No. 813 of 2003 titled as 'Swaran Singh vs. Joginder Singh and others'.

Briefly stated, facts of the case are that on 24.8.1989, Swaran Singh and Richh Pal Singh were going to village Bilona from village

Assandh on their motorcycle bearing registration No. HR-40-6348. The motorcycle was being driven by Swaran Singh and Richh Pal Singh was a pillion rider thereon. When they had crossed village Mardan Khera, in the meanwhile, a three wheeler bearing No. HR-45-4119 being driven by respondent No.1 Joginder Singh in a rash and negligent manner, came from the side of village Kheri Sharaf Ali and hit their motorcycle by going on the wrong side of the road. Resultantly, both the riders alongwith the motorcycle fell down on the road and sustained multiple injuries on their persons. They had filed separate claim petitions under Section 166 of the Motor Vehicles Act, 1988, against the respondents i.e. Joginder Singh – driver, Raj Singh – owner and the National Insurance Company Limited, Gohana – insurer of three-wheeler No. HR-45-4119.

Notice of the claim petitions was given to the respondents. All the three respondents were served. Respondent No.2 did not appear, despite service, as such was proceeded against ex parte. Whereas, respondents No. 1 and 2 filed separate written statements contesting the claim petitions.

In the written statements filed by respondent No.1, he admitted the factum of accident contending that the accident had taken place on account of negligent driving of the motorcycle by claimant Swaran Singh, therefore, claimants were not entitled to receive the compensation from him. According to the answering respondent though he has been challaned wrongly by the police for having caused the accident. Refuting the remaining allegations, such respondent prayed for dismissal of the claim petitions.

In the written statements filed by respondent No.3, it denied the material assertions and refuted the factum of accident. However, in alternative took the plea that even if it is found that the three-wheeler in question was insured by it, the claimants were not entitled to be compensated by respondent No.3, as the vehicle was being driven by respondent No.1 in violation of the terms of the insurance policy because respondent No.1 was not holding a valid driving licence. Such respondent also pleaded for dismissal of the claim petition.

From the pleadings of the parties, following issues were framed :-

In petition No.1

- 1) Whether the claimant had sustained multiple injuries on his person in a roadside vehicular accident which had occurred on 24.8.1999 in the area of police station Assandh on account of rash and negligent driving of three-wheeler No. HR-45-4119 by respondent No.1 Joginder Singh ? OPP
 - 2) If issue No.1 is proved, whether the claimant is entitled to be compensated for the injuries sustained by him in the above accident, if so, to what extent and from whom? OPP
 - 3) Whether the respondent No.1 was not holding a valid driving licence at the time of accident, if so its effect? OPR
- 3
- 4) Relief.

In petition No.2

1. Whether the claimant had sustained multiple injuries on

his person in a roadside vehicular accident which had occurred on 24.8.1999 in the area of police station Assandh on account of rash and negligent driving of three-wheeler No. HR-45-4119 by respondent No.1 Joginder Singh ? OPP

2) If issue No.1 is proved, whether the claimant is entitled to be compensated for the injuries sustained by him in the above accident, if so, to what extent and from whom? OPP

3) Whether the respondent No.1 was not holding a valid driving licence at the time of accident, if so its effect? OPR

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4) Relief.

Subsequently, both the petitions were consolidated with the observations that the evidence which was recorded in petition No.1, it was to be read in petition No. 2 also.

Parties led evidence in support of their respective claims. Claimants Richh Pal Singh and Swaran Singh appeared in witness box as PW-1 and PW-2, respectively, besides examining Dr. Ashok Gupta as PW-3, Dr. K.C. Sachdeva as PW-4 and Dr. Rakesh Girdhar as PW-5 and closed their evidence.

On the other hand, respondent No.1 did not lead any evidence and closed the same. Respondent No.3 tendered certified copy of judgment as Exhibit R-1, report of licensing authority as Exhibit R-2, copy of insurance police as Exhibit R-3, copy of driving licence of respondent No.1 as Exhibit R-4, besides examining Rakesh Kumar, Clerk, as RW-1.

After hearing the arguments, the Tribunal vide award dated

18.11.2002, awarded compensation of Rs.47,500/- with interest and costs to claimant Richh Pal Singh and compensation of Rs.1,86,400/- with interest and costs to claimant Swaran Singh.

Both the petitioners were dissatisfied with the compensation amount awarded to them and they have filed separate appeals seeking enhancement of the compensation.

Notices of the appeals were given, but only the insurance company turned up to offer contest.

The Tribunal on appreciation of the evidence adduced before it has come to the conclusion that claimants had sustained injuries on their person in the accident which had taken place on account of rash and negligent driving of three-wheeler No. HR-45-4119 by respondent No.1 Joginder Singh, as such they were entitled to compensation.

While considering the case of Richh Pal Singh – injured, who while appearing as PW-1, had stated that he had sustained fractures on his left leg, left hand and head, besides other injuries in the above accident; he was taken to the Civil Hospital, Assandh and then shifted to Dr. Sachdeva Nursing Home, Karnal for treatment, where he remained admitted as indoor patient for 25 days and subsequently, he had taken follow up treatment from that hospital.

Dr. K.C. Sachdeva, PW-4 who had treated him, had also supported his case that claimant was admitted in his nursing home on 24.8.1999 at 7.30 P.M. suffering injuries in a roadside vehicular accident. He was having multiple fractures of tibia and fibula of left leg and on left wrist and he was operated upon. Plaster of Paris was

applied for the fractures of tibia and fibula as also the left wrist and he remained admitted in the hospital upto 6.9.1999.

The Tribunal has awarded him a sum of Rs.1,500/- for pain and suffering borne by him on account of injuries suffered. I find this amount somewhat on lower side. Only a person who suffers multiple serious injuries, that too in a roadside accident, having a nightmarish experience, can feel the pain and misery, undergone by him. It is very difficult to quantify such pain and misery. However, considering the facts and circumstances of the case and period of hospitalization of the injured, I find that it would be proper and appropriate, if he is granted Rs.25,000/- as damages for pain and suffering.

The Tribunal has awarded a sum of Rs.14,500/- as treatment expenses. However, it has not been taken into consideration that many a times, people do not keep record of the medicines and drugs purchased. Sometimes, those are purchased without asking for bill or receipt and on occasions bills or receipts so obtained get misplaced. No amount has been awarded towards future treatment. Therefore, the amount of Rs.14,500/- is enhanced to Rs.25,000/-.

The Tribunal has awarded a sum of Rs.8,000/- under the Head special diet and transportation charges. Of course, a person suffering multiple injuries, including fractures, requires a special diet for early recovery and joining of bones. A sum of Rs.10,000/- under that Head would be proper and appropriate to be awarded. For transportation charges, i.e. hiring vehicles for going for follow up treatment, another sum of Rs.10,000/- deserves to be awarded.

The Tribunal has awarded a sum of Rs.10,000/- for the

reason of suffering pecuniary loss due to inability of the claimant to work. Again keeping in view the period of hospitalization, nature of injuries and the fact that injuries could take quite some time for healing and the claimant must have been unable to perform his usual work, a sum of Rs.10,000/- appears to be inadequate and is enhanced to Rs.20,000/-.

The Tribunal has not granted any amount under the Head Loss of amenities. Of course, as a result of suffering multiple injuries, including on vital parts, nature and extent thereof, the claimant would not be in a position to lead life as he would prior to suffering injuries. One does face difficulty in walking, running and moving about, after suffering injuries of such type and magnitude and for loss of amenities, claimant deserves to be compensated. A sum of Rs.25,000/- is awarded to him on that count.

Therefore the total compensation comes out as under:-

<i>Sr.No.</i>	<i>Head</i>	<i>Compensation</i>
1	Damages for pain and suffering	Rs. 25,000/-
2	Expenditure on Medical treatment	Rs. 25,000/-
3	Special diet	Rs. 10,000/-
4	Transportation charges for follow up treatment	Rs. 10,000/-
5	For suffering pecuniary loss	Rs. 20,000/-
6	Loss of amenities	Rs. 25,000/-
	Total	Rs.1,15,000/-

The Tribunal has already awarded a sum of Rs.47,500/- to the claimant. The claimant shall be entitled to get additional compensation of $Rs.1,15,000 - 47,500 = 67,500/-$. The claimant-appellant shall also be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till

actual realization. Other terms and conditions with regard to apportionment and payment shall remain the same as in the original award.

Now coming to the case of Swaran Singh, whose left leg got fractured at three places and his left hand suffered multiple fractures besides injuries on his right leg and knee. He remained hospitalized for about 6 months as borne out from the record and thereafter has been going for follow up treatment. Dr. K.C. Sachdeva PW-4, had stated that such claimant was admitted in his nursing home on 24.8.1999 and discharged on 27.8.1999 having fractures on left wrist, besides having fracture in the left neck of femur. There was deformity in the left forearm near the wrist joint and further he had extensive and irregular wounds in an area of 8" x 2" on the medial side of left leg. PW-3 Dr. Ashok Gupta, had stated that on 28.5.2001, Swaran Singh was admitted in his hospital for treatment as his internal fixation of femur was infected. He was operated upon and nail was removed and he remained in the hospital till 5.7.2011. During that period, he had multiple blood transfusion. Such witness proved discharge slip and bed head ticket of the patient, stating that he had charged Rs.200/- to Rs.250 per day for one room and Rs.150/- per day as visiting fee. The Tribunal has wrongly discarded his testimony, just for the reason that he had nowhere stated that he had gone to such witness for taking treatment. This witness cannot possibly have fabricated the record in that regard, running the risk of being prosecuted with chances of going behind the bars, if alleged

forgery was detected. The Tribunal adopted hyper-technical approach in disbelieving PW-3, which was uncalled for. While dealing with such like matters the Tribunal should have taken a sensitive view. On account of pain and suffering a sum of Rs.20,000/- has been awarded. While keeping in view the magnitude and extent of injuries, he deserves to be awarded a sum of Rs.35,000/-.

As per disability certificate, Exhibit P-3, he was found to have suffered 80% permanent disability on account of malunited fracture femur with three inch shortening of left lower limb with complete stiffness of left hip and knee joint with fracture of both leg bones on both sides with infected wound on the left leg and left hip with complete stiffness of both knee joint and right ankle joint with mild stiffness of the left wrist joint. The Tribunal has awarded a sum of Rs.1,86,400/-, which in my view is on lower side.

In view of the law on this point as enunciated in authority *Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another 2014 (14) SCC 396,* wherein the Apex Court had observed that for permanent disability suffered, upto 90%, Rs. 5 lacs of compensation should be awarded. Therefore, following the law laid down by the Apex Court, since the permanent disability on the person of injured has been found to be 80%, therefore, he is entitled to a sum of Rs.5 lacs as compensation on account of permanent disability.

The Tribunal has granted a sum of Rs.10,000/- towards medical expenses. However, keeping in view the nature of injuries

their magnitude, period of hospitalization and follow up treatment etc. , this amount seems to be on lower side. The Tribunal has rightly observed that on account of illiteracy and ignorance, the claimant and his family members might not have preserved the bills for claiming compensation. Therefore a sum of Rs.40,000/- is awarded on that account.

With regard to the consolidated compensation of Rs.10,000/- awarded under the Head of special diet and conveyance that is also on lower side. The claimant is awarded a sum of Rs.25,000/- for special diet and Rs.25,000/- towards transportation expenses for going to Hospital from his residence and back.

On account of loss of work, a sum of Rs.12,000/- has been awarded, which is inadequate and the amount towards pecuniary loss is enhanced to Rs.40,000/-.

With the type of extent of injuries, he would be requiring services of an attendant for quite some time. Furthermore he must have required assistance of an attendant during the period of his hospitalization and thereafter even while going for follow up treatment. So in my view on account of loss of amenities, a sum of Rs.50,000/- is awarded to the claimant.

Thus the total compensation is worked out as under :-

<i>Sr.No.</i>	<i>Head</i>	<i>Compensation</i>
1	Damages for pain and suffering	Rs. 35,000/-
2	Permanent disability of 80%	Rs.5,00,000/-
3	Expenditure on Medical treatment	Rs. 40,000/-
4	Special diet and conveyance	Rs. 25,000/- + Rs. 25,000/-

<i>Sr.No.</i>	<i>Head</i>	<i>Compensation</i>
5	For suffering pecuniary loss	Rs. 40,000/-
6	Loss of amenities	Rs. 50,000/-
	Total	Rs.7,15,000/-

The Tribunal has already awarded a sum of Rs.1,86,400/- to the claimant. The claimant shall be entitled to get additional compensation of $\text{Rs.7,15,000} - 1,86,400 = 5,28,600/-$. The claimant-appellant shall also be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization. Other terms and conditions with regard to apportionment and payment shall remain the same as in the original award.

Both the appeals are allowed accordingly.

3.4.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes/ No

Whether reportable Yes/ No