

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

F.A.O. No.1643 of 2002(O&M)

Date of Decision: 13.02.2019

Bijender @ Pappu

.....Appellant.

Versus

Vijay Singh and others

..... Respondents.

AND

F.A.O. No. 1642 of 2002O&M)

Smt. Narvanti

.....Appellant.

Versus

Vijay Singh and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sachin Mittal, Advocate
for the appellants.

Mr. Gaurav Aggarwal, Advocate
for respondents no.1 and 2.

Ms. Vandana Malhotra, Advocate
for respondent no.3-Insurance Company.

LISA GILL, J.

This judgement shall dispose of FAO No. 1643 of 2002 and FAO No.1642 of 2002 as both the appeals arise from a common award dated 07.11.2001, passed by the learned Motor Accident Claims Tribunal, Gurgaon (for short 'tribunal').

Appellant-claimant, Bijender @ Pappu in FAO No. 1643 of 2002, seeks enhancement of compensation awarded by the learned tribunal, Gurgaon, vide impugned award dated 07.11.2001, on account of injuries received by him in the motor vehicle accident which took place on

23.11.1999.

Appellant-claimant in FAO No. 1642 of 2002, mother of Bijender @ Pappu also seeks enhancement of the compensation awarded by the learned tribunal on account of injuries received by her in the same accident. For the sake of convenience, facts are being extracted from FAO No. 1643 of 2002.

Brief facts which are common to both the appeals as pleaded in the claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V.Act'), are that Satya Parkash along with his wife Narwanti and eight year old son Bijender were travelling from village Hayatpur to village Khoh/Sikanderpur on a scooter bearing registration no. DL-8SD-9895 on 23.11.1999 at about 4.45.p.m. Narwanti was pillion riding on the said scooter. The abovesaid scooter was driven by Satya Parkash on the correct side of the road. When, they reached near turning of village Badha, a dumper bearing registration no. HR-26-GA-2210 driven in a rash and negligent manner by respondent no.1 came from the side of village Budha side and struck the scooter from the front side. As a result thereof, all three fell down from the scooter and received injuries. Bijender and his mother Narwanti were taken to Civil Hospital, Gurgaon by Satya Parkash. Due to their serious condition, they were then admitted at Kalyani Hospital, Gurgaon. FIR No. 733/99, under Sections 279, 338 IPC, Police Station Sadar Gurgaon, was registered against respondent no.1-Vijay Singh, in this respect.

Learned Tribunal on considering the facts and circumstances of the case concluded that the accident in question was caused due to rash and

negligent driving of the offending vehicle by respondent no.1-Vijay Singh. The said finding of the learned tribunal has attained finality.

Learned tribunal in MACT No. 51 dated 02.03.2000 (claiming compensation on account of injuries received by appellant-Bijender) awarded a sum of ₹70,000/- along with interest @ 9 % per annum from the date of filing of the claim petition till realisation of the amount to the claimant.

Learned tribunal in MACT No. 140 dated 24.07.2000 awarded a total sum of ₹2,25,000/- along with interest @ 9 % per annum from the date of filing of the claim petition till realization of the amount to the claimant-Narwanti on account of injuries received by her.

Learned counsel for the appellant in FAO No. 1643 of 2002 submits that compensation of ₹70,000/- awarded to the claimant-Bijender, on account of the injuries received by him is woefully insufficient and prays that the same be enhanced.

Learned counsel for the appellant in FAO No. 1642 of 2002 submits that increase on account of future increment has not been afforded. It is further submitted that meagre compensation has been awarded under the conventional heads. It is, thus, prayed that compensation awarded to the appellant be enhanced.

Learned counsel for the respondent-Insurance Company in both the appeals, while refuting the above arguments, submits that compensation has been reasonably assessed by the learned tribunal and there is no scope for any further enhancement. Learned counsel prays for dismissal of both the appeals.

I have heard learned counsel for the parties and have gone through the record with their assistance.

FAO No. 1643 of 2002

Appellant-claimant-Bijender @ Pappu aged 8 years at the time of the accident suffered a fracture of leg. He was admitted in the hospital on 23.11.1999 having a fracture of right femur, right tibia and fibula. PW-1-Dr. Vineesh Mathur, proved that Bijender was admitted in the hospital on 23.11.1999 and discharged on 29.11.1999. He deposed that close reduction was done and a cast with skeleton traction applied. It is further stated that the appellant had to come for follow up treatment. Some complication was however developed. PW-7-Dr. Akhlaq Ahman proved the disability certificate, Ex.P-7. PW-7 further stated that there was mild restriction of movement at the right knee along with shortening of the right leg by 1". Disability was assessed as 17 ½ %. Therefore, it is proved on record that the appellant was hospitalised for about six days and he suffered permanent disability to the extent of 17½ %. It is rightly observed by the learned tribunal that the appellant did not suffer from any apparent functional disability on account of the injuries/disability suffered by him. However, learned tribunal has erred in awarding a consolidated sum of ₹50,000/- on account of injuries including disability, pain and suffering, mental shock etc.

In the facts and circumstances of the case, the appellant who was an eight (08) years old child at the time of accident is entitled to a sum of ₹25,000/- each on account of pain and suffering, loss of amenities besides loss of marriage prospects. He is also entitled to a sum of ₹35,000/- (17 ½ % x 2000/- on account of permanent disability). Learned tribunal has further

erred in awarding a sum of ₹6000/- in respect to the expenses incurred on medical treatment, medicines etc. Learned tribunal while holding that the bills of Kalyani Hospital, Gurgaon, Mark A-1 and A-2 to the tune of ₹9360/- and ₹400/- are allowed in *toto*, awarded a sum of ₹6000/- instead of ₹10,291/- on account of other medical expenses while observing that the bills Mark A-3 to A-24 are not proved.

In my considered opinion, there is no evidence on record which would persuade this Court to negate or discard the said bills. Therefore, apart from a sum of ₹9360/- and ₹400/-, the appellant is also entitled to a sum of ₹10,291/-. Appellant is thus entitled to a total sum of ₹20,051/- on account of medical expenses (₹9360 + ₹400+ ₹10291). Appellant is also entitled to a sum of ₹5000/- on account of transportation and attendant charges and ₹8000/- for special diet.

Claimant-Bijender, on account of the injuries received by him is entitled to compensation which is re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of earnings	₹35,000/-
2.	Pain and suffering	₹25,000/-
3.	Loss of amenities	₹25,000/-
4.	Loss of marriage prospects	₹25,000/-
5.	Medical expenses	₹20,051/-
6.	Transportation charges	₹5,000/-
7.	Special diet	₹8,000/-
	Grand Total	₹1,43,051/-

Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5 % per annum from the date of filing of petition till

realization. Needless to say the amount, if any, already disbursed to the claimant shall stand deducted.

FAO No. 1642 of 2002

It is proved on record that the claimant-Nirwanti received injuries in the motor vehicle accident which took place on 23.11.1999. PW-4-Rakesh Naithani of Kalyani Hospital, Gurgaon, deposed that Narwanti was admitted at Kalyani Hospital, Gurgaon on 23.11.1999 with head injury. She was unconscious. Blood clot was detected on the left side of the brain and she was operated thereon in emergency. Narwanti was discharged from the hospital on 10.12.1999 with a slight improvement at the time of discharge. Discharge summary, Ex.P-1, and OPD slip, Ex.P-2 were proved by PW-4, who further testified that Narwanti had paralysis of the right side and was unable to speak. Certificate, Ex.P-4, was proved by him. Narwanti was subjected to examination by the Board at RML Hospital, Delhi for assessing the percentage of disability. PW-6-Dr. K.S.Anand, a member of the Board proved the disability certificate, Ex.P-6, wherein it is stated that Narwanti suffered permanent disability to the extent of 60%.

Claimant-Narwanti was admittedly 30 years old at the time of the accident. She remained hospitalised for 32 days. It is to be noted that the petition under Section 166 of the M.V. Act was filed on behalf of Narwanti through her husband as she was in coma at that time, due to serious injuries. Keeping in view the nature of disability which was caused due to the injuries, functional disability of the appellant in this case cannot be less than 75%. It is so assessed. Appellant-Narwanti was claimed to be a house-wife and engaged in agricultural work as well earning a sum of ₹4000/- per

month. Taking Narwanti to be a house wife, it is considered just and expedient to assess her notional income as ₹3000/- per month.

Compensation to the appellant-Narwanti is thus required to be worked out in view of the judgement of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. Loss of income is ₹3000 x 75/100 i.e., ₹2250/- per month.

While affording an increase of 40% in the income of the appellant on account of future income, the amount comes to [(2250/- + (2250 x 40%)] = ₹3150/- per month i.e., ₹37,800/- per annum. Age of the injured/claimant-Narwanti was 30 years as on the date of the accident, therefore, multiplier of 17 is to be applied. Loss of earnings is, thus, assessed as ₹6,42,600/- [37,800 x 17].

Bills of Kalyani Hospital, Gurgaon, amounting to ₹50,000/- were duly proved. Learned tribunal has erred in awarding a sum of ₹20,000/- only in respect to the other expenses incurred on medical treatment, which is reflected to be ₹30,000/- as per bills Mark A-25 to A-73. Appellant is thus entitled to ₹30,000/- instead of ₹20,000/-, besides ₹50,000/- on account of medical expenses. Appellant is thus entitled to a total sum of ₹ 80,000/- on account of treatment and medical expenses. Appellant is also entitled to a sum of ₹5000/- for transportation, ₹8000/- for special diet, ₹20,000/- for future medical expenses and ₹30,000/- each for pain and suffering and loss of amenities.

Compensation towards the claimant-Narwanti on account of the

injuries received by her is thus re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of earnings	₹6,42,600/-
2.	Pain and suffering	₹30,000/-
3.	Loss of Amenities	₹30,000/-
4.	Medical expenses	₹80,000/-
5.	Future medical expenses	₹20,000/-
6.	Transportation charges	₹5,000/-
7.	Special diet	₹8,000/-
	Grand Total	₹8,15,600/-

Amount already awarded by the Tribunal to claimant-Narwanti shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, FAO No. 1643 of 2002 and FAO No. 1642 of 2002 are disposed of.

13.02.2019

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.