

FAO No. 1130 of 1991 (O&M) & FAO No. 1052 of 1991 (O&M)

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

Date of Decision: 19.10.2019

1. FAO No. 1130 of 1991 (O&M)

State of Haryana and another

..... Appellants

Versus

Sadhu Ram Singla and another

..... Respondents

2. FAO No. 1052 of 1991 (O&M)

Sadhu Ram Singla

..... Appellant

Versus

Mohan Singh and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajesh Gaur, Addl. A.G., Haryana,
for the appellants in FAO No. 1130 of 1991.

Mr. Sukant Gupta, Advocate,
for respondent No.1 in FAO No. 1130 of 1991 and
for the appellant in FAO No. 1052 of 1991.

JAISHREE THAKUR, J.

1. By this common order, this Court proposes to dispose of
two appeals i.e. FAO No.1130 of 1991 and FAO No 1052 of 1991

which have been filed seeking to challenge the impugned award dated 27.04.1991 passed by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') arising out of the same accident.

2. In brief, the facts are that an accident took place on 08.03.1988 involving a car Fiat NE-118 bearing registration No. PAW-2825 carrying Sadhu Ram Singla and his teenage daughter Sikha, driven by his driver Tarsem Lal, with a Truck bearing registration No. HYC-7164 belonging to the PWD Department, Govt. of Haryana, driven by Mohan Singh-respondent No.1. The accident took place near Dang Brick Kilan on Raipurani road at Naraingarh, on the road from Bathinda to Mussorie between 10-11 a.m. Consequent to the accident, FIR No. 35 dated 08.03.1988 under Sections 279, 337, 338 IPC was registered at Police Station Naraingarh. Sadhu Ram Singla, the injured, remained admitted at Civil Hospital, Naraingarh and later shifted to PGIMR, Chandigarh and discharged on 16.05.1988. Subsequently, on discharge he preferred a claim petition seeking compensation of ₹ 42.5 lakhs on account of permanent disability, loss of income, medical treatment, future medical treatment, pain and suffering, which was contested by the Department.

3. A reply was also filed by the Driver-Mohan Singh. The

Tribunal by its award dated 24.07.1991, allowed compensation to the claimant-Appellant Sadhu Ram for a sum of ₹ 13.46 lakhs with interest from the date of filing of the claim petition till realization by holding respondent No.1 and 2 jointly and severally liable to pay compensation. Aggrieved against the inadequate award of compensation, the injured Sadhu Ram Singla preferred an appeal No. 1052 of 1991, whereas the State of Haryana too filed an appeal numbered as FAO No 1130 of 1991 challenging the award on the ground that the award was unsustainable.

4. Learned counsel appearing on behalf of the appellant while seeking enhancement relies upon the judgments rendered in ***Laxman @ Mourya vs. Divisional Manager, Oriental Insurance Company Limited and Another, (2011) 10 Supreme Court Cases 756, Balram Prasad vs. Kunal Saha and others, (2014) 1 Supreme Court Cases 384, Santosh Devi vs. National Insurance Company Limited and others, (2012) 6 Supreme Court Cases 421, Savita vs. Bindar Singh and others, (2014) 4 Supreme Court Cases 505, Reshma Kumari and others vs. Madan Mohan and another, (2013) 9 Supreme Court cases 65 and National Insurance Company Limited vs. Pranay Sethi and Ors., 2017(4) RCR (Civil) 1009***, to contend that the compensation awarded should include pecuniary and non-pecuniary damages and adequate compensation must be awarded not only for physical injury and loss of income but also for pain,

suffering and trauma caused due to accident. Non-pecuniary damages should also include victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed.

5. Learned counsel for the appellant submits that the Tribunal has allowed compensation, which reads as under :-

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Expenses on purchase of medicines	₹ 50,000/-
2	Expenses incurred on attendants and relations for their stay at Chandigarh	₹ 25,551/-
3	Expenses incurred on Taxi etc.	₹ 24,600/-
4	Expenses incurred for visit to USA for treatment	₹ 1,26,106/-
5	Expenses incurred on treatment at Delhi	₹ 10,000/-
6	Expenses incurred on diet of the attendants	₹ 10,000/-
7	Future expenses of treatment including cost of two hip replacement	₹ 1,00,000/-
8	Cost of keeping attendants for the rest of the life	₹ 1,00,000/-
9	Loss of income	₹ 8,20,000/-
10	Pain and suffering and loss of amenities and expectation of life	₹ 80,000/-
	Total	₹ 13,46,257/-

The Compensation payable was rounded off to ₹ 13,46,000/- which is inadequate.

6. Per contra, learned counsel appearing on behalf of the

respondent-State assails the compensation as has been allowed by the Tribunal. It is argued that this is a case of head on collision or in the alternative a case of contributory negligence. It is argued that the Tribunal has erred in relying upon the statement of PW-6 since the site plan produced, proved beyond a shadow of doubt that the brick kiln was far off and there were Safeda trees in between so the alleged eye witness could not have seen the occurrence. It is argued that the vehicles were approaching each other from the opposite sides and there was ample space on the highway for them to pass each other and, therefore, there was presumption that both the drivers were negligent which would amount to contributory negligence. Counsel for the State also argues that an amount of ₹ 1,26,106/- has been paid towards expenses incurred to visit USA for treatment which is not sustainable .

7. I have heard learned counsel for the parties and have perused the award of the Tribunal, wherein the accident has been held to be on account of the rash and negligent driving of the driver of the PWD Truck. The site plan as prepared by the State reflecting Safeda trees, has been discarded by the Tribunal, as the photographs produced by the claimants show that there is no Safeda plantation to block the site of the accident. Gian Chand PW-7 the independent eye witness in his statement had clearly stated that the accident took place

on account of the rash and negligent driving of the PWD Truck. State-respondent produced RW-3 Hira Singh, Forest Ranger as a witness in support of the plea taken by the Driver Mohan Lal that it was the car driver who was driving in a rash and negligent manner. The driver of the offending vehicle appearing as RW1 had stated that the Deputy Forest Ranger, Hira Singh and six Rajasthani labourers were also sitting in the Truck. The statement of RW2-Hira Singh was disbelieved as copy of the Logbook reflected that name of Hira Singh, Deputy Forest Ranger was not reflected in the Logbook. His statement was in direct contradiction to the statement given by Driver, Mohan Singh, who had stated that the car had collided with the truck. Moreover, the Tribunal rightly rejected the evidence on the ground of not being a reliable witness as he had turned hostile. The eye witness, who is an independent, had clearly deposed about the accident, stated that he was facing the road when he saw the PWD truck driven in a rash and negligent manner, hitting into the oncoming car. Even though Mohan Singh, the driver of the offending vehicle had stated that he did not see anyone at the brick kiln, his statement cannot be relied upon because name of Gian Chand PW6 is reflected in the FIR itself, which was lodged immediately thereafter. Being an independent eye witness, credence has to be given to his testimony over and above the testimony of the driver of the offending

vehicle and the Deputy Forest Ranger, Hira Singh. The factum of that the accident having been established and negligence attributed to the driver of the PWD truck, the question that remains for determination is the quantum.

8. Counsel for the injured-claimant argues that the injuries as suffered by Sadhu Ram Singla are enlisted as under :-

i	Fracture of right hip bone into numerous pieces
ii	Injuries on forehead and other partes of body
iii	Post Trauma Stress Disorder (PTSD)
iv	Loss of urinary control, to the extent that had to use condoms to prevent clothes getting wet
v	Brain injury and weakening of memory
vi	Unable to sit cross-legged for the rest of his life
vii	Fat embolism
viii	Shortening of leg

10. In order to prove the injuries suffered by Sadhu Ram Singla – claimant had examined himself as PW-1 and had stated that he remained admitted in PGI Chandigarh from 08.03.1988 to 16.05.1988. The claimant's right hip bone was fractured from numerous places. Costly life saving drugs were used while stating that he had also suffered from urinary problem and had developed blood pressure while claiming that he called two Doctors from USA to give him treatment in consultation with the Doctors of the PGI. He was also admitted under the treatment of Dr. Mukhani of Orthopedic

Department of Shri Ganga Ran Hospital from 17.05.1988 to 28.07.1988 and had spent ₹ 30,000/- on his treatment as he had been advised hip transplantation, he had gone to USA along with his wife in August, 1988 and had consulted with various doctors and they advised total hip replacement. On account of the injuries, he could not properly walk without the help of attendant along with stick, could not sit on his legs, could not climb stairs and could not take bath independently and could not answer the call of nature without some attendants. There was shortening of his right leg and he could not walk without aid. He further deposed that there was a loss of income as he was not able to conduct business properly. The statement was corroborated by PW-11 Dr. Manoj Sobti, Neuro Surgeon and Professor V.P. Bansal PW-12. Dr. Manoj Sobti deposed that the petitioner was not moving his left lower limb and he had stitched wounds of a length of 8 inches in the middle of the forehead. He was treated by Orthopaedic Surgeons, Neuro Surgeons and Medical Specialists. He further deposed that claimant had urinary problem while he had remained confined to bed during his entire stay in PGI. Professor V.P. Bansal, deposed about the fracture of the hip and also stated that during the stay in the hospital, he had suffered from numerous complications like pneumonia, ARDS, fat embolism, clotting of blood in veins, fever, chest infection, urinary infection.

The said witness deposed that the petitioner was examined by nearly 16 different doctors of the PGI and stated that on account of the injuries, there was more than 80% total body disability. Dr. Bansal also deposed that there was a shortening of the limb by 1½”, gross limitation of movements of the right hip, gross wasting of the right thigh muscles, wasting of the right calf muscles while right knee by 15 degree while further stating that two doctors, who have visited to USA, were his relatives and because of that he had discussions regarding the treatment but there was no necessity for calling the said Doctors. As regards the hip replacement, Dr. Bansal deposed that the said surgery could take place in India and would in all probability require a second replacement after 10-15 years. PW-4 Dr. Kamal Kishore, Supervisor, Medical Records, PGI Chandigarh brought the record of the PGI stating that a sum of ₹ 10,738/- had been paid on account of hospital charges while stating that this did not include costs of medicines and other instruments.

11. PW-13 Vijay Kumar Mengli, Accounts Officer of M/s Roshan Lal Oil Mills, Private Limited, Bhatinda had deposed that there was loss of turn over of ₹ 3.93 crores for the quarter ending 30.06.1988 while further stating he had made payment of all the medical bills produced on the record Ex.P-129A to Ex. 270 while further confirming that he had made payment towards Air Fare for

visiting USA and other expenses incurred towards the treatment of the claimant.

12. PW-5 Vikas Kumar, Receptionist, New Cosmo Tourist, Bungalow No.504 had deposited about the three rooms occupied by the attendants of a patient in PGI and they were charged ₹ 150/- per day per room in those days.

13. PW-6 Ramesh Kumar, Chemist Ramesh Medical Hall, who proved medical bills as Ex. P-11 to Ex. P-71.

14. On perusal of the said bills produced on the record as exhibits, the Tribunal allowed a sum of ₹ 50,000/- on account of medicines, which in the opinion of the Court is on the lower side. It is an admitted fact that the claimant remained admitted in PGI from 08.03.1988 to 16.05.1988, which is for a period of more than nine weeks. During his admission he was bed ridden and suffered various complications as enlisted above and thereafter, he remained under the treatment of Dr. Mukhani of Orthopedic Department of Shri Ganga Ran Hospital from 17.05.1988 to 28.07.1988. The expenses allowed is wholly inadequate keeping in mind that treatment of the appellant was under various doctors and various hospitals for over a period of four months. It is also a well known fact that in all cases , especially in a case of emergency, as would be evident in this case, the attendants of the injured were not conscious of the fact that all bills

pertaining to medical expenses are to be retained. At that time the focus of an attendant is towards making sure that medicines are bought and handed over to the Doctor/ staff concerned. Judicial notice can be taken of the fact that the PGI asks for the medicines to be provided instead of supplying from in-house store or billing the patient. The charges would include ICU charges, room charges, O.T. Charges, but the responsibility is put upon the attendants to provide for the medicines as required on a day today basis.

15. The question for deciding whether the claimant is entitled to further enhancement of compensation has to be decided in the light of his disability which has been assessed at 80%.

16. In the judgment rendered in ***Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC 343***, the Supreme Court has held that before compensation can be awarded the Tribunal must decide whether there is any permanent disability and if so the extent of such permanent disability. Meaning thereby, evidence has be to be considered (i) whether the disablement is permanent or temporary; (ii) if the disability is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) If the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. It was

also held that the Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability. In the instant case, the claimant was a businessman 80% disability having several fractures would affect his capacity of working to some extent.

17. In view of the above and as per the dictum that has been stipulated in ***Raj Kumar*** case (supra), the appellant is allowed an enhancement from ₹ 50,000/- to ₹ 1,00,000/- towards medical expenses. Though, all bills are not readily available but is a well known fact that in times of a medical emergency the injured does not have the presence of mind to retain all bills.

18. Similarly, this Court is of the opinion that inadequate compensation has been allowed on account of pains and suffering and loss of amenities as assessed at ₹ 80,000/-. The claimant-appellant would be entitled to an increase of future expenses, including the cost of two hip replacement from ₹ 1,00,000/- to ₹ 5,00,000/-. Considering the fact that he has suffered 80% disability and is unable to walk during his life span, it can fairly be presumed that the claimant-appellant would live upto the minimum age of 75 years and he would require attendant for the rest of his life. Consequently, the same is increased from ₹ 1,00,000/- to ₹ 10,00,000/-. The Tribunal has assessed his net income at ₹ 89,165/-

and it has rightly held that with 80% total disability his earning capacity would indeed be impaired. The earning capacity was assessed at ₹ 65,000/- per annum with multiplier of 16, however, it should be 17 as the **Raj Kumar** case (supra). Thus, the appellant is held entitled to towards future loss of income and other expenses as tabulated below.

Sr.No	Head	Amount
1	Expenses on purchase of medicines	₹ 1,00,000/-
2	Expenses incurred on attendants and relations for their stay at Chandigarh	₹ 50,000/-
3	Expenses incurred on Taxi etc.	₹ 24,600/-
4	Future expenses of treatment including cost of two hip replacement	₹ 5,00,000/-
5	Special diet	₹ 20,000/-
6	Attendant Charges during treatment	₹40,000/-
7	Cost of keeping attendants for the rest of the life	₹ 10,00,000/-
8	Loss of income	₹ 11,05000/-
9	Pain and suffering and loss of amenities and expectation of life	₹ 5,00,000/-
	Total	₹ 33,39,600/-

19. While enhancing the compensation, the argument raised that the claimant should not be allowed compensation for the trip to USA is taken into consideration and the same has merit. The facilities available here in India are excellent and there was no requirement to

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have travelled abroad. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 13,46,000/- to ₹ 33,39,600/-.

20. The Insurance Company is directed to release the enhanced compensation in favour of the claimant-appellant with interest @ 7.5% per annum from the date of the appeal till realization.

21. Appeal (FAO No. 1052 of 1991) filed by the claimant Sadhu Ram Singla is allowed, whereas the appeal (FAO No. 1130 of 1991) filed by the State of Haryana and another is dismissed, in the aforesaid terms.

22. A photocopy of this judgment be placed on the file of the other connected case.

19.10.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.