

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 2816 of 2001 (O&M)
 Date of decision : 6.12.2019

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Rajesh Kapoor

.....Appellant

vs.

Naveen Kumar and others

.....Respondents

2) FAO No. 2822 of 2001 (O&M)

...

Rajesh Kapoor

.....Appellant

vs.

Naveen Kumar and others

.....Respondents

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

Present: Mr. Vinod K. Kanwal, Advocate for
 Mr. Ashit Malik, Advocate for the appellant

 Mr. D.P. Gupta, Advocate for respondent No.3
 Insurance company.

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H. S. Madaan, J. (Oral)

By this common judgment, I intend to dispose of two appeals

i.e. bearing FAO No. 2816 of 2001 titled as 'Rajesh Kapoor vs.

Naveen Kumar and others' and FAO No. 2822 of 2001 titled as

'Rajesh Kapoor vs. Naveen Kumar and others' , as both these appeals have arisen out of the same award.

Briefly stated, facts of the case are that on account of petitioner – claimant Rajesh Kapoor, suffering injuries in a motor vehicular accident, which took place on 7.11.1997, at about 7.00 P.M. in the area of 2 kms short of village Jundla, due to rash and negligent driving of tractor bearing registration No. HR-08-A-4775, by respondent No.1 Naveen Kumar, such injured Rajesh Kumar, had brought a claim petition bearing No. 142 of 2000, under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Naveen Kumar – driver, Ram Kishan – owner and M/s National Insurance Company Limited, Karnal – insurer of the said tractor, claiming compensation of Rs.10,00,000/-.

Another claim petition bearing No. 141 of 2000 was filed by the claimant claiming a sum of Rs.2,50,000/- as compensation on account of damage to his Maruti car No. HR-05—D-8635, in the aforesaid accident.

Notice of the claim petitions was given to the respondents, who put in appearance and filed written statement, contesting the claim petition. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence. On conclusion of trial, the Motor Accidents Claims Tribunal, Karnal, vide award dated 1.2.2001, accepted the claim petitions and awarded compensation of Rs.67,000/- to the claimant on account of injuries suffered by the claimant and a sum of Rs.1 lac was awarded to the claimant on

account of damages to the car, payable by all the three respondents jointly and severally with interest @ 12% per annum from date of filing of the claim petitions till actual realization.

Feeling aggrieved, the claimant has approached this Court by filing two separate appeals, one seeking enhancement of compensation on account of suffering injuries and the other for enhancement of compensation on account of damage to his car.

Notice of the appeals was given to the respondents. Respondent no.3 – Insurance company has put in appearance through counsel.

I have heard counsel for the parties, besides going through the record.

A perusal of the award goes to show that claimant had suffered badly comminuted fracture which was segmental left humerus and comminuted fracture both bones left fore-arm, as deposed by PW-3 Dr. Vijay Gupta, who had examined the injured. The claimant had been hospitalized and also undergone surgeries twice. The Tribunal has awarded compensation of Rs. 30,000/- on account of medicines, Rs.20,000/- for pain and suffering, Rs.5,000/- as special diet, Rs.2,000/- for transportation, Rs.10,000/- as loss of income.

However, I find that the Tribunal has not taken into consideration the fact that many a times the chemists do not issue bills for purchase of medicines and some times bills and cash memos get lost and further some amount should be granted to the claimant

towards future medical expenses also. Therefore, on account of medical treatment etc. the amount is enhanced to Rs.35,000/- and another sum of Rs.10,000/- is awarded to the claimant towards future medical expenses.

I find that a sum of Rs.20,000/- awarded on account of pain and suffering is sufficient. However, the amounts awarded under various other heads are on lower side and deserve to be increased. For special diet a sum of Rs.5,000/- awarded is enhanced to Rs.10,000/-. Similarly for transportation the sum of Rs.2,000/- awarded is enhanced to Rs.7,500/-. No amount has been awarded for attendant charges and on account of loss of amenities. On account of fractures suffered, the claimant would not be able to lead a life of a normal human being, which he used to do earlier and deserves to be compensated for that.

In my considered view it would be proper and appropriate, if the total amount of compensation is enhanced to Rs.1 lac. It is ordered accordingly.

The Tribunal has awarded a sum of Rs.67,000/- as compensation on account of injuries suffered by the claimant. The claimant would be entitled to get additional compensation of $\text{Rs.1,00,000} - 67,000 = \text{Rs.33,000/-}$, with interest @ 7.5 % per annum, from the date of filing of appeal till actual realization, besides costs. Liability to pay the additional compensation shall remain the same as mentioned in the original award.

As far as compensation awarded by the Tribunal on account

of damages to the car in the accident, the Tribunal has awarded a sum of Rs.1 lac, though the estimate placed on the file by the claimant was to the extent of Rs. 1,94,275/-. The Tribunal has considered that claimant had driven the car for a period of one year and salvage of car was to be deducted without specifying as to how much amount was to be deducted under the two heads.

In my considered view, the amount awarded by the Tribunal is on lower side. Therefore, the same is enhanced to Rs.1,50,000/-. Accordingly, the claimant shall be entitled to get additional compensation of $\text{Rs.1,50,000} - 1,00,000 = \text{Rs.50,000/-}$ on account of damages to the car. The claimant would be entitled to get interest @ 7.5% per annum on the additional amount of compensation from the date of filing of appeal till actual realization.

In view of the order passed by this Court in FAO 1735 of 2001, vide which the liability of Insurance company was found to be Rs.6,000/- only, the Insurance company may make payment and then recover the same from the owner of the offending vehicle.

Both appeals are accordingly allowed partly, with costs.

6.12.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No