

**FAO-2819-2008 (O&M) and
FAO-4639-2008 (O&M)**

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

**FAO- 2819-2008 (O&M)
Date of Decision: November 22, 2019**

State of Haryana and others

..... Appellants(s)

Versus

Chander Singh and others

..... Respondent(s)

with

FAO-4639-2008 (O&M)

Chander Singh

..... Appellants(s)

Versus

Sant Parkash and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashish Yadav, Addl. A.G., Haryana,
counsel for the appellants in FAO-2819-2008 and
for respondents no.2 to 4 in FAO-4639-2008.

Mr. Akshay Jain, Advocate
for the appellant in FAO-4639-2008 and
for respondent no.1 in FAO-2819-2008.

LISA GILL, J.

This judgment shall dispose of FAO-2819-2008 (State of Haryana and others Vs. Chander Singh and others) as well as FAO-4639-2008 (Chander Singh Vs. Sant Parkash and others) as both the above noted appeals arise out of award dated 01.05.2008, passed by the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal).

Brief facts necessary for adjudication of the case are that claimant-appellant Chander Singh has filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of the injuries suffered by him in the motor vehicle accident, which took place on 21.10.2003. It is pleaded that the claimant was proceeding in the Government Gypsy bearing registration No. HR-24-F-7908 along with Head Constable Sube Singh and Rohtash Singh, Gunman on 21.10.2003 from Sirsa to Dabwali. The gypsy was being driven by respondent-driver Sant Parkash, Constable in a rash and negligent manner and at high speed. Despite requests by the claimant, it is stated that the respondent-driver did not slow down and proceeded in a careless manner. When the gypsy reached in the area of village Mithri at about 7:15 AM, a tractor along with a trolley loaded with wooden logs was proceeding on the road. The gypsy struck against the tractor-trolley from behind. It is pleaded that the accident in question was caused due to the rash and negligent driving of respondent-driver Sant Parkash, Constable or on the part of the driver of the tractor-trolley or composite negligence of both the drivers. FIR No.94 dated 22.10.2003 was registered against the driver of the tractor at the instance of the driver of the Gypsy. It is pleaded that the claimant who was serving as a Deputy Superintendent of Police with Haryana Police, suffered permanent disability of 45%. Compensation was accordingly claimed. The claim petition was resisted by the respondents.

Learned Tribunal while accepting the claimant to be working as a D.S.P., concluded that the accident took place due to the rash and negligent driving of the gypsy by respondent - Sant Parkash, Constable. It is

concluded that there is nothing on record to show that the driver of the tractor had suddenly applied brakes which led to the collision. Learned Tribunal awarded a sum of Rs.1,70,238/- as compensation to the claimant, which is detailed as under:-

Sr. No.	Heads	Calculations
1.	Medical bills/medicines	11,881 + 11,700 + 16,657 = 40,238/-
2.	Permanent disability	90,000/-
3.	Special diet	20,000/-
4.	Attendant charges	20,000/-
	Total	Rs.1,70,238/-

Learned counsel for the appellant-claimant argues that meagre compensation has been afforded by the learned Tribunal, which should be enhanced. Multiplier method should have been applied and loss of future income of the claimant should have been calculated and awarded. It is further submitted that the entire medical claim of the claimant was not reimbursed by the Department. He is, thus, entitled to the difference. Moreover, no compensation has been awarded towards pain and suffering, loss of amenities of life etc. It is thus, prayed that the appeal filed by the claimant be allowed and the compensation be enhanced.

Learned counsel for the State, per contra, vehemently argues that the accident in question is not proved to have taken place due to the rash and negligent driving of the driver of the gypsy. The FIR in this case was registered against the driver of the offending tractor-trolley, who is still facing trial. It is further contended that there were no indicators on the said trolley and the driver of the tractor-trolley applied brakes suddenly, due to

which the accident took place. Moreover, the claimant at no point of time raised any objection against the registration of the FIR against the driver of the tractor-trolley. Furthermore, the claimant continued in service and there is no loss of income suffered to him. Therefore, there is no question of applying the multiplier method. Medical claim was duly reimbursed by the government. Just and reasonable compensation has been awarded. It is thus, prayed that the impugned award, therefore, be upheld.

I have heard learned counsel for the parties and have gone through the photocopy of the record, which was placed on record by learned counsel for the claimant. It is to be noted that present are appeals, the record of which is not available, as the files of these cases along with the record were burnt in the fire, which took place on the premises of this Court in 2011.

It is a matter of record that the claimant in this case was serving the Haryana Police as a DSP. He was travelling in the official gypsy, which was being driven by the respondent-Sant Parkash, Constable. It is not in dispute that the gypsy struck against the tractor-trolley from behind. It is not a case where the tractor-trolley was stationary on the metalled road. It was proceeding on the road itself. Driver of the offending gypsy H.C. Sant Parkash (RW-1) in his cross-examination has clearly stated that he saw the trolley from a distance of about 50 yards. The road, it is stated, is national highway no.10 and two vehicles can easily pass. Testimony of RW1 clearly shows the rash and negligent act on the part of the driver of the offending gypsy. There is, thus, no merit in the argument raised by learned counsel for the State that the driver of the gypsy was not at fault in any manner and that

too merely on the ground that the FIR in question was registered against the driver of the tractor-trolley only.

At this stage, it is relevant to note that FIR No.94 dated 22.10.2003 was registered at the instance of none other but H.C. Sant Parkash, who was the driver of the offending gypsy. Therefore, mere registration of the FIR against the driver of the tractor-trolley is insufficient to hold the tractor-trolley driver responsible for the accident. Evidence on record points to the rash and negligent act of the driver of the gypsy.

The claimant has examined PW2 Dr. Joginder Singh and PW3 Dr. Raj Singh. It is proved on record that the claimant remained admitted in the hospital from the date of the accident i.e. 21.10.2003 till 15.12.2003. He was diagnosed with 'fracture trochanter left with avascular necrosis with O/A changes hip, with fracture shaft humerus right, fracture rib, with L.P.N. palsy'. He was operated upon on 19.11.2003 by Professor Sangwan for plating right humerus and blade plate for fracture left trochanter. He has to take regular physiotherapy etc. as proved on record. As per the disability certificate Ex.P1, the claimant suffered 45% permanent disability. At the same time, learned counsel for the claimant is unable to deny that the claimant continued with his services with Haryana Police. Therefore, it cannot be held that the claimant suffered any functional disability, which led to any loss of income. There is no evidence on record to show that the claimant suffered any set back in so far as permanent disability is also concerned. The reimbursement of the medical bills to the extent of Rs.12,924/- is admitted by the claimant. Ld. Tribunal has awarded a sum of

Rs.90,000/- towards permanent disability. In addition to the amount already awarded by the learned Tribunal, the appellant is entitled to sum of Rs.50,000/- each towards pain & sufferings and loss of amenities. The amount awarded by the learned Tribunal on all other heads is maintained. The claimant is thus entitled to compensation of Rs.2,70,238/- instead of Rs.1,70,238/-. Furthermore, instead of interest at the rate of 7% per annum, appellant is entitled to interest at the rate of 7.5% per annum on the entire amount of compensation.

In view of the discussion as above, the appeal filed by the State (FAO-2819-2008) is dismissed and with the modification in the amount of compensation, the appeal filed by the claimant (FAO-4639-2008) is disposed of accordingly.

November 22, 2019.

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No