

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

FAO No. 2732 of 2010 (O&M)

Date of decision : January 07, 2019

Mukesh Garg

.....Appellant

Versus

Amit and others

....Respondents

FAO No. 4534 of 2010 (O&M)

Indu Garg

.....Appellant

Versus

Amit and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Barjinder Singh, Advocate for
Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. S.S. Khurana, Advocate
for respondent No. 2.

Mr. D.R. Bansal, Advocate
for respondent No. 3.

LISA GILL, J.

This judgment shall dispose of FAO No. 2732 of 2010 (Mukesh Garg Versus Amit and others) and FAO No. 4534 of 2010 (Indu Garg versus Amit and others) which arise out of a common award dated 30.09.2009 passed by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as the 'Tribunal').

These appeals have been preferred by the appellants – Mukesh Garg and Indu Garg for enhancement of compensation awarded to them vide award dated 30.09.2009 passed by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'Tribunal') on account of injuries suffered by them in the motor vehicle accident, which took place on

05.12.2006.

Brief facts necessary for adjudication of the case are that the appellants were involved in a motor vehicle accident on 05.12.2006. The appellants were going from Sohna to Tauru on their motorcycle bearing registration No. HR26Q-9399 driven by appellant – Mukesh. When they reached at the turn near main gate Tourist Complex, Sohna, offending bus bearing registration No. RJ-32P-0485 came at a high speed without observing traffic rules from Tauru side and struck against the motor cycle. Both the appellants suffered injuries including fractures. Claim petition under Section 166 of Motor Vehicles Act was preferred by the appellants seeking compensation on account of the injuries suffered by them.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to rash and negligent driving of offending vehicle bus bearing registration No. RJ-32P-0485 driven by respondent No. 1. This finding of the learned Tribunal has attained finality.

Learned Tribunal awarded compensation of ₹1,13,448/- to appellant – Mukesh which is detailed as hereunder:-

a) Pain and sufferings	:	₹25,000/-
b) Loss of income	:	₹10,000/-
c) Special diet, transportation and attendant charges	:	₹15,000/-
d) Medical expenses	:	₹63,448/-

Learned Tribunal awarded compensation of ₹84,140/- (rounded off to ₹84,000/-) to appellant – Indu which is detailed as hereunder:-

a) Pain and sufferings	:	₹25,000/-
b) Loss of income	:	₹15,000/-
c) Special diet, transportation and attendant charges	:	₹15,000/-
d) Medical expenses	:	₹29,140/-

Present appeals have been filed seeking enhancement of the compensation awarded.

Learned counsel for the appellants submits that both the appellants are entitled to enhanced compensation. Evidence on record, it is submitted proves that appellant – Mukesh Garg, an advocate by profession could not have attended to his work for atleast a period of three months. He infact remained hospitalised for one whole month.

In respect to the appellant – Indu Garg, it is submitted that there is conclusive evidence on record to show that she was advised complete bed rest for 7/8 months. Therefore, she is entitled to enhanced compensation under the head of loss of income. No permanent disability was suffered by the claimants. Moreover, she was also looking after her home, therefore, she is also entitled to enhanced compensation in respect to the attendant charges.

Learned counsel for the respondents per contra opposed any enhancement while submitting that income tax returns produced by the claimants reflect an increase in income in the year the accident in question took place, therefore, there is no question of any loss of income. No permanent disability was suffered by the claimants. It is, thus, prayed that these appeals be dismissed.

Heard, learned counsel for the parties and have perused the record.

In respect to the claimant – appellant Mukesh Garg, PW10 Dr. Naresh Kumar Sharma, Satish Memorial Hospital, Sohna deposed that claimant Mukesh was brought to his hospital with a history of road side accident. He was diagnosed as a case of multiple abrasions, stitched,

lacerated wound right eye lid with hemotoma right lower abdomen (collection of blood in lower abdomen). Claimant was operated upon for hematoma on 25.12.2005 and ultimately discharged on 06.01.2006. Discharge card (Ex.P50) was proved on record. It is noticed that a sum of ₹10,000/- has been awarded on account of loss of income. Keeping in view the evidence on record it is apparent that the claimant – appellant would not have been able to attend his vocation as an Advocate for at least a period of two months, therefore, he is entitled to ₹20,000/- instead of ₹10,000/- for loss of income. Contention of learned counsel for the insurance company that due to an increase in the claimant's income in the Income Tax Return (ITR) of the said year he is not entitled to enhancement is fallacious, hence rejected. Admittedly, the ITR reflects income of the whole year and not just a few months. Medical expenses have been afforded as per the bills produced on record. There is no ground for any enhancement of compensation awarded under any of the other heads.

Appellant – Mukesh Garg is, thus, entitled to compensation detailed as under:-

a) Pain and suffering	:	₹25,000/-
b) Loss of income	:	₹20,000/-
c) Special diet, transportation and attendant charges	:	₹15,000/-
d) Medical expenses	:	₹63,448/-
Total	:	₹1,23,448/-

In respect to the claimant – appellant Indu Garg, PW11 Dr. Rakesh Singh, Satish Memorial Hospital, Sohna deposed that the appellant was brought to his hospital on 06.12.2005 with a history of road accident. She was diagnosed as a case of fracture of right anterior and posterior fracture acetabulum. She was treated upon conservatively with continuous traction of back and discharged on 15.12.2005 with a direction to continue

the treatment at home including continuous traction. PW11 further deposed that the appellant remained under his treatment for one year. She was advised bed rest with no weight bearing for 7/8 months. Discharge card (Ex.P55) was proved on record. Perusal of the discharge card (Ex.P55) reveals that the claimant was advised complete bed rest for four/five months. There is no evidence on record to indicate that she had to undertake bed rest for a period more than as mentioned in the discharge card. Statement of PW11 Dr. Rakesh Singh to the effect that she was advised bed rest for 7/8 months is not substantiated. It is, however, not in dispute that claimant – Indu Garg was a married lady, having to attend to her duties as a wife as well. Income of the appellant – Indu has been assessed as ₹9,000/- per month by the learned Tribunal. Therefore, she is entitled for loss of income for five months i.e. a sum of ₹45,000/- [(₹9,000/- x 5)] instead of ₹15,000/-. She is also entitled to a sum of ₹5,000/- each on account of special diet and transportation and ₹15,000/- for attendant charges instead of a consolidated sum of ₹15,000/- for special diet, transportation and attendant charges.

Appellant – Indu Garg is, thus, entitled to compensation detailed as under:-

a) Pain and suffering	:	₹25,000/-
b) Loss of income for five months (9000 x 5)	:	₹45,000/-
c) Special diet	:	₹5,000/-
d) Transportation	:	₹5,000/-
e) Attendant charges	:	₹15,000/-
f) Medical expenses	:	₹29,140/-
Total	:	₹1,24,140/-

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above.

Appellants shall be entitled to interest at the rate of 7.5% per annum on the

enhanced amount from the date of filing of the petition till realization.

Needless to say, recovery rights as granted to the insurance company are maintained.

With the abovesaid modification in the amount of compensation, FAO Nos. 2732 and 4534 of 2010 stand disposed of.

January 07, 2019

rts

(Lisa Gill)
Judge

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