

206 (1/4)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.2875 of 2011 (O&M)
Date of Decision: 20.03.2019

Lalita Jain and another
Appellants

Versus

Malkiat Singh and others
Respondents

FAO No.2874 of 2011

Lalita Jain
Appellant

Versus

Malkiat Singh and others
Respondents

FAO No.2876 of 2011

Gora Jain
Appellant

Versus

Malkiat Singh and others
Respondents

FAO No.2883 of 2011

Manik Jain
Appellant

Versus

Malkiat Singh and others
Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Anand Kumar Bishnoi, Advocate
for the appellant(s).

Mr. Anupam Singla, Advocate
for respondents No.1 and 7.

Mr. Sukhdarshan Singh, Advocate
for the respondent-Insurance Company.

AVNEESH JHINGAN, J (Oral):

The awards dated 08.12.2010 passed by the Motor Accident Claims Tribunal, Bathinda [for brevity 'the Tribunal'] in MACT Cases No.69, 68, 66 and 67 of 26.03.2008 have been assailed in four separate appeals by the claimants seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. Since all appeals arise from same accident, these are being disposed of by a common order.

Brief facts necessary for adjudication of the present appeals are that on 11.02.2008, Anand Kumar Jain alongwith his wife Lalita Jain, sons Manik Jain & Vishal Jain and daughter-in-law Gora Jain was going to Bhucho Mandi in a car bearing registration No.PB-04H-0051 [hereinafter referred to as 'car']. The car was being driven by Vishal Jain. On the way, the car was hit by another car bearing registration No.DL-6C-1147 [hereinafter referred to as 'offending vehicle']. As a result of the impact, occupants of the car sustained multiple injuries. Anand Kumar Jain succumbed to the injuries on the spot whereas other occupants were shifted to Civil Hospital, Bathinda. FIR No.15, dated 02.02.2008 was registered on the statement of Vishal Jain.

The claim petitions were filed by the claimants seeking compensation under Section 166 of the Act. Inspite of pleadings of the claimants that both the drivers were responsible for causing accident, the Tribunal relying upon the contents of

FIR and deposition of Vishal Jain, came to the conclusion that accident was caused due to the rash and negligent driving of the offending vehicle.

FAO No.2875 of 2011 (in Claim Petition No.69 of 2011):

The present appeal has been filed by the claimants Lalita Jain and Manik Jain seeking enhancement of compensation awarded for death of Anand Kumar Jain.

In the claim proceedings, it was claimed that the deceased was a Government Contractor and was earning ₹30,000/- per month. The claimants failed to prove occupation and monthly earning of the deceased. The Tribunal assessed monthly earning of the deceased as ₹3,000/- per month; 1/3rd deduction for self-expenses was made and multiplier of '13' was applied. The Tribunal awarded a sum of ₹3,27,000/- alongwith interest @ 9% per annum. The amount awarded included ₹15,000/- under the conventional heads.

Alongwith this appeal, an application under Order XLI Rule 27 read with Section 151 of CPC has also been filed for placing on record additional evidence i.e. Income Tax Returns (ITRs) of Anand Kumar Jain for assessment years 2004-05, 2005-06 and 2007-08.

Learned counsel for the appellants contends that the Tribunal erred in assessing monthly earning of the deceased as ₹3,000/- per month whereas as per ITRs, income from 'Business & Profession' is much higher. His grievance is that no future

prospects have been awarded and amounts awarded under the conventional heads are on the lower side.

Learned counsel for the respondents argues that ITRs have been produced for the first time in the appeal, same were neither produced nor verified.

From the perusal of the ITRs, it is evident that Returns were filed much prior to the date of accident but it would not be fair to rely upon the said documents without affording opportunity to the respondents to verify and rebut the same.

The matter with regard to quantum of compensation is remitted back to the Tribunal to be decided in accordance with law after providing opportunity to the parties to adduce fresh evidence in support of their claims.

The appeal is disposed of.

FAO No.2874 of 2011 (in Claim Petition No.68 of 2011):

The present appeal has been filed by Lalita Jain seeking enhancement of compensation for injuries sustained by her in the said accident.

In the claim petition, it was claimed that the claimant was 42 years old at the time of accident. It was further claimed that she suffered fracture in her right hip joint and suffered 100% disability. The Tribunal awarded compensation of ₹15,850/- alongwith interest @ 9% per annum on account of injuries sustained by the claimant. The amount awarded included ₹5,000/- for special diet and ₹5,000/- for pain & suffering. The

owner and driver of the offending vehicle were held liable to pay the compensation.

Learned counsel for the appellant contends that the claimant had suffered fracture of hip joint and remained hospitalized for seven days. His grievance is that amount of ₹5,000/- each awarded for special diet and pain and suffering is on the lower side. He further submits that compensation towards attendant charges and transportation was not awarded.

Learned counsel for the respondents argues that there was neither any permanent disability nor temporary disability. The Tribunal has awarded adequate compensation considering the evidence adduced.

It has not been disputed that there was fracture and hospitalization for 7 days, in such circumstances, she would have required attendant and transportation not only during the period of hospitalization but subsequently also.

Keeping in view the facts and circumstances of the case, the amount of ₹15,850/- awarded by the Tribunal is enhanced by ₹15,000/-.

It is clarified that while enhancing the compensation, interest to be awarded under Section 171 of the Act has been taken into consideration to cover up the compensation for attendant charges and transportation.

The appeal is disposed of accordingly.

FAO No.2876 of 2011 (in Claim Petition No.66 of 26.03.2008):

The present appeal has been filed by Gora Jain seeking enhancement of compensation for injuries sustained by her in the said accident.

In the claim proceeding, it was claimed that the claimant received fracture of right fore-arm and remained hospitalized for seven days. The Tribunal awarded compensation of ₹25,050/- alongwith interest @ 9% per annum. The amount awarded included ₹5,000/- each for special diet and pain & suffering. The owner and driver of the offending vehicle were held liable to pay the compensation.

Learned counsel for the appellant contends that the claimant suffered fracture of right fore-arm and she remained hospitalized for seven days. He further contends that the amounts awarded for special diet and pain & suffering are on the lower side.

Learned counsel for the respondents argues that there was neither any permanent disability nor temporary disability. The Tribunal has awarded adequate compensation considering the evidence adduced.

It has not been disputed that there was fracture and hospitalization for 7 days and she would have required attendant and transportation not only during the period of hospitalization but subsequently also.

Keeping in view the facts and circumstances of the case, the amount of ₹25,050/- awarded by the Tribunal is

enhanced by ₹10,000/-.

It is clarified that while enhancing the compensation, interest to be awarded under Section 171 of the Act has been taken into consideration to cover up the compensation for attendant charges and transportation.

The appeal is disposed of accordingly.

FAO No.2883 of 2011 (in Claim Petition No.67 of 26.03.2008):

The present appeal has been filed by Manik Jain seeking enhancement of compensation for injuries sustained by him in the said accident.

In the claim proceeding, it was pleaded that the claimant was 25 years old and was earning ₹15,000/- per month. It was further pleaded that the claimant was operated upon and steel rod was inserted in his right arm. The Tribunal awarded compensation of ₹38,397/- alongwith interest @ 9% per annum. The amount awarded included ₹5,000/- each for special diet and pain & suffering. The owner and driver of the offending vehicle were held liable to pay the compensation.

Learned counsel for the appellant contends that the claimant suffered fracture of right arm and he remained hospitalized for seven days. He further contends that the amounts awarded for special diet and pain & suffering are on the lower side.

Learned counsel for the respondents argues that there was neither any permanent disability nor temporary

disability. The Tribunal has awarded adequate compensation considering the evidence adduced.

It has not been disputed that there was fracture and hospitalization for 7 days and he would have required attendant and transportation not only during the period of hospitalization but subsequently also.

Keeping in view the facts and circumstances of the case, the amount of ₹38,397/- awarded by the Tribunal is enhanced by ₹12,000/-.

It is clarified that while enhancing the compensation, interest to be awarded under Section 171 of the Act has been taken into consideration to cover up the compensation for attendant charges and transportation.

The appeal is disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

March 20, 2019
pankaj baweja

1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	No