

FAO No. 75 of 2009
FAO No. 540 of 2010

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

FAO No. 75 of 2009
DECIDED ON: MAY 17, 2019

JASBIR

.....APPELLANT

VERSUS

SURESH KUMAR & ORS

.....RESPONDENTS

AND

2.

FAO No. 540 of 2010

SURESH KUMAR AND ANOTHER

.....APPELLANTS

VERSUS

JASBIR & ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Zorawar Singh, Advocate for
Mr. N.S. Shekhawat, Advocate
for the appellant in FAO No. 75 of 2009 and
for respondent No.1 in FAO No. 540 of 2010.

Mr. Jitender Nara, Advocate
for the appellants in FAO No. 540 of 2010 and
for respondents No.1 and 2 in FAO No. 75 of 2009.

Mr. Suman Jain, Advocate
for the respondent-Insurance Company. .

AVNEESH JHINGAN, J (ORAL)

Being aggrieved of the award dated 15.10.2008 passed by the Motor Accident Claims Tribunal, Jhajjar (for brevity 'the Tribunal') in MACT Case No. 91 of 2006, the claimant/injured and driver and owner of tractor bearing registration No. HR-14-C-1263 (hereinafter referred to as 'offending vehicle') have filed two separate appeals bearing FAO Nos. 75 of 2009 and 540 of 2010. As both the appeals arise out of same accident and one award, these are being disposed of vide common order.

The facts emanating from the record are that on 05.06.2006, Jasbir along-with Jagdev Singh was going on motorcycle, registration number of which was applied for. Jagdev Singh was driving the motorcycle. When they reached near village Kasni, the offending vehicle struck the motorcycle. As a result of the impact both the riders of the motorcycle fell down and sustained injuries. Jasbir was taken to Civil Hospital, Jhajjar from where he was referred to PGIMS, Rohtak, thereafter, he was taken to Safdarjung Hospital, Delhi.

In the claim proceedings, the Tribunal opined that the accident was result of rash and negligent driving of the offending vehicle. The insurer was exonerated on the ground that the claimant was a pillion rider on the motorcycle, thus a gratuitous passenger.

In the claim proceedings, it was pleaded that the claimant had spent an amount of ₹2,00,000/- on medical treatment. Claimant filed his own affidavit, further the receipt of transportation Ex.P2 to Ex.P21 and medical bills i.e. Ex.P23 to Ex.P84 for a sum of ₹87,413/- were also produced. In order to prove the receipts of transport expenses Azad Singh appeared as PW-3. The

Tribunal awarded a sum of ₹97,413/- alongwith interest @7% per annum. The amount awarded included ₹30,513/- for medical expenses, ₹56,900/- for transportation and ₹10,000/- for pain and suffering.

Heard learned counsel for the parties and perused the relevant documents produced by them.

Learned counsel for the claimant argues that the compensation awarded by the Tribunal is on the lower side. He further argues that while awarding the compensation the Tribunal has not taken into consideration the amounts to be awarded under various pecuniary and non-pecuniary heads.

Learned counsel for the driver and owner of the offending vehicle argues that the Tribunal erred in exonerating the insurer, as the offending vehicle was duly insured at the time of accident and there was nothing to prove that there was violation of the terms and conditions of the policy.

Learned counsel for the insurer argues that there was no permanent or temporary disability, no doctor was examined to prove the nature of injuries and type of treatment. He resisted any further enhancement.

From the perusal of the record, it is evident that the claimant had not proved the nature of injuries and type of treatment given to the claimant. Even from the receipts, period of hospitalization is not forthcoming. There is a document mark 'A' (discharge summary), which shows that the claimant was hospitalized for one month. The said document i.e. Mark 'A' was not proved by the deposition of any doctor or official of the hospital. The claimant had not placed on record even an iota of evidence to show that he suffered any permanent or temporary disability. However, considering the fact that the

claimant was 20 years old at the time of accident, the discharge summary point that the claimant sustained grievous injuries for which he was hospitalized for one month. Attendant would have been required and special diet must have been given for speedy recovery

The Supreme Court in case of **G. Ravindranath @ R. Chowdary Versus E. Srinivas and another, 2013(12) SCC 455**, held as under:-

“11. We have heard learned counsel for the parties and carefully perused the record.

It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will

be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.”

In absence of any temporary or permanent disability and without establishing the nature of injuries and type of treatment, it would be difficult to enhance the compensation under various pecuniary and non-pecuniary heads. It is the duty cast upon the Courts to arrive at just and equitable compensation and the only restriction is that it should not be a windfall for the claimant.

Considering the medical expenses and period of hospitalization, and for the reason that transportation, attendant and special diet would have been required during the period of hospitalization and may be thereafter also, amounts awarded by the Tribunal are enhanced as under :

Particulars	Amount awarded by the Tribunal. (in ₹)	Amount enhanced by this Court (in ₹)
Medical Expenses	30,513/-	-Nil-
Transportation	56,900/-	-Nil-
Attendant Charges	-Nil-	10,000/-
Special Diet	-Nil-	10,000/-
Pain & Suffering	10,000/-	20,000/-
Loss of income	-Nil-	15,000/-
Follow up treatment	-Nil-	10,000/-
Total enhanced amount :		65,000/-

The award dated 15.10.2008, is modified to the extent that amounts of ₹97,413/- awarded by the Tribunal is enhanced by ₹65,000/-.

The claimant shall be entitled to the enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till

realization of the amount.

From the perusal of record it is forthcoming that the claimant was travelling on the motorcycle as pillion rider. The accident was caused due to rash and negligent driving of the offending vehicle. Claim was filed against the offending vehicle. There is no occasion for the Tribunal to go into the aspect as to whether the claimant was gratuitous passenger or not, as compensation was to be paid by insurer of the offending vehicle. There is nothing on record to rebut the fact that offending vehicle was duly insured at the time of accident. There was no violation of terms and conditions of the insurance policy. The findings recorded by the Tribunal exonerating the insurer of the offending vehicle cannot be sustained.

The award of the Tribunal is modified to the extent that the owner, driver and insurer of the offending vehicle shall be liable to pay compensation including enhanced compensation jointly and severally.

Both the appeals are allowed in the aforesaid terms.

MAY 17, 2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *Yes*