

FAO-1588-2013(O&M);
FAO-5091-2013(O&M);
FAO-2221-2013(O&M); and
FAO-2222-2013(O&M)

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

(1) FAO-1588-2013(O&M)

Avinash Chander

...Appellant

Versus

Pirtpal Singh @ Billu and others

...Respondents

(2) FAO-5091-2013(O&M)

Mohinder Garg

...Appellant

Versus

Pirtpal Singh @ Billu and others

...Respondents

(3) FAO-2221-2013(O&M)

United India Insurance Co. Ltd.

...Appellant

Versus

Avinash Chander and others

...Respondents

(4) FAO-2222-2013(O&M)

United India Insurance Co. Ltd.

...Appellant

Versus

Mohinder Garg and others

...Respondents

Date of Decision:-16.9.2019

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CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: None for the appellants
in FAO-1588-2013 and FAO-5091-2013.

Mr.Paul S. Saini, Advocate
for the appellant – insurance company in
FAO-2221-2013 and FAO-2222-2013 and for
respondent No.3 in FAO-1588-2013 and
FAO-5091-2013.

H.S. MADAAN, J.

By this order, I shall dispose of four FAOs i.e. FAO-1588-2013 and FAO-5091-2013 filed on behalf of claimants and FAO-2221-2013 and FAO-2222-2013 filed on behalf of the appellant/insurance company, which have arisen out of the same accident.

Briefly stated, the facts of the case as per version of the claimants are that on 6.7.2009, Avinash Chander, a businessman along with his brother Mohinder Garg, Gurpreet Singh, Rohan son of Narinder Kumar and Ramandeep Singh son of Ranjit Singh was going from village Jodhpura Romana to Panipat in a Wagon-R car bearing registration No.PB-10AZ-0731 being driven by Mohinder Garg; Gurpreet Singh was sitting by the side of the driver, whereas Avinash Chander along with Rohan and Ramandeep Singh were sitting on the rear seat of the car; their Wagon-R car was being followed by Darshan Singh and Ranjit Singh in their Indica car bearing registration No.DL-3CW-2802; at about 6:00 p.m. when the Wagon-R car reached about 1 ½ kms. ahead of Kot Fatta drain and it was being driven at a moderate speed, then the Oil Tanker

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No.PB10BQ-1929 (hereinafter referred to as the offending vehicle) being driven by Pirtpal Singh @ Billu at a very high speed, rashly and negligently came from opposite direction and while going on wrong side of the road, hit the Wagon-R car, though Mohinder Garg had taken the said car to extreme right side of the road in order to avoid accident but respondent No.1 Pirtpal Singh @ Billu brought the offending vehicle towards his left hand side of the road and by his rash and negligent driving hit the offending vehicle with the Wagon-R car; resultantly, all the occupants of the car received multiple grievous injuries; Gurpreet Singh had died at the spot; their car was badly damaged; other injured were removed to Civil Hospital, Bathinda on 6.7.2009; FIR No.38 dated 29.8.2009 for the offences under Sections 279, 337, 338, 427 IPC was registered with Police Station Kotfatta on the basis of statement of Avinash Chander.

Petitioner/claimant – Avinash Chander aged about 48 years had filed a claim petition bearing MACT File No.27 dated 4.8.2010 under Section 166 of Motor Vehicles Act against respondents i.e. Pirtpal Singh – driver, Aman Bansal – owner and United India Insurance Co. Ltd. - insurer of the offending vehicle. He had suffered fractures in both arms and legs. Keeping in view his serious condition, he was taken to Dr.Nagpal Super Speciality Hospital, Bathinda and then he was taken to CMC Hospital, Bathinda. He was admitted in that hospital and was operated upon and he is still under treatment of CMC Hospital, Ludhiana.

Due to the injuries in his arms and legs, his left arm from elbow was

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amputated. He has become permanent disabled to the extent of 80% as per the disability certificate issued by the competent authority. Therefore, he craved for grant of compensation to the tune of Rs.30 lakhs alongwith interest.

Petitioner/claimant – Mohinder Garg aged about 37 years had filed a claim petition bearing MACT File No.28 dated 4.8.2010 under Section 166 of Motor Vehicles Act against the above-said respondents. He had also suffered multiple grievous injuries and B/L Mid Shaft humerus fracture and intertrochantric fracture, left femur and on his abdomen and he had taken treatment from Civil Hospital, Bathinda on 6.7.2009 and then remained admitted in Dr.Nagpal Super Specialty Hospital, Bathinda from 6.7.2009 to 12.7.2009; thereafter he was taken to CMC Hospital, Bathinda where he remained admitted from 12.7.2009 to 27.7.2009 and was operated upon. It is stated that he is still under treatment of CMC Hospital, Ludhiana and as a result of suffering injuries in the accident including fractures in the legs, his one leg has shortened by 2” and he cannot walk properly and he has become permanently disabled to the extent of 25%. Therefore, he craved for grant of compensation to the tune of Rs.30 lakhs alongwith interest.

On notice, the respondents had appeared in both the petitions and filed their written statements. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the claim petitions were allowed by Motor Accidents Claims Tribunal, Bathinda (hereinafter referred to as the

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Tribunal) and separate awards dated 17.10.2012 were passed and compensation of Rs.13,67,700/- with interest @ 6% per annum from the date of the claim petition till realization besides costs of the petition was awarded in MACT File No.27 dated 4.8.2010 to claimant Avinash Chander and compensation of Rs.4,10,350/- with interest @ 6% per annum from the date of the claim petition till realization besides costs of the petition was awarded in MACT File No.28 dated 4.8.2010 to claimant Mohinder Garg. All the respondents were jointly and severally made liable to pay the compensation amount.

The claimants/petitioners being of the view that the compensation awarded was on lower side and insurance company being dissatisfied with both the Awards have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents. Initially, the petitioners/claimants appeared through counsel but subsequently there was no representation on their behalf.

I have heard learned counsel for the insurance company besides going through the record.

The Tribunal on the basis of evidence adduced before it by the parties orally as well as documentary came to the conclusion that respondent No.1 Pirtpal Singh @ Billu was author of the accident by rash and negligent driving of the offending vehicle in which Avinash Chander and Mohinder Garg had suffered injuries, whereas Gupreet Singh had expired. The finding is absolutely correct and there is no reason to upset

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the same.

Next coming to the quantum of compensation awarded. Firstly coming to FAO-1588-2013 filed on behalf of claimant/petitioner Avinash Chander. The Tribunal taking note of the contentions raised by the claimant/injured Avinash Chander that he is partner of firm M/s Ambika Enterprises, Mall Road, Bathinda, M/s J.P. Bros. Panipat and M/s JPR Enterprises, Dhobi Bazar, Bathinda, earning Rs.2 lakhs per annum, however, due to injuries suffered in the accident, he was operated upon and his left arm has been amputated and he has become permanent disabled to the extent of 80%. The Tribunal has noticed that disability certificate placed on file by the claimant as Ex.C1 showed that it related to operated case of fracture B/C femur and above elbow amputation of left upper limb and weaken right upper limb showing disability to the extent of 90%. The claimant has placed on file medical bills Ex.C2 to Ex.C361 showing that a sum of Rs.11,10,127/- had been spent on his medical treatment, whereas income tax return Ex.C362 for assessment year 2008-09 filed on 24.2.2009 showed income of Avinash Chander to be Rs.1,63,185/-, income tax return Ex.C363 for the assessment year 2009-10 filed on 31.3.2010 showed his income Rs.1,76,249 and income tax return Ex.C364 for the assessment year 2007-08 filed on 28.3.2008 showed his income to be Rs.1,20,619/-. The age of Avinash Chander was found to be 46 years at the time of accident and his avocation being partner in three different firms. Making reference to the income tax return brought in evidence by the claimant, the Tribunal had returned a verdict

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that he was earning Rs.1,75,000/- per annum at the time of accident.

The Tribunal has awarded a sum of Rs.11,10,127/- to claimant Avinash Chander on account of medical treatment since bills in that regard Ex.C2 to Ex.C361 had been proved on record. Though learned counsel for the insurance company doubted the genuineness of those bills but I do not find myself in agreement with it. Avinash Chander - claimant had brought on record bills to show the money spent by him on his medical treatment. If the respondent – insurance company had any doubt regarding the genuineness of those bills it have got those verified from the issuing chemists or concerned person from the drug store etc. Those persons could have been summoned before the Tribunal or the truthfulness of the bills could be got verified by deputing some official in that regard but it was not so done. Keeping in view the nature of injuries suffered by Avinash Chander in the accident and the fact that his left upper arm had been amputated, he had suffered injuries on his other limbs also and had a long period of hospitalization, his physical disability has been assessed as 90%, the claimant incurring expenditure of **Rs.11,10,127/-** on his medical treatment cannot certainly be doubted.

With such disability the Tribunal has taken the functional disability to be 10% only, which in my view is on lower side. A sum of Rs.2,27,500/- has been awarded for that disability, which in my view is on lower side. In my considered view the functional disability should be taken to be 30 to 35%. The compensation deserves to be enhanced and the same is increased to be **Rs.3,00,000/-**.

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The compensation awarded under the head of pain and suffering to be Rs.5,000/- is too meagre. In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I enhance the compensation and award a sum of **Rs.35,000/-** under that head.

Similarly loss of income quantified as Rs.15,000/- is on the lower side. Considering the number of injuries suffered by the claimant, there nature, period of hospitalization and time spent for follow up treatment, the claimant would have suffered damages much more than Rs.15,000/- on account of loss of work. The same is accordingly enhanced to **Rs.35,000/-**.

The Tribunal has awarded a consolidated sum of Rs.10,000/- under the heads special diet and attendant charges, which I do not find proper and appropriate.

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. A award a sum of **Rs.30,000/-** under that head.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.30,000/-** is accordingly awarded to the appellant/claimant on that score.

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No amount has been awarded to the claimant Avinash Chander on account of loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.30,000/- each (total **Rs.60,000/-**) is awarded to him under that heads.

Thus, total compensation comes out to Rs.16,00,127/-.

The Tribunal has awarded compensation of Rs.13,67,700/-.

In this way, the enhanced amount comes out to Rs.2,32,427/- (16,00,127 - 13,67,700). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.2,32,427/-. The other terms and conditions given in the award shall apply to the enhanced amount as well.

Now coming to FAO-5091-2013 filed on behalf of appellant/claimant Mohinder Garg. While granting reimbursement of Rs.3,85,332/- towards medical expenses, the Tribunal has not taken into view the fact that many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept or at times it gets misplaced or lost and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to **Rs.4,50,000/-**.

The compensation awarded under the head of pain and suffering to be Rs.5,000/- is also on lower side. The same is enhanced to **Rs.35,000/-**.

Similarly loss of income quantified as Rs.10,000/- is on the

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lower side. The same is accordingly enhanced to **Rs.35,000/-**.

The Tribunal has awarded a consolidated sum of Rs.10,000/- under the heads special diet and attendant charges, which I do not find proper and appropriate.

I award a sum of **Rs.30,000/-** under the head special diet.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment etc. A sum of **Rs.30,000/-** is accordingly awarded to the appellant/claimant on that score.

No amount has been awarded to the claimant Mohinder Garg on account of loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.30,000/- each (total **Rs.60,000/-**) is awarded to him under that heads.

Thus, total compensation comes out to Rs.6,40,000/-.

The Tribunal has awarded compensation of Rs.4,10,350/-.

In this way, the enhanced amount comes out to Rs.2,29,650/- (6,40,000 - 4,10,350). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.2,29,650/-. The other terms and conditions given in the award shall apply to the enhanced amount as well.

Thus, **FAO-1588-2013** filed by appellant/claimant Avinash Chander and **FAO-5091-2013** filed on behalf of appellant/claimant Mohinder Garg stand allowed partly.

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Now taking up FAO-2221-2013 and FAO-2222-2013 filed by the insurance company. Learned counsel for the appellant/insurance company has argued that the accident had taken place on 6.7.2009, whereas the FIR was registered on 29.8.2009 i.e. after delay of more than 1 ½ months without there being explanation for abnormal delay in lodging of the FIR and furthermore no medical evidence has been produced by the claimants putting a question mark over the genuineness of claim of the claimants.

After hearing the learned counsel for the appellant – insurance company and going through the record, I find that the arguments advanced by learned counsel for the appellant insurance company are devoid of any merit. Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there. Furthermore the Tribunal deciding the claim petition is to reach its own conclusion on the basis of evidence adduced before it. The reports of the police officers and even judgment of a Criminal Court are not binding upon the Tribunal.

As regards the contention that the vehicle number and name of the driver are not mentioned in the FIR, it is not in dispute that FIR is not an encyclopedia and the detailed version of an incident need not be given there. The only purpose of lodging of FIR with regard to

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commission of a cognizable offence is to set the criminal machinery into motion. It is only after registration of the FIR that the investigating agency came to know about the manner in which the offence was committed and person responsible for doing so.

The compensation has been awarded by the Tribunal on the basis of evidence before it, which has been found to be on lower side and has rather been increased by way of accepting the appeals filed by the claimants. Therefore, these contentions cannot be accepted.

Thus, **FAO-2221-2013** and **FAO-2222-2013** filed by the insurance company stand dismissed.

16.9.2019
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No