

**FAO No.1547 of 2016 (O&M)
and connected cases**

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

1. **FAO No.1547 of 2016 (O&M)**
Date of Decision : 16.01.2019

MUNESH KUMAR AND ANOTHER **....APPELLANTS**
V/S

MANISH KUMAR **....RESPONDENT**
2. **FAO No.1549 of 2016 (O&M)**

MUNESH KUMAR AND ANOTHER **....APPELLANTS**
V/S

KAVITA **....RESPONDENT**
3. **FAO No.6096 of 2016 (O&M)**

MANISH KUMAR **....APPELLANT**
V/S

MUNESH KUMAR AND ANOTHER **....RESPONDENTS**
4. **FAO No.6320 of 2016 (O&M)**

KAVITA **....APPELLANT**
V/S

MUNESH KUMAR AND ANOTHER **....RESPONDENTS**

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Ms. Mehak Sawhney, Advocate for
 Dr. Deipa Singh, Advocate
 for the appellants (in FAO Nos.1547 & 1549 of 2016 and
 for the respondents (in FAO Nos.6096 & 6320 of 2016).

Mr. Akashdeep Singh, Advocate for the respondent(s)
 in FAO Nos.1547 & 1549 of 2016 and
 for the appellants in FAO Nos.6096 & 6320 of 2016.

B.S. WALIA, J. (ORAL)

[1] FAO Nos.1547 and 1549 of 2016 have been filed by the owner-
 driver, while FAO Nos.6096 and 6320 of 2016 have been filed by the
 claimants.

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[2] Notice of motion was issued in FAO Nos.1547 & 1549 of 2016, filed by owner-driver, on the limited issue of quantum of compensation and in FAO Nos.6096 and 6320 filed by claimant(s), seeking enhancement of compensation.

FAO No.6096 of 2016 and FAO No. 1547 of 2016

[3] FAO Nos.6096 of 2016 has been filed by Manish Kumar, seeking enhancement of compensation of ₹3,09,000/- awarded to him while FAO No. 1547 of 2016 has been filed by the owner and driver seeking reduction. Learned counsel for the claimant contended that due to injuries the claimant remained bed ridden for 6 months, therefore was entitled to compensation for attendant charges, loss of earning, special diet, transportation charges, medical treatment expenses accordingly besides for loss of amenities of life. However, learned counsel has not been able to refer to any evidence qua the duration for which the claimant remained bed ridden and was unable to attend to work or that the attendant had charged ₹6000/- per month from him, for a period of six months. Learned counsel for the owner and driver on the other hand contended that a perusal of the cross-examination of PW-7 reveals that he was a taxi driver and used to ply a taxi and further that he was a friend of the claimant. Although, PW-7 denied the suggestion that the claimant was able to do the work himself or that PW-7 had not worked as an attendant with the claimant after he met with an accident or that he had not charged ₹6000/- per month from the claimant being his friend but the fact remains that the evidence of PW-7/attendant was not accepted by the learned Tribunal and as against claim of ₹36,000/-, only ₹20,000/- was awarded as attendant charges. Learned counsel for the claimant has neither been able to controvert the aforementioned

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any other evidence to show that the claimant was bed-ridden for a period of six months. In the circumstances, the claimant is taken as being on bed-rest for a period of 6 to 8 weeks.

The learned Tribunal awarded reimbursement of medical expenses of ₹ 2,38,835/- on account of bills produced in proof before the Tribunal. No evidence has been pointed out that the medical expenses incurred were less or more than what were awarded.

The claimant suffered permanent disability of 25% for which he was awarded ₹ 50,000/- on account of pain and suffering. No argument has been advanced by either party to show that the amount awarded on account of pain and suffering was inappropriate and required variation. Besides, the compensation awarded on account of pain and suffering appears to be just and appropriate.

In view of the position noted above I do not find any circumstances warranting interference in the compensation awarded on account of attendant charges, medical expenses and pain and suffering.

[4] Learned counsel for the claimant next contended that no amount has been awarded on account of special diet, transportation charges, loss of income besides loss of amenities of life. Learned counsel for the owner and driver contended that at best the claimants can be awarded a token amount under aforesaid heads. I have considered the submissions. The claimant remained admitted in hospital for a period of 18 days. In addition thereto, in view of the injuries sustained it can be presumed that he remained on bed-rest for a period of 6 to 8 weeks. In the circumstances, a sum of ₹ 3000/- per month on account of special diet and a sum of ₹ 1000/- per month on account of transportation charges for a period of 2 ½ months would be just and appropriate compensation.

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In addition to the aforementioned amount, the claimant is also awarded a sum of ₹10,000/- on account of loss of amenities of life.

[5] Learned counsel on the basis of examination-in-chief of the claimant as PW-1 contends that the appellant is entitled to award of loss of earning as he lost his job as Supervisor in M/s Commit Heat Treatment, Industrial Area, Hisar Road, Rohtak where he was earning ₹ 15000/- per month.

[6] *Per contra*, learned counsel for the owner-driver contended that a perusal of the cross-examination of PW-1 reveals that no evidence in support of being engaged as Supervisor was led on record and in view thereof, the plea for award of loss of income for a period of 2 ½ months is without any merit.

[7] I have considered the submissions of counsel for the parties and am of the view that in the absence of evidence having been led to prove that the claimant was engaged as Supervisor on monthly salary of ₹15000/-, the claimant is not entitled to award of loss of income for the aforementioned period of 2 ½ months @ ₹15000/-. However, in the facts and circumstances of the case, the minimum wages for an unskilled labourer i.e. ₹5041.51 rounded off to ₹5042/- per month is taken into account for award of compensation on account of loss of income. Thus, a sum of ₹12,605/- is awarded on said account.

No interest was granted on the compensation awarded by the Tribunal. However, the ends of justice would be met if in addition to the compensation awarded, the claimant is held entitled to interest on the same @ 7.5% per annum with effect from date of claim petition, till date of payment.

FAO No.6320 of 2016 and FAO No. 1549 of 2016

[8] FAO Nos.6320 of 2016 has been filed by the claimant Kavita, seeking enhancement of compensation of ₹3,43,000/- awarded to her and FAO

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No. 1549 of 2016 has been filed by the owner and driver seeking reduction of the compensation awarded. A perusal of paragraph No.13 of the award reveals that a sum of ₹ 3,28,688/- was awarded to the claimant as reimbursement of medical expenses incurred. The same is on the basis of medical bills exhibited as P-64 to P-161 and Ex.P-174. A sum of ₹14000/- was awarded on account of transportation expenses on the basis of receipts (Ex.P-170 to P-173).

[9] Learned counsel for the parties have not been able to refer to any evidence to show that the amount awarded on account of reimbursement of medical treatment or transportation charges is less or excessive nor is it case of the owner and driver that the bills in question had not been proved.

[10] Accordingly, I do not find any circumstances warranting interference with the award of the medical expenses of ₹3,28,688/- or ₹14000/- on account of transportation expenses.

[11] Further, Learned counsel for the claimant contended that no amount had been awarded on account of pain and suffering, special diet, loss of earning, besides future medical expenses.

[12] Learned counsel contended that the claimant was M.A. in Sanskrit and was teaching in Hindu Senior Secondary School, Ganaur, Sonapat against salary of ₹10,000/- per month and since the claimant had remained hospitalized for 26 days, she was entitled to loss of income for the said period.

[13] *Per contra*, learned counsel for the owner and driver contended that in cross-examination, the claimant had admitted that she did not have any record regarding getting pay from the school.

[14] Faced with the aforementioned situation, learned counsel for the claimant contended that in the circumstances, the claimant could be treated as

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to a skilled labourer for the relevant period in the State of Haryana, which were ₹5991.51 (rounded off to ₹5992/-). I find merit in the submission of learned counsel for the claimant. Accordingly, the claimant is held entitled to loss of earning for a period of one month and is accordingly awarded ₹5992/- i.e. the minimum wages payable to a highly skilled labourer.

The claimant suffered fracture of the wrist as well as injuries to the optic nerve, besides remained hospitalized for 26 days. No amount has been awarded on account of pain and suffering. Learned counsel for the claimant contends that minimum of ₹25,000/- ought to have been awarded as compensation on account of pain and suffering. Learned counsel for the owner and driver contends that the amount claimed is highly excessive. Taking into account all aspects of the matter, I am of the view that a sum of ₹20000/- would be just and appropriate compensation on account of pain and suffering.

No amount has been awarded on account of special diet. Accordingly, a sum of ₹2500/- is awarded on account of special diet for a period of one month.

[15] Learned counsel for the respondent-claimant further contends that despite the claimant having to visit hospital even after discharge on account of follow-up for the damage to the optic nerve, no amount has been awarded on account of future medical expenses.

[16] *Per contra*, learned counsel for the owner and driver contends that no evidence has been led with regard to the duration for which the follow-up treatment would have to be carried out and that in the circumstances, no amount is payable on said account.

[17] Perusal of prescription slips (Ex. P-179 to Ex.P-191) goes to show that the claimant has been visiting the hospital for follow-up treatment with

regard to the injury to the optic nerve. However, learned counsel for the

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claimant-respondent/appellant has not been able to refer to any evidence to show the duration for which the claimant was required to further undergo the follow-up treatment as also the expenses incurred. However, taking into account all aspects of the matter I am of the view that ₹10,000/- in lump sum would be just and appropriate compensation on account of future medical expenses.

[18] A perusal of the award reveals that no amount has been awarded on account of interest on the compensation awarded. Ends of justice would be met if the amount awarded as compensation carries interest @ 7.5% per annum w.e.f. claim petition till the date of payment.

[19] Accordingly, in the light of the position as noted above, FAO Nos.1547 and 1549 of 2016 are **dismissed**, while FAO Nos.6096 and 6320 of 2016 are **partly allowed** and the appellant-claimants therein held entitled to award of compensation of ₹ 3,41,440/- and ₹ 3,81,180/- respectively along with interest @ 7.5% per annum w.e.f. date of claim petition till date of payment, less payment if any already paid.

[20] Since the main case has been decided, therefore, all pending miscellaneous application(s), are accordingly disposed of.

(B.S. WALIA)
JUDGE

January 16, 2019
'rajneesh'

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