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

**1. FAO No.3572 of 2016 (O&M)
Date of Decision: 02.07.2019**

Sunder Vs Ajmer and othersAppellant
.....Respondents

2. FAO No.4091 of 2016 (O&M)

Dharmo**Appellant**
Vs
Ajmer and others**Respondents**

3. FAO No.2324 of 2016 (O&M)

Subhash**Appellant**
Vs
Ajmer and others**Respondents**

4. FAO No.4249 of 2016 (O&M)

Rekha Vs Ajmer and othersAppellant
.....Respondents

5. FAO No.4354 of 2016 (O&M)

Partap Vs Ajmer and othersAppellant
.....Respondents

6. FAO No.3495 of 2016 (O&M)

Guddi Vs Ajmer and othersAppellant
.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Abhinav Sood, Advocate for

Mr. Vikram Singh, Advocate
for the appellant(s).

Mr. Vishal Kahsyap, A.A.G., Haryana.

Mr. S.P. Arora, Advocate
for respondent No.3/Insurance Company.

Mr. Punit Jain, Advocate
for respondent No.5/Insurance Company.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, FAO Nos.3572, 4091, 2324, 4249, 4354 and 3495 of 2016 (O&M) are being decided as all the aforesaid appeals have been preferred against the common award dated 06.11.2015 passed by Motor Accident Claims Tribunal, Sonapat (for short 'the Tribunal'). The Tribunal decided a bunch of seven claim petitions. Out of which, claimant(s) in six claim petitions, have preferred the present appeals before this Court.

[2]. Brief facts in common are that the accident took place on 01.07.2012 in which Ram Phool son of Ram Chander had died. Ram Phool, Dharmo, Partap, Rekha, Ram Niwas, Subhash and Guddi were going in a tempo being driven by Ram Niwas from village Sisana to village Malikpur on the fateful day. The offending vehicle i.e. bus of Haryana Roadways being driven by respondent No.1 came in a rash and negligent manner and struck against the tempo from

the back side. Resultantly, all the occupants of the tempo sustained injuries. Ram Phool died in that accident. FIR was registered against respondent No.1. Other six persons received injuries on their persons. Ram Niwas driver of the tempo has not preferred any appeal against the award.

[3]. The claim petitions were contested by respondent No.1. Respondent No.3 is the insurer of the bus, whereas respondent No.5 is the insurer of the tempo/auto rickshaw. All the respondents have contested the claim petitions by filing separate written statements.

[4]. Both the parties went to trial on the following issues:-

- “1. Whether the accident took place due to rash and negligent driving of bus bearing registration No.HR-45-A-5016 by its driver-respondent No.1 on 01.07.2012, within the jurisdiction of police station, Murthal resulting into death of Ramphool and causing injuries to injured Smt. Dharmo, Subhash, Ram Niwas, Partap, Guddi, Rekha as alleged? OPP.*
- 2. If issue No.1 is proved in the affirmative to what amount of compensation, the petitioner is entitled to and from whom? OPP.*
- 3. Whether the claim petition is not maintainable and petitioners have no cause of action and locus-standi to file the present claim petition? OPR.*
- 4. Whether the respondent No.1 was not holding valid and effective driving licence at the time of alleged accident if so its effect? OPR.*

5. *Whether respondent No.1 was driving the vehicle i.e. bus bearing registration No.HR-45A-5016 in violation of terms and conditions of insurance policy? OPR.*
6. *Relief.”*

[5]. On the basis of evidence led by the parties, the Tribunal found under issue No.1 that the accident in question took place due to rash and negligent driving of respondent No.1 and decided the issue No.1 in favour of the claimants. Under issue No.2, different claim petitions were decided on the basis of evidence produced by the claimants in respect of their entitlement qua compensation. Issues No.3, 4 and 5 were not pressed by the respondents during course of arguments and, therefore, these issues were decided against the respondents. The claim petitions were held to be maintainable. Respondent No.1 was having valid and effective driving licence at the time of accident and respondent No.1 was not driving the offending vehicle in violation of terms and conditions of the insurance policy.

[6]. In view of above, I proceed to decide the entitlement of each of the claimants separately.

FAO No.3572 of 2016 (O&M)

[7]. There is delay of 13 days in filing the appeal. For the reasons mentioned in the application bearing CM No.12600-CII of 2016, the same is allowed. Delay of 13 days in filing the

appeal is condoned.

[8]. The claim petition was filed by widow, daughter and sons of deceased Ram Phool on account of death in the vehicular accident in question. Deceased Ram Phool was 52 years of age at the time of accident. He died due to injuries suffered by him in the accident. His income was assessed to be Rs.5,0000/- per month as against Rs.9,000/- pleaded by the claimants. The aforesaid assessment was made on the basis of minimum wages prevalent at the time of accident. Annual income of the deceased was assessed to be Rs.60,000/-. Keeping in view the composition of family of the deceased, 1/3rd cut was applied towards personal expenses of the deceased and annual loss of the dependency was calculated as Rs.40,000/-. In view of age of the deceased, multiplier of 11 was applied and loss of dependency was assessed to be Rs.4,40,000/-. In view of age of the deceased, an amount of Rs.50,000/- was granted for loss of consortium. An amount of Rs.20,000/- was granted for love and affection and an amount of Rs.25,000/- was granted towards funeral expenses. In this way, total amount of Rs.5,35,000/- was awarded as compensation to the claimants. The liability of respondents No.2 and 3 was held to be joint and several. Claim petition qua respondents No.4, 5 and 6 was dismissed.

[9]. Learned counsel for the appellant submitted that the compensation awarded by the Tribunal needs to be modified as nothing was granted towards future prospects. Keeping in view the age of the deceased, future prospects to the tune of 10% needs to be granted.

[10]. In view of monthly income of the deceased i.e. Rs.5,000/- based on notification of daily wages, I deem it appropriate to grant increase of 10% towards future prospects. Thereby addition of Rs.500/- is made to the monthly income of the deceased. In this way, monthly income of the deceased would come out to be Rs.5500/-. Deduction to the extent of 1/3rd towards his personal expenses would make the monthly income to be Rs.3667/- (5500-1833) rounded off to Rs.3670/-. In this way, the total amount of annual dependency comes to Rs.44040/- (3670 x 12) per annum.

[11]. The deceased was aged about 52 years at the time of accident. In view of ratio laid down in **Sarla Verma vs. Delhi Transportation Corporation, 2009 ACJ 1298 (SC)** on the basis of age of the deceased, multiplier of 11 is to be applied. In this way assessment towards dependency comes out to be Rs.4,84,440/- (44040 x 11). Since this Court is making fresh assessment in each and every component, therefore, conventional charges cannot exceed to Rs.70,000/- in view of

National Insurance Co. Limited vs. Pranay Sethi, 2017 SCC

1270. An additional amount of 70,000/- is assessed towards the conventional heads. In this way, total amount of compensation comes out to be Rs.5,54,440/- (4,84,440 + 70,000).

[12]. The enhanced amount i.e. Rs.19,440/- (5,54,440 – 5,35,000) would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

FAO No.4091 of 2016 (O&M)

[13]. There is delay of 19 days in filing the appeal. For the reasons mentioned in the application bearing CM No.13955-CII of 2016, the same is allowed. Delay of 19 days in filing the appeal is condoned.

[14]. The claimant-Dharmo sustained injuries in the accident in question. In view of her affidavit Ex.PW-3/A, X-ray report and bills Ex.P-14 to Ex.P-19. It is found that the injured/appellant was radiologically examined in PGIMS, Rohtak. Fracture in her left thigh was found. As per medical bills, she had spent Rs.47,245/- towards medicines.

[15]. There can be some unforeseen expenses in case of injuries towards day to day purchase of medicines without maintaining any exact record. The award of Rs.50,000/- towards medical expenses, Rs.5000/- towards transportation charges, Rs.3000/- towards special diet, Rs.5000/- towards attendant

charges and Rs.20,000/- towards pain and sufferings granted by the Tribunal cannot be held to be just and proper. The same needs to be enhanced.

[16]. In case of injury though nature of permanent disability has not come to fore, but certainly the appellant has undergone pain, suffering and mental stress due to the fracture in her left thigh. Since there cannot be any strict proof of maintaining record of expenses as some unforeseen expenses do arise in case of hospitalization of an injured. Sometimes attendant keep on changing and certain amount is incurred. The same needs to be taken notice of.

[17]. In view of above, I deem it appropriate to consider an amount of Rs.60,000/- towards medical expenses, Rs.5,000/- towards special diet, Rs.10,000/- towards attendant charges and Rs.30,000/- towards pain and suffering. The amount of Rs.5,000/- towards transportation charges needs no addition. In this way, the total amount would come out to be Rs.1,10,000/-.

[18]. The enhanced amount i.e. Rs.27,000/- (1,10,000 – 83,000) would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

FAO No.2324 of 2016 (O&M)

[19]. Appellant-Subhash sustained injuries in the accident in question. He was medico-legally examined. As per MLR

Ex.P-52, the injured was medically examined in General Hospital, Sonapat with alleged history of road side accident. The injury was found to be below lower lip and he was advised X-ray. As per medical bills, Ex.P-24 and Ex.P-25, expenses towards his treatment was assessed to be Rs.8635/-.

[20]. There can be some unforeseen expenses in case of injuries towards day to day purchase of medicines without maintaining any exact record. An amount of Rs.20,000/- as compensation was granted by the Tribunal by taking into consideration the amount incurred by the appellant towards treatment, transportation charges, special diet, pain and sufferings due to injuries suffered by him. In my considered opinion, the amount of Rs.20,000/- as compensation awarded to the appellant is wholly on the lower side. The Court has to award just compensation to the injured. Components of compensation towards transportation charges and special diet, attendant charges cannot be lost sight off in addition to the award of compensation for pain and sufferings.

[21]. In case of injury though nature of permanent disability has not come to fore, but certainly the appellant has undergone pain, suffering and mental stress due to the injuries suffered by him. Since there cannot be any strict proof of maintaining record of expenses as some unforeseen expenses do arise in case of

hospitalization of an injured. Sometimes attendant keep on changing and certain amount is incurred. The same needs to be taken notice of.

[22]. In view of above, I deem it appropriate to consider an amount of Rs.40,000/- in lumpsum. The same would suffice to serve the purpose of granting just compensation to the injured. The enhanced amount i.e. Rs.20,000/- (40,000 – 20,000) would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

FAO No.4249 of 2016 (O&M)

[23]. There is delay of 17 days in filing the appeal. For the reasons mentioned in the application bearing CM No.14580-CII of 2016, the same is allowed. Delay of 17 days in filing the appeal is condoned.

[24]. The injured-Rekha as per evidence on record had sustained injuries. As per medical bills Ex.P-54 to Ex.P-57, she had incurred medical expenses to the tune of Rs.15,360/-. The Tribunal has granted Rs.17,000/- towards medical expenses, Rs.5,000/- towards transportation charges, Rs.3000/- towards special diet, Rs.5000/- towards attendant charges and Rs.10,000/- towards pain and suffering, thereby granting a total amount of Rs.40,000/- as compensation. The aforesaid amount is on the lower side. The same needs to be enhanced. In claim

cases, compensation on the basis of some guess work has to be made in order to award just compensation to the appellant. There can be some unforeseen expenses in case of injuries towards day to day purchase of medicines without maintaining any exact record.

[25]. In case of injury though nature of permanent disability has not come to fore, but certainly the appellant has undergone pain, suffering and mental stress due to the injuries suffered by her. Since there cannot be any strict proof of maintaining record of expenses as some unforeseen expenses do arise in case of hospitalization of an injured. Sometimes attendant keep on changing and certain amount is incurred. The same needs to be taken notice of.

[26]. In view of above, I deem it appropriate to consider an amount of Rs.20,000/- towards medical expenses, Rs.5,000/- towards special diet, Rs.10,000/- towards attendant charges and Rs.15,000/- towards pain and suffering. The amount of Rs.5,000/- towards transportation charges requires no addition. In this way, the total amount would come to Rs.55,000/-.

[27]. The enhanced amount i.e. Rs.15,000/- (55,000 – 40,000) would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

FAO No.4354 of 2016 (O&M)

[28]. There is delay of 8 days in filing the appeal. For the reasons mentioned in the application bearing CM No.14932-CII of 2016, the same is allowed. Delay of 8 days in filing the appeal is condoned.

[29]. Appellant-Partap received injuries in the accident in question. As per evidence adduced by him in the form of medical bills Ex.P-39 to Ex.P-43, he had spent an amount of 44,040/- for purchasing medicines.

[30]. There can be some unforeseen expenses in case of injuries towards day to day purchase of medicines without maintaining any exact record. The award of Rs.45,000/- towards medical expenses, Rs.5000/- towards transportation charges, Rs.5000/- towards special diet, Rs.5000/- towards attendant charges and Rs.50,000/- towards pain and sufferings granted by the Tribunal cannot be held to be just and proper. The same needs to be enhanced.

[31]. In case of injury though nature of permanent disability has not come to fore, but certainly the appellant has undergone pain, suffering and mental stress due to the injuries suffered by him. Since there cannot be any strict proof of maintaining record of expenses as some unforeseen expenses do arise in case of hospitalization of an injured. Sometimes attendant keep on changing and certain amount is incurred. The same needs to be

taken notice of.

[32]. In view of above, I deem it appropriate to consider an amount of Rs.50,000/- towards medical expenses, Rs.8,000/- towards special diet, Rs.10,000/- towards attendant charges and Rs.60,000/- towards pain and suffering. The amount of Rs.5,000/- towards transportation charges is just and proper and needs no enhancement. In this way, the total amount would come out to be Rs.1,33,000/-.

[33]. The enhanced amount i.e. Rs.23,000/- (1,33,000 – 1,10,000) would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

FAO No.3495 of 2016 (O&M)

[34]. There is delay of 17 days in filing the appeal. For the reasons mentioned in the application bearing CM No.12519-CII of 2016, the same is allowed. Delay of 17 days in filing the appeal is condoned.

[35]. The claimant-Guddi sustained injuries in the accident in question and tendered medical bills Ex.P-31 to Ex.P-36. As per medical bills, she had spent Rs.49,680/- towards purchase of medicines.

[36]. There can be some unforeseen expenses in case of injuries towards day to day purchase of medicines without maintaining any exact record. The amount of Rs.50,000/-

towards medical expenses, Rs.5000/- towards transportation charges, Rs.5000/- towards special diet, Rs.10,000/- towards attendant charges and Rs.50,000/- towards pain and sufferings was granted by the Tribunal. In view of nature of injuries suffered by the appellant, the compensation needs to be enhanced.

[37]. In case of injury though nature of permanent disability has not come to fore, but certainly the appellant has undergone pain, suffering and mental stress due to the injuries received by her. Since there cannot be any strict proof of maintaining record of expenses as some unforeseen expenses do arise in case of hospitalization of an injured. Sometimes attendant keep on changing and certain amount is incurred. The same needs to be taken notice of.

[38]. In view of above, I deem it appropriate to consider an amount of Rs.55,000/- towards medical expenses, Rs.10,000/- towards special diet, Rs.15,000/- towards attendant charges and Rs.60,000/- towards pain and suffering. The amount of Rs.5,000/- towards transportation charges needs no addition. In this way, the total amount would come to Rs.1,45,000/-.

[39]. The enhanced amount i.e. Rs.25,000/- (1,45,000 – 1,20,000) would carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

[40]. The liability to pay the compensation to the claimant(s) would remain the same as ordered by the Tribunal. With the aforesaid modifications, all the six appeals are hereby disposed of.

July 02, 2019

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No