

FAO No. 4096 of 2016 (O&M)

-1-

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

**FAO No. 4096 of 2016 (O&M)
Date of Decision: October 14, 2019**

Krishan @ Shishan

..... Appellants(s)

Versus

Krishan Kumar and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. Ashish Yadav, Advocate
for respondents no.1 & 2.

Mr. Deepak Suri, Advocate
for respondent no.3 - insurance company.

LISA GILL, J.(oral)

This appeal has been filed seeking enhancement of compensation awarded to the claimant vide award dated 30.04.2015, passed by learned Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal') on account of the injuries and disability suffered by him in the motor vehicle accident, which took place on 03.10.2011.

Brief facts necessary for adjudication of the case are that the appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 through his wife and next friend, seeking compensation on account of injuries sustained by him in a motor vehicle accident, which took place on 03.10.2011, due to the rash and negligent driving of the offending bus

FAO No. 4096 of 2016 (O&M)

-2-

bearing bearing registration No. HR-62-0333, by its driver Krishan Kumar - respondent no.1. FIR No.313 dated 05.10.2011, under Sections 279, 337 IPC was registered at Police Station Sadar Fatehabad against respondent no.1 in respect to the accident. It is pleaded that the appellant was 34 years old at the time of the accident. He is claimed to be a labourer besides running a milk dairy, maintaining buffaloes, thereby earning a sum of Rs.10,000/- per month. He is claimed to have become permanently disabled after the head injury suffered by him in the accident and thus unable to do any work at all. Compensation was thus claimed.

Learned Tribunal on considering the evidence on record concluded that the claimant received injuries in the motor vehicle accident, which took place on 03.10.2011, due to the rash and negligent driving of the offending bus bearing registration No. HR-62-0333, by its driver Krishan Kumar-respondent no.1, which led to 90% permanent disability. Learned Tribunal awarded a sum of Rs. 2,50,000/- as compensation, detail of which is as under:-

1.	Expenses of medicines and hospitalization	57,000/-
2.	Loss of amenities and earning capacity	30,000/-
3.	Permanent disability	1,50,000/-
4.	Pain and suffering	10,000/-
5.	Special diet and attendant charges	3,000/-
	Total	2,50,000/-

Present appeal has been filed seeking enhancement of the aforesaid compensation.

FAO No. 4096 of 2016 (O&M)

-3-

Learned counsel for the appellant argues that meagre compensation has been awarded. The appellant has suffered 100% functional disability and he is unable to earn his livelihood and is completely dependent on others. Accordingly, it is prayed that the meagre compensation awarded by the learned Tribunal be enhanced.

Learned counsel for respondent-insurance company, however, prays that there is no scope for any enhancement of compensation awarded to the appellant, as the same is reasonable and just in the facts and circumstances of the case. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

There is no dispute regarding the appellant having suffered a head injury as well as a fracture of radius bone in the motor vehicle accident, which took place on 03.10.2011, due to the rash and negligent driving of the offending bus bearing registration No. HR-62-0333, by its driver Krishan Kumar-respondent no.1. This finding of the learned Tribunal has attained finality. It is borne out from the record that the claimant suffered 90% permanent disability on account of severe intellectual impairment as per report of PGIMS, Rohtak. PW-1 Dr. Girish Kumar, Medical Officer, General Hospital, Fatehabad has proved the medical certificate Ex.P1. It is a matter of record that the appellant after the accident was taken to the General Hospital, Fatehabad. Due to his critical condition, he was referred to Sapra Hospital and C.T. Scan Centre, Hisar, where he

FAO No. 4096 of 2016 (O&M)

-4-

was admitted as an indoor patient from 03.10.2011 to 20.11.2011. PW5 Dr. Tarun Sapra has proved the admission of the appellant. PW5 further testified that the appellant was operated upon for head injury and he was discharged on 21.11.2011. PW5 has clearly testified that the possibility of the disability suffered by the claimant due to the head injury caused with the road side accident cannot be ruled out. An effort has been made to suggest that the claimant was suffering from some sort of mental disability even prior to the accident in question. In this regard reference is made to the cross-examination of PW6 Dr. Pallavi Raji, Clinical Physiologist, PGIMS, Rohtak, wherein she has stated that she could not comment, whether the I.Q. of the patient is due to the injuries suffered by the patient or by birth. In my considered opinion, a stray remark by PW6 without any other evidence on record to prove that the claimant was suffering from any such disability prior to the accident, cannot be countenanced. PW2 - Sumitra, the claimant's wife has specifically testified that her husband was a labourer and also running a dairy farm. PW2 Sumitra and PW4 Satpal Singh have specifically denied the suggestion that the claimant was mentally unfit or retarded before the accident. It is after the accident that he had suffered the disability, which has rendered him incapable to even carry-out his routine chores. In this view of the matter, it is apparent that claimant has in fact suffered 100% functional disability. He is unable to perform even his routine tasks much less earn a livelihood and support his family.

The claimant is pleaded to be a labourer besides running a dairy, thus, earning a sum of Rs.10,000/- per month. There is no evidence

FAO No. 4096 of 2016 (O&M)

-5-

on record to indicate the exact income earned by the appellant or even the fact that he was running a dairy farm earning any income therefrom. His income is thus assessed with reference to the minimum wage available to an unskilled labourer in the State of Haryana at the time of accident i.e. Rs.4,643/-, which is rounded off to Rs.4,650/- per month.

Compensation to the appellant is thus required to be reworked in terms of the guidelines laid down in **Sayed Sadiq etc. Vs. Divisional Manager, United India Insurance Company, 2014(1) RCR (Civil) 765.** Loss of income is assessed as Rs.4,650/- per month. With increase in income on account of future prospects at the rate of 40%, the amount is $[4,650 + 1860 (4,650 \times 40\%)] = \text{Rs.}6,510/-$ per month i.e. Rs. 78,120/- per annum. Multiplier of 16 is to be applied. Loss of earnings is, thus, assessed as Rs.12,49,920/- $[78,120 \times 16]$.

Appellant is also entitled to a sum of Rs.1,00,000/- instead of Rs.10,000/- awarded by learned Tribunal for pain and sufferings. Appellant is further entitled to a sum of Rs.1,00,000/- for loss of amenities of life instead of Rs.30,000/- awarded by learned Tribunal. Appellant is further entitled to Rs.10,000/- towards special diet and Rs.25,000/- towards attendant charges instead of Rs.3,000/- awarded by the learned Tribunal on both these counts. Compensation towards medical expenses as awarded by the learned Tribunal is maintained. The appellant is not entitled to the sum of Rs.1,50,000/- awarded by the learned Tribunal towards permanent disability in view of the dispensation as above.

FAO No. 4096 of 2016 (O&M)

-6-

Appellant-claimant is, thus, entitled to compensation which is re-worked as under:-

1.	Disability	12,49,920/-
2.	Medical expenses	57,000/-
3.	Loss of amenities of life	1,00,000/-
4.	Pain and suffering	1,00,000/-
5.	Special diet	10,000/-
6.	Attendant charges	25,000/-
	Total	15,41,920/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

October 14, 2019.
Sunil

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