

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

1. FAO No. 8439 of 2015
Date of Decision: July 15 , 2019.

Sulinder APPELLANT(s)
Versus
Surender Singh and others RESPONDENT (s)

2. FAO No. 8605 of 2015.

Rakesh Kumar APPELLANT(s)
Versus
Surender Singh and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sunny Dhull, Advocate for
Mr. Namit Khurana, Advocate
for the appellants.

Mr. Manoj Pundir, Advocate
for respondents No.1 and 2.

Mr. Vinod Chaudhri, Advocate
for respondent No.3 – Insurance Company.

LISA GILL, J.

This judgment shall dispose of FAO No.8439 of 2015 (Sulinder v. Surender Singh and others) and FAO No.8605 of 2015 (Rakesh Kumar v. Surender Singh and others) which arise out of a common impugned award dated 07.08.2015 passed by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, the 'Tribunal'). The appellants in both the appeals

seek enhancement of compensation awarded to them vide impugned award dated 07.08.2015.

Brief facts necessary for adjudication of the case are that, two petitions under Section 166 of Motor Vehicles Act were preferred by the appellants seeking compensation on account of the injuries and disability suffered by them in a motor vehicle accident, which took place on 03.03.2012. It was averred in the claim petitions that on 03.03.2012 at 6.00 a.m., both the claimants – Rakesh Kumar and Sulinder were coming from village Dheen towards Jagadhri on Ambala-Jagadhri road on a motorcycle No.HR02-Q-1288 being driven by Rakesh Kumar at a moderate speed on the correct side of the road. A TATA 207 vehicle bearing registration No.HR-58-9946, coming from the opposite side, struck against their motorcycle. As a result thereof, both the claimants suffered multiple injuries and were removed to hospital. Initially, they were treated at Mullana Medical College, Mullana and thereafter, shifted to Goel Hospital, Jagadhri. FIR No.35 dated 03.03.2012 (Ex.P119) under Sections 279/337 IPC, Police Station Mullana was registered in respect to the incident.

Learned Tribunal on consideration of the facts and evidence on record held that both the claimants suffered injuries in the accident in question due to the rash and negligent driving of offending TATA 207 vehicle bearing registration No.HR58-9946 by respondent No.1-Surender Singh. This finding of the learned Tribunal has attained finality.

In the claim petition filed by appellant-Sulinder, learned Tribunal awarded a total sum of ₹46,221/- as compensation, which is detailed as hereunder:-

Treatment incl. medicines : ₹26,221/-

Pain and sufferings	:	₹10,000/-
Transportation, Special diet future attendant charges etc.	:	₹5,000/-
Loss of work	:	₹5,000/-

In the claim petition filed by appellant-Rakesh Kumar, it is concluded that he suffered 30% temporary disability in the accident in question. He was awarded a total compensation of ₹58,780/-, which is detailed as hereunder:-

Medical Bills	:	₹38,780/-
Pain and sufferings	:	₹10,000/-
Transportation, Special diet future attendant charges etc.	:	₹5,000/-
Loss of work	:	₹5,000/-

Aggrieved therefrom, the present appeals have been preferred by both the appellants seeking enhancement of the compensation awarded to them.

Learned counsel for the appellants submits that meagre compensation has been awarded by the learned Tribunal. Though they have not suffered permanent disability on account of the said injuries, the appellants, it is submitted, are entitled to enhancement of the compensation awarded by the learned Tribunal. It is thus prayed that compensation awarded to the appellant be enhanced.

Learned counsel for respondent No.3 – Insurance Company however submits that the compensation awarded by the learned Tribunal is reasonable and as per the evidence on record. Dismissal of the appeals is prayed for.

I have heard learned counsel for the parties and have gone through the file.

There is no dispute regarding the injuries suffered by both the appellants in the accident in question being caused by the rash and negligent driving of offending TATA 207 vehicle bearing registration No.HR58-9946 by respondent No.1 – Surender Singh, neither is there a dispute regarding liability of the Insurance Company in this case.

As regards the claim petition filed by the claimant-Sulinder (subject matter of FAO No.8439 of 2015), the claimant initially got treatment at Mullana Medical Hospital, Mullana on 03.03.2012, thereafter he remained admitted in Goel Hospital, Jagadhri and he was discharged on 15.03.2012. As per the evidence of PW3 Dr. Mahabir Goel, injured/claimant was operated for the fracture of both bones of left leg, two pins were fixed and plaster was applied. Later on the patient was treated in OPD. Appellant-Sulinder claimed to be working as Munshi-cum-Supervisor in Sir Chhotu Ram Thermal Plant, Yamuna Nagar, earning ₹7,000/- per month. However, no evidence has been produced on record to prove the same, except his own bald statement. Thus, his income is assessed as ₹5,000/- per month. Keeping in view the nature of injuries suffered by him, the claimant-Sulinder is entitled for loss of income for six months as it is apparent that he would not have been able to revert to his normal routine till then. Perusal of the file reveals that the appellant-Sulinder did not suffer any permanent functional disability, therefore, he is not entitled to any loss of future income.

Furthermore, the appellant is entitled ₹25,000/- on account of pain and suffering instead of ₹10,000/- as awarded by the learned Tribunal. Instead of a consolidated sum of ₹5,000/-, a sum of ₹5,000/- each is awarded on account of transportation, special diet, attendant charges. The claimant is awarded ₹30,000/-

(5000 x 6) on account of loss of income. ₹26,221/- towards medical expenses as ordered by the learned Tribunal are maintained.

Appellant-Sulinder is, thus, entitled to compensation detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Pain and suffering	₹25,000
2.	Special diet	₹5,000
3.	Attendant charges	₹5,000
4.	Transportation	₹5,000
5.	Medical expenses	₹26,221
6.	Loss of income	₹30,000
Grand Total		₹96,221/-

As regards the claim petition filed by the claimant-Rakesh Kumar (subject matter of FAO No.8605 of 2015), he was initially got treated at Mullana Medical Hospital, Mullana on 03.03.2012. Thereafter he remained admitted in Goel Hospital, Jagadhri and was discharged on 15.03.2012. The patient was thereafter treated as outpatient. As per the evidence of PW3 Dr. Mahabir, claimant-Rakesh Kumar suffered 30% disability qua a particular limb on account of fracture of right femur with restriction of movement of right knee. Disability is temporary and likely to improve after physiotherapy. Appellant-Rakesh Kumar was held to be a casual labourer by the learned Tribunal in the absence of any evidence on record. However, in view of the nature of injuries suffered by him, the claimant-Rakesh Kumar is entitled for loss of income for twelve months. Therefore, instead of ₹5,000/- as awarded by the learned Tribunal, the claimant is held entitled for ₹60,000/- (5000 x 12) on account of loss of income for twelve months. Perusal of the file reveals that the appellant-Rakesh Kumar did not suffer

any functional disability, therefore, he is not entitled to loss of future income.

Furthermore, the appellant is entitled ₹25,000/- on account of pain and suffering instead of ₹10,000/- as awarded by the learned Tribunal. Instead of a consolidated sum of ₹5,000/-, a sum of ₹5,000/- each is awarded towards transportation, special diet, attendant charges. ₹38,780/- towards medical expenses as ordered by the learned Tribunal are maintained.

Appellant-Rakesh Kumar is, thus, entitled to compensation detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Pain and sufferings	₹25,000
2.	Special diet	₹5,000
3.	Attendant charges	₹5,000
4.	Transportation	₹5,000
5.	Medical expenses	₹38,780
6.	Loss of income	₹60,000
Grand Total		₹1,38,780/-

Amount already awarded by the Tribunal to both the appellants/claimants under various heads shall stand deducted from the amount of compensation reworked as above. Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, both the appeals are disposed of.

July 15 , 2019.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No