

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

Date of decision: 04.07.2019

FAO No.8713 of 2015 (O&M)

Jagdish

... Appellant

Versus

Subhash Chander and others

... Respondents

FAO No.368 of 2016 (O&M)

Prem Lata and others

... Appellants

Versus

Subhash Chander and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Harmandeep Kaur, Advocate for
Mr. PK Ganga, Advocate
for the claimants.

Mr. Dheeraj Narula, Advocate
for respondents No.1 and 2.

Mr. Neeraj Khanna, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.8713 of 2015 and 368 of 2016 as these have emerged out of the same award dated 27.11.2012 passed by the Motor Accidents Claims Tribunal, Sirsa whereby compensation has been assessed on account of injuries sustained by Jagdish and death of Amar Singh in a motor vehicular accident that took place on 28.03.2009.

FAO No.8713 of 2015 has been filed by Jagdish seeking enhancement of compensation whereas the other appeal has been filed by legal representatives of deceased Amar Singh for the same relief.

CM No.27654-CII of 2015 in FAO No.8713 of 2015

Prayer in this application is for condonation of delay of 983 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the appellant coupled with that provisions of the Motor Vehicles Act, 1988 providing for compensation are benevolent social legislation, application is allowed and delay of 983 days in filing the appeal is condoned subject to the condition that the claimant shall forgo interest for the period of delay, in case compensation is enhanced.

FAO No.8713 of 2015

The Tribunal awarded Rs.9,76,824/- (rounded off to Rs.9,76,800/-), detailed hereunder:-

1. On account of disability to the extent of 80% Rs.6,48,000/-
2. On account of bills of medicines and charges Rs.2,98,824/- of operation and OPD
3. On account of pain and sufferings, Rs.20,000/- transportation charges
4. On account of conveyance charges Rs.10,000/-

Counsel for the appellant would argue that the injured suffered disability to the extent of 80% but compensation awarded by the Tribunal with regard to disability is grossly inadequate. Another submission made by counsel is that even compensation allowed under other heads i.e. pain and sufferings, transportation and conveyance merits enhancement. The

claimant is entitle to additional compensation for services of an attendant and loss of amenities of life etc.

Counsel representing the insurance company, on the contrary, would apprise the Court that the Tribunal has allowed compensation with regard to disability by applying multiplier method and the entire disability to the extent of 80% has been taken into account.

The Tribunal has awarded a sum of Rs.6,48,000/- by computing income of the deceased at Rs.4500/- per month and loss of earning capacity to the tune of 80% by applying appropriate multiplier.

The claimant examined Dr. Pawan Kumar, Medical Officer, General Hospital, Sirsa, a member of the medical board, to prove the extent of disability suffered by the victim. Dr. Pawan Kumar has deposed that Jagdish had orthopedic disability to the extent of 10% whereas the total disability of eye, ENT, dental and orthopedic was to the tune of 80.37%. He proved disability certificate Ex.PW4/1. In cross examination, he had stated that disability on account of orthopedic will not decrease but he cannot say about other disability. The disability certificate also does not make a specific mention that disability is permanent in nature. The claimant did not examine any other medical officer to prove that even disability to eye, ENT and dental will not improve with passage of time. There is no medical opinion as to how disability suffered by the victim to the aforesaid extent and nature is to be treated for assessing functional disability in the context of avocation of the victim before the occurrence. In the given

circumstances, I do not find any justification for allowing additional compensation with regard to disability suffered by the victim.

The Tribunal has allowed reimbursement of medical expenses on the basis of documentary evidence and the same is affirmed. Compensation with regard to conveyance charges allowed by the Tribunal is correct and affirmed. However, the claimant shall be entitle to additional amount of Rs.30,000/- with regard to loss of amenities of life and pain and sufferings. The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 983 days in filing the appeal.

The appeal is partly allowed in the aforesaid terms.

FAO No.368 of 2016

The Tribunal awarded Rs.4,98,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.4500/-
2. Multiplier	13
3. Deduction for personal expenses	1/3 rd
4. Loss of dependency	Rs.4,68,000/-
5. Expenses on funeral	Rs.10,000/-
6. Loss of consortium	Rs.20,000/-

However, the claimants have been paid Rs.2,49,000/- as 50% negligence has been attributed to the deceased.

Counsel for the appellants would argue that findings of the Tribunal attributing contributory negligence to the deceased are not based upon correct appreciation of materials on record, thus, liable to be set aside. Claimants are entitle to benefit of future prospects and may be allowed adequate compensation under conventional heads.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal both in regard to attributing contributory negligence to the deceased as well as quantum of compensation.

The claimants examined Vinod Kumar, an eye-witness to the occurrence and author of FIR lodged against Subhash Chander driver of alleged offending motorcycle. Jagdish one of the riders of ill-fated motorcycle driven by Amar Singh (since deceased) and injured in the case also appeared in the witness box. Both the witnesses have consistently stated in their affidavits filed by way of examination in chief that when they reached near Risalia Chowk, respondent No.1 while driving motorcycle No.HR-44-C-2310 came from Risalia Chowk and struck his motorcycle in motorcycle No.HR-44-B-6623 from front side and occupants of this motorcycle fell on the road and sustained serious injuries that proved fatal for Amar Singh. However, both the witnesses have failed to explain as to how the driver of motorcycle No.HR-44-C-2310 namely Subhash Chander was rash and negligent in his driving or can be attributed exclusive negligence for the occurrence that happened on account of striking of two motorcycles coming from opposite directions. In view of evidence on record, it is difficult to differ with findings of the Tribunal that present is a case of contributory negligence of the motorcycle driven by Amar Singh (since deceased) and Subhash Chander respondent No.1 and they are attributed negligence in equal ratio. Accordingly, findings of the Tribunal

on issue No.1 are affirmed.

With regard to compensation assessed by the Tribunal, income of the deceased assessed by the Tribunal is correct and affirmed when examined in the light of minimum wage available at the relevant time. Claimants shall be entitle to addition in income for future prospects @ 25%. The Tribunal has allowed deduction to the extent of 1/3rd for personal and living expenses of the deceased. The application for compensation has been filed by the widow and four children of the deceased and they all were minors. Thus, the admissible deduction for personal and living expenses would be 1/4th. In this manner, loss of dependency is calculated at Rs.6,58,125/- [(4500 x 12 x 13) + (25% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.7,28,125/- and 50% thereof comes to Rs.3,64,062/-. The additional amount is Rs.1,15,062/- (3,64,062 – 2,49,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 983 days in filing the appeal, to be shared by the minor claimants in equal ratio, to be invested in fixed deposit till they attain majority or for a period of three

years, whichever is later. The interest accruing on FDRs shall be payable to mother of the minors for meeting their expenses.

The appeal is partly allowed in the aforesaid terms.

04.07.2019

ashok

(REKHA MITTAL)
JUDGE

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