

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

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Date of decision: 12.12.2019

FAO 5964 of 2014 (O&M)

Harpinder Singh

.....*Appellant*

Versus

Suresh Kumar and others

.....*Respondents*

FAO 5973 of 2014 (O&M)

Saravjit Singh

.....*Appellant*

Versus

Suresh Kumar and others

.....*Respondents*

FAO 5974 of 2014 (O&M)

Rao Varinder Singh

.....*Appellant*

Versus

Suresh Kumar and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Ms Ritu Bairagi, Advocate for
Mr. R S Budhwar, Advocate
for the appellant (s)

Mr. Suvir Dewan, Advocate
for respondent No. 3- Insurance company

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 02.01.2014 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short, 'the Tribunal') whereby compensation has been assessed on account of injuries sustained by Harpinder Singh, Rao Varinder Singh and application for compensation

with regard to damage to motor cycle bearing No. HR 08P 7872 filed by Saravjit Singh has been dismissed.

FAO Nos. 5964 and 5974 of 2014 have been filed by injured Harpinder Singh and Rao Varinder Singh respectively, whereas FAO No. 5973 of 2014 has been filed by Saravjit Singh.

CM 16553 CII of 2014 in FAO 5964 of 2014

Prayer in this application is for condoning delay of 99 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 99 days in filing the appeal stands condoned.

FAO No. 5964 of 2014

The Tribunal assessed compensation of Rs.68,200/-, detailed hereunder:-

-Expenses of medical bills	Rs.48,181/-
-Pain and sufferings	Rs.10,000/-
-Transportation, service of attendant and special diet	Rs.10,000/-

However, 50% of compensation was paid to the claimant as he has been attributed negligence to the extent of 50%.

Counsel for the appellant would argue that findings of the Tribunal attributing 50% negligence to injured Harpinder Singh merely on the ground that three persons were travelling on the ill fated motorcycle driven by him cannot be allowed to sustain and are liable to be set aside. It is further argued that there is nothing on record suggestive of the fact that

merely because three persons were travelling on the aforesaid motorcycle, same is the cause for accident. In support of her contention, she has relied upon judgments of this Court ***Banwari Lal and another vs Ran Singh and others*** (FAO No. 2191 of 2014, decided on 23.08.2016) and ***Karnail Singh vs Balwinder Singh, 2014 (7) R.C.R. (Civil) 177.***

Another submission made by counsel is that the insurance company has wrongly been exonerated of liability to pay compensation even if driving licence possessed by Suresh Kumar, driver of Tanker No. JK 02 AJ 2365 was invalid. It is further submitted that the insurance company may be directed to pay compensation to the claimant (s) and it may press for right of recovery against the insured after discharging liability towards the claimant. It is argued that the injured was a student of 10+2 and had VISA for study in Australia but due to the accident, he could not fulfill his dream of getting education in Australia. It is further argued that compensation allowed by the Tribunal under various heads is grossly inadequate and merits enhancement.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal exonerating the insurance company of liability to pay compensation. In the alternative, it is argued that in case the insurance company is directed to pay compensation, there is no justification for tinkering with findings of the Tribunal on issue No. 1 and so also assessment of compensation.

There is no representation on behalf of respondent No. 1 whereas service of respondent No.2 was dispensed with vide order dated 26.08.2019.

I have heard counsel for the parties and perused the paper book particularly the award.

Perusal of findings of the Tribunal on issue No. 1 makes it evident that the Tribunal has attributed contributory negligence to injured by referring to the provisions of Section 128 of the Motor Vehicles Act, 1988 (in short, 'the Act') and judgment of this Court ***Angrejo Devi and others vs Jai Parkash and others*** (FAO 6550 of 2010, decided on 23.05.2012). There is no such finding recorded by the Tribunal that travelling of three persons on the motorcycle driven by Harpinder Singh is cause of the accident or contributed in happening of accident. In the given circumstances, when the case is examined in the light of judgments of this Court in ***Banwari Lal*** and ***Karnail Singh's*** case (supra), there is no escape from conclusion that findings of the Tribunal attributing 50% negligence to the injured cannot sustain and accordingly set aside. As a natural corollary, the appellant shall be entitle to entire compensation assessed by the Tribunal and additional compensation, if any, allowed by the Court.

The Tribunal has exonerated the insurance company of liability to pay compensation while deciding issue No. 5 on the question of driving licence. As per the settled position in law, even if the driver was not possessing valid and effective driving licence, the insurance company cannot escape liability to pay compensation to the injured or the victim family but can only press for right of recovery against the insured after payment of compensation to the claimant (s). In this context, reference can be made to judgments of Hon'ble the Supreme Court ***National Insurance Company Limited vs Swaran Singh and others, 2004 ACJ 1*** and ***Pappu***

and others vs Vinod Kumar Lamba and another, 2018 (1) P.L.R. 425. In this view of the matter, findings of the Tribunal exonerating the insurance company of liability to pay compensation are set aside. The insurance company shall be liable to pay compensation to the claimant but would have right of recovery against the insured after satisfying the award.

This brings the Court to quantum of compensation. The injured remained admitted in PGI, Chandigarh for few days and was discharged on 12.07.2011. For post operative treatment, he was admitted in Mehendiratta Hospital Ambala Cantt. He had produced bills in respect of medical expenses to the tune of Rs.48,181/- which were allowed to be reimbursed by the Tribunal.

Dr. R K Mehendiratta, Orthopaedic Surgeon, Mehendiratta Hospital, Ambala City (PW7) was examined and he deposed that Harpinder Singh was brought to his hospital for post operative care and treatment. Regular dressings were done and treatment was given. He was discharged on 21.07.2011.

Indisputably, the injured has not suffered disability on account of sustaining injuries. The total period of hospitalization is 13 days. The injured was a resident of Village Chhorpur, District Kurukshetra. He got treatment from General Hospital, Ambala, PGI, Chandigarh and Mehendiratta Hospital, Ambala.

Taking into consideration the period of hospitalization coupled with that the injured received treatment from different hospitals, interest of justice would be served, if the claimant is awarded additional amount of Rs.15,000/- for loss of income during the period of treatment and recovery.

The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FAO 5973 of 2014

The Tribunal dismissed the claim with regard to damage to motorcycle bearing No. HR-08P-7872 preferred by Saravjit Singh, in view of findings recorded in para 18 of the award.

The Tribunal has noticed that application was filed by the insurance company for issuance of direction to the claimant to produce insurance policy particulars of motorcycle No. HR-08P-7872 and reply to the said application was filed. Saravjit Singh did not produce documents in respect of his ownership of motorcycle damaged in the accident. Counsel for the appellant has failed to point out any material on record to dispute these factual findings or to substantiate plea of the appellant that he is entitle to compensation qua damage to the motorcycle in question.

That being so, I do not find an error in findings of the Tribunal rejecting claim of Saravjit Singh. Accordingly, the appeal is dismissed.

FAO 5974 of 2014

The Tribunal has assessed Rs.1,02,650/-, detailed hereunder:-

-Medical expenses	Rs.67,650/-
-Pain and sufferings	Rs.20,000/-
-Transportation, service of attendant and special diet.	Rs.15,000/-

However, the claimant was paid Rs.51,325/- as 50% negligence was attributed to him.

In view of findings recorded in FAO No. 5964 of 2014, findings of the Tribunal attributing 50% negligence to the injured are set aside. As a consequence, the appellant shall be entitled to entire compensation assessed by the Tribunal and additional amount, if any, allowed by this Court.

Rao Varinder Singh appeared in the witness box and tendered into evidence his affidavit Ex. PW2/A. In para 2 of the affidavit, he has deposed that after the accident, he was taken to Civil Hospital, Ambala Cantt from where he was referred to PGI, Chandigarh on the same day. On 12.07.2011, he was operated. Thereafter, he was admitted in Mehendiratta Hospita, Ambala Cantt. for 15 days. He further deposed that he had to spent Rs.3,00,000/- on treatment, transportation, special diet and attendant etc.

The claimant did not examine the doctor of Civil Hospital, Ambala Cantt. or PGI Chandigarh in order to make it clear as to the nature of injuries sustained and treatment given during his hospitalization. The statement of the claimant that he remained admitted in Mehendiratta Hospital, Ambala for fifteen days does not get corroboration from testimony of Dr. R K Mehendiratta (PW7) who had stated that Rao Varinder Singh was admitted in his Hospital on 02.08.2011 with history of injuries on left thigh. The patient was operated in PGI, Chandigarh. He was brought to his hospital on 02.08.2011 for post operative care and discharged on 09.08.2011. The testimony of Dr. R K Mehendiratta also does not make it clear as to what injury (s) was sustained by the victim and what was the nature of operation conducted qua the said injury. In the given circumstances, it is difficult to accept contention of the appellant that he is

entitle to additional compensation for pain and sufferings, transportation, services of an attendant and special diet. However, he is awarded Rs.15,000/- for loss of income during the period of treatment and recovery. The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

12.12.2019
Mohan Bimbura

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