

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: 24.01.2020

1.

FAO No.1143 of 2003

Chuhar Singh

..... APPELLANT

VERSUS

Davinder Singh & others

..... RESPONDENT(S)

...

2.

FAO No.1144 of 2003

Suresh Kumar

..... APPELLANT

VERSUS

Davinder Singh & others

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

...

PRESENT: - Mr. Vipin Sharma, Advocate, for Mr. S.M. Sharma,
Advocate, for the applicant – appellant(s).

Mr. Neeraj Khanna, Advocate and Mr. Ravinder Arora,
Advocate, for respondent No.3.

. . .

Sant Parkash, J

CM No.9975-CII of 2018

Application is allowed as prayed for.

Legal heirs of appellant - Chuhar Singh (since deceased), as mentioned in Para 2 of the application, are ordered to be brought on record.

Amended Memo of Parties is taken on record.

Main Appeals

This judgment shall disposed of afore mentioned two appeals preferred against common Award dated 17.10.2002 passed by the Motor Accident Claims Tribunal, Ambala (for short, 'Tribunal').

Appellant, Chuhar Singh, has preferred FAO No.1143 of 2003 for enhancement of compensation of ₹ 7,000/- awarded to him on account of damage to his vehicle i.e. Jeep bearing registration No.HR01-8866, owned by him, on account of its accident with Truck bearing No.HR-37-4896.

FAO No.1144 of 2003 has been preferred by appellant – Suresh Kumar seeking enhancement of compensation of ₹ 96,200/- awarded to him on account of multiple injuries sustained by him in the accident.

Brief facts of the case are that an accident took place on 09.03.2000 at about 9.30 pm between Jeep owned by appellant – Chuhar Singh, being driven by appellant – Suresh Kumar and the aforesaid Truck, being driven in a rash and negligent manner. The Jeep was heavily damaged and turned upside down. Appellant – Suresh Kumar suffered multiple injuries.

Two separate claim petitions were filed by the appellants. Appellant Suresh Kumar pleaded that due to sustaining of injuries, he had to remain admitted in Civil Hospital, Amabala Cantt., whereafter he was referred to PGI, Chandigarh. He sought compensation from the respondents

i.e. Driver, Owner and Insurance Company. Appellant Chuhar Singh sought compensation on account of damage caused to his jeep in the said accident.

Respondent Nos.1 and 2 filed written statement denying the claim of appellants – claimants. It was stated that respondent No.1 was driving the truck on a moderate speed whereas the jeep was being driven at a very high speed and could not be controlled, as a result of which, it collided with the truck by coming on a wrong side of the road.

Respondent No.3, New India Assurance Company Limited (for short, 'Insurance Company') took up a stand that no accident, in fact, had taken place, and there was a violation of the terms & conditions of the insurance policy.

From the pleadings of parties, issues were framed. On appreciation of evidence, oral as well as documentary, and after hearing learned counsel for the parties, the Tribunal passed the impugned award in the terms stated above.

Now, the appellants have preferred the present appeals seeking enhancement of compensation awarded by the Tribunal.

Heard learned counsel for the parties and perused the record.

Admittedly, Jeep bearing No.HR01-8866 was owned by appellant Chuhar Singh which met with an accident with Truck bearing registration No.HR-37-4896, in which, appellant Suresh Kumar sustained multiple injuries and damage was caused to the jeep owned by appellant Chuhar Singh.

Appellant Chuhar Singh examined himself as PW-6 and deposed that the jeep was being driven by his nephew Suresh Kumar who was going from village Kardhan to village Haldari. Appellant Suresh Kumar

stepped into witnesses box as PW-7 and given the details about the date, time, place of accident and the manner in which the incident had occurred. The FIR (Ex.P-10) lodged with regard to the alleged accident also recites the aforesaid facts.

Though, learned counsel for the Insurance Company argued that appellant Suresh Kumar himself was negligent in driving the jeep, however, neither there is any such plea in the pleadings of Insurance Company nor has been cross examined on this point. Moreover, Dr. Satish Kumar (PW-1), who proved MLR (Ex.P1), deposed that appellant Suresh Kumar was smelling of alcohol but there no cross examination also on this aspect from the side of Insurance Company that he was under the influence of liquor. Thus, it has been rightly held by the Tribunal that without any test having been held with regard to quantity of intake of alcohol or about its effect, mere smell of alcohol having not been found to be affecting judgment of driving, cannot be a circumstance to infer negligence in driving the vehicle by claimant Suresh Kumar.

So far as damage caused to the jeep owned by appellant Chuhan Singh, there is no challenge to the fact that his nephew Suresh Kumar was driving the said vehicle.

AS far as the enhancement of compensation is concerned, this Court is of the view the same is on the lower side and the factual matrix as well as documents placed on record have not been taken into consideration in the correct perspective.

Appellant Suresh Kumar was injured in the alleged accident and received multiple injuries. Even he was admitted in Civil Hospital, from where, he was referred to PGI, Chandigarh. He was examined by Dr. Satish

Kumar (PW-1) who proved MLR as Ex.P1, giving details of injuries to the effect that he received four lacerated wounds, two on his forehead, one on his fore-arm and second on left lower limb. PW-2, Dr. S.S. Gill, treated appellant Suresh Kumar in PGI, Chandigarh and found on his person, fracture of right humerus; and fracture of right ulna with dislocation of head or radius of right side. Appellant Suresh Kumar had to be operated twice for fixing of plates and for excising of head of the radius. OPD card, Ex.P2 was proved. The said doctor also deposed that he would require another for removal of plates and screws. It is evident that appellant Suresh Kumar remained confined to bed due to nature of injuries and fracture sustained by him. Even the Medical Board assessed 30% disability as per Disability Certificate (Ex.P4) which was proved by Dr. P.K. Nigam (PW-3).

In the light of aforesaid discussion, this Court is of the considered view that the compensation awarded to appellant Suresh Kumar under different heads is insufficient and it needs to be enhanced.

As regards, claim of appellant Chuhar Singh with regard to enhancement of compensation on account of damage of his jeep. He proved on file the Bills Ex.P5 and Ex.P6 for an amount of ₹ 15,567/- and ₹ 20,235/-, for purchase of parts of the jeep. Though, appellant could not produce the relevant record of workshop of Prem Chand (PW-4), where the jeep was allegedly got repaired, but mere non production of record does not ipso facto means that accident did not occur and there was no damage to the jeep owned by appellant Chuhar Singh. Thus, it is held that compensation of ₹ 7,000/- awarded by the Tribunal on account of damage, repairs, denting and panting etc. of the damaged vehicle is on the lower side, which is hereby enhanced to ₹ 12,000/-.

In view of the above detailed discussion, and keeping in view the price index at the time of accident, the compensation awarded to appellant Suruesh Kumar is hereby enhanced in the following terms:-

Sr. No.	Particulars	Compensation by the Tribunal (₹)	Compensation enhanced by this Court (₹)
1	Compensation for Medical Expenses	11,500/-	15,000/-
2	Compensation for Pain & Suffering	10,000/-	25,000/-
3	Compensation for Special Diet	2,100/-	2,500/-
4	Compensation for attendant charges	2,400/-	2,800/-
5	Compensation for permanent disability	60,000/-	75,000/-
6	Compensation for loss of income	7,200/-	15,000/-
7	Compensation for transportation charges	3,000/-	5,000/-
Total Enhancement		96,200/-	1,40,300/-

The enhanced amount shall entail interest at the same rate as awarded in the original award, from the date of Award.

With the aforesaid modification of compensation, both the appeals stand disposed of.

24.01.2020
avin

(Sant Parkash)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No