

321

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2896-2004

Date of Decision: 15.09.2022

Harjinder Singh

---Appellant

versus

Dharam Pal and others

---Respondents

FAO-1913-2004

National Insurance Company Ltd.

---Appellant

versus

Harjinder Singh and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellant in FAO-2896-2004.

Mr. Man Mohan, Advocate and
Mr. Suman Jain, Advocate
for the appellant-National Insurance Company
in FAO-1913-2004.

Mr. Sanjay Verma, Advocate for private respondents.

Mr. Pardeep Garg, Advocate
for respondent No.5-The New India Assurance Co. Ltd.
in FAO-1913-2004.

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order FAO-2896-2004 and FAO-1913-2004
arising from same cause of action and award are hereby adjudicated.

2. The appellant (FAO-2896-2004) through instant appeal is seeking
enhancement of compensation awarded vide award dated 16.01.2004 passed
by Motor Accident Claims Tribunal, Kurukshetra (for short 'Tribunal')

whereby Learned Tribunal has awarded a sum of Rs.1,40,000/- along with interest @ 9% per annum from the date of filing of the claim petition.

3. The brief facts borrowed from FAO-2896-2004 are that appellant-Harjinder Singh on 01.09.1999 was travelling from Delhi to Shahabad in his car bearing registration No.HR-07B-0909 being driven by Baljit Singh-respondent No.6. The car of the appellant met with an accident with tempo bearing registration No. UP-12D-3125 which was lying parked in the middle of the road. It was quite dark thus driver could not see tempo lying parked in the mid of the road. Thus, car struck against the tempo and appellant suffered multiple injuries in the accident.

4. The appellant-claimant filed a claim petition under Section 166 of Motor Vehicle Act, 1988 (for short '1988 Act') before Tribunal which framed different questions and vide award dated 16.01.2004 granted compensation of Rs.1,40,000/- under different headings which are reproduced as below:-

i)	For physical disability to the extent of 31% (as per disability certificate Ex. P-3)	Rs.62,000/-
ii)	For 'expenses of treatment' (including medicines)	Rs.60,000/-
iii)	For 'Pain & suffering &'	Rs.5,000/-
iv)	For 'loss of amenities of life & for 'loss of earning capacity'	Rs.5,000/-
v)	For "transportation charges"	Rs.5,000/-
vi)	For 'Special die' & 'Special attendant' etc.	Rs.3,000/-
	Total	Rs.1,40,000/-

5. The appellant feeling aggrieved from quantum of compensation has preferred present appeal (FAO-2896-2004) before this Court.

6. The insurer i.e. National Insurance Company Limited has preferred appeal (FAO-1913-2004) claiming that liability of the insurer is to

compensate the insured towards the risk of third party and to satisfy the judgement and award passed against the person/vehicle insured. In the present case, insured himself is a claimant, thus no claim could be awarded against the insurer, however, Tribunal has fixed their liability to the extent of 50% of sum awarded.

FAO-2896-2004

7. Learned counsel for the appellant contended that there is no dispute qua accident and negligence of owner of tempo. He submitted that the appellant had suffered 31% permanent disability and learned Tribunal has awarded a meagre amount of Rs.1,40,000/-. He submitted that appellant had undergone five surgeries/operations and at present is suffering from permanent disability of 31%. This fact has been noted in the order of Tribunal. He contended that the appellant has to undergo further surgeries thus appellant would have to spend expenses on further treatment. Learned Tribunal has granted a very small amount of Rs.5,000/- under heading pain and sufferings, a sum of Rs.62,000/- under heading disability and a sum of Rs.5,000/- under loss of amenities of life.

FAO-1913-2004

8. Learned counsel for the insurer pleaded that Insurance Company is not liable to bear cost of award because insurance company is responsible for third party and not claim of the owner of the vehicle insured. Learned Tribunal has wrongly divided amount of compensation between insurer of both the vehicles involved.

9. Learned counsels for the respondents though did not concede, however, could not dispute the fact that amount of compensation awarded is on lower side especially when appellant has undergone five surgeries and

suffering from permanent disability to the extent of the 31%.

10. I have perused the record of the case and heard arguments of both sides.

11. I find that appellant is suffering from permanent disability to the extent of 31%. The appellant indubitably had undergone five surgeries and remained hospitalized more than 30 days. He was 38 years old at the time of incident. The appellant is supposed to undergo further surgery which would require further expenses. The appellant on account of injuries has lost amenities and enjoyment of life. He has suffered a lot of pain and is bound to suffer in future as he still has to undergo further surgeries and suffering from 31% permanent disability.

Keeping in view totality of facts and circumstances, I order to redetermine amount of compensation as below:-

Head	Amount of compensation
Medical Expenses	Rs.60,000/-
Future Medical Expenses	Rs.20,000/-
Special Diet/Attendant Charges	Rs.10,000/-
Transportation	Rs.5,000/-
Loss of Income During Treatment	Rs.15,000/-
Pains & Sufferings	Rs.1,00,000/-
Disability	Rs.1,20,000/-
Loss of Amenities of Life	Rs.1,00,000/-
Total	Rs.4,30,000/-

12. I do not find substance in the appeal of insurer because accident admittedly took place and both vehicles were insured. It would be inappropriate to transfer burden on one Insurance Company when accident took place at 2.00 A.M. and tempo in question was lying parked on road and driver of Car struck against tempo. Learned Tribunal has rightly held driver

of tempo and Car responsible for accident and fastened liability upon both insurer.

13. The appellants shall be entitled to interest @ 9% per annum qua compensation awarded by learned Tribunal, however, they shall be entitled to interest @ 7.5% per annum on the enhanced amount of compensation. It is made clear that amount already paid would be deducted from claim determined hereinabove.

The respondents are directed to make payment within eight weeks from today.

The appeals are disposed of in the above said terms.

(JAGMOHAN BANSAL)
JUDGE

15.09.2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No