

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

FAO No.2453 of 2011

Vinod Kumar

....Appellant

Versus

Jeet Singh and others

.....Respondents

FAO No.2454 of 2011

Hem Raj

....Appellant

Versus

Jeet Singh and others

.....Respondents

Date of Decision : 20.04.2022

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Dheeraj Narula, Advocate
for the appellant(s).

Mr. Ravinder Arora, Advocate
for respondent No.3/Insurance Company.

PANKAJ JAIN, J.

These two appeals are directed against common Award passed by the Motor Accident Claims Tribunal, Sirsa whereby two claim petitions filed under Section 166 of the Motor Vehicles Act, 1988 have been allowed.

2. Claimants have approached this Court seeking modification of the Award *qua* the quantum of compensation awarded to them on account of injuries sustained in a motor-vehicular accident.

3. Since the appeals are directed against the common Award and

involve common set of facts, the same are being disposed off by this common judgment.

4. As per the claimants, on 11th May, 2008 while they were returning to their native village riding motorcycle, a Tractor Marka HMT 5911 No.HR-24-F/9136 driven by respondent No.1 in a rash and negligent manner came from opposite side and struck their motor cycle. Both of them received multiple injuries on the various parts of their body. They were taken to General Hospital, Sirsa from where they were referred to PGI Rohtak. They spent an amount of Rs.2,00,000/- on treatment. Vinod Kumar was pillion rider and Hem Raj was driving the motor-cycle. Accordingly a case FIR No.166 under Sections 279/337 IPC was registered against respondent No.1.

5. On the basis of the pleadings of the parties, Ld. Tribunal framed the following issues :-

- “1. Whether the petitioners Hemraj and Vinod Kumar sustained injuries in a road accident which took place on 11.5.2008 in the area of village Mehna Khert within the jurisdiction of Police Station Rania due to rash and negligent driving on the part of respondent No.1 driver of Tractor No. HR-24-F-9136 as alleged? OPP*
- 2. Whether the petitioners are entitled to receive compensation ? If so how much and from whom? OPP*
- 3. Whether the petitioners have no cause of action and locus-standi to file the present petition? OPR*
- 4. Whether the petitioners have concealed the material facts from this Court ? If so to what effect? OPR*

5. *Whether the respondent No.1 was not holding a valid driving licence at the time of alleged accident? If so its effect? OPR*
6. *Relief.”*

6. I have heard Ld. Counsel for the parties and have gone through the evidence on record.

7. The scope of the present appeals is confined to finding on Issue No.2.

8. The claimant namely Hem Raj claims himself to be a contractor engaged in construction of buildings. His disability has been proved to the extent of 35%. He was 40 years of age. He remained admitted for about a month in different hospitals. Medical bills have been proved on record. He has been granted meager sum of Rs.20,000/- for pain & suffering, attendant charges, hospitalization and special diet.

9. In the considered opinion of this Court the appellant/Hem Raj being a contractor deserves to be assessed as a skilled labour on the date of accident i.e. 11th May, 2008. As per Notification No.3/42/83-3 dated 27th June, 2007 issued by Labour Department, Haryana Government, minimum wages for skilled labour for the relevant time has been notified as Rs.4030/- per month. Thus, loss of income also needs to be recalculated. Ld. Tribunal has calculated loss of income without rationalizing the disability in the light of vocation of the claimant.

10. In the considered opinion of this Court, the loss of income

ought to have been calculated by taking loss of capacity to earn. As per the Disability Certificate of Hem Raj which has been proved on record as Exhibit PW3/A he has suffered disability to the extent of 35% on account of :-

“non-union right femur with stiffness right knee and stiffness right hand due to fracture of right femur compound and fracture both bone right leg and dislocation carpometacarpal right hand...”

11. It has further come on record in the cross-examination of PW-3 Dr. Pawan Kumar that appellant-Hem Raj is able to walk but with great difficulty and limping. Taking these facts into the consideration and the vocation of the appellant, the loss of capacity of appellant to earn is assessed to the extent of 50%. Thus, the monthly loss of income to the appellant/ claimant will be Rs.2015/- and yearly loss comes to Rs.2015X12 = Rs.24,180/-. Keeping in view the age of appellant/claimant Hem Raj at the time of accident i.e. 40 years, multiplier of 15 will be applicable. Thus, the total loss of income comes to Rs.3,62,700/-. The appellant/claimant Hem Raj remained hospitalized for about a month and is suffering continuous pain. Thus, he is awarded an amount of Rs.30,000/- for pain and suffering. He is further awarded an amount of Rs.10,000/- for attendant charges and Rs.25,000/- for hospitalization and special diet.

12. The claimant namely Vinod Kumar (in FAO No. 2453 of 2011) is a minor. He suffered permanent disability to the extent of 5%. He was

15 years of age at the time of accident. He suffered fracture of femur for which he had to undergo surgery. At this tender age for the rest of his youth he won't be able to lead a normal life and his participation in the physical activities like sports etc. will never be the same. Thus, he is awarded a sum of Rs.2.00 lac for the disability. Keeping in view the age of the minor he is awarded a sum of Rs.30,000/- for pain and suffering, Rs.10,000/- for attendant charges and Rs.25,000/- for hospitalization. He is further awarded a sum of Rs.50,000/- for loss of marriage prospects.

13. As a sequel of the aforesaid discussion, the present appeals are allowed. The Award dated 30th September, 2010 (in both the appeals) passed by the Tribunal stands modified to the extent as stated herein above.

14. The total compensation be calculated accordingly and paid to the claimants/appellants namely Vinod Kumar and Hem Raj, respectively.

15. Needless to say that any amount already paid to the claimants/appellants shall be set off.

16. Ordered accordingly.

April 20, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No