

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Reserved on 28.10.2022

Date of pronouncement :November 9,2022

FAO No.5791 of 2014

Jai Parkash

.....Appellant

vs.

Rakesh and others

.....Respondents

FAO No.7405 of 2014

Vijay

.....Appellant

vs.

Rakesh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Vaibhav Narang, Advocate, for the appellant(s).

Mr. R.K.Bashamboo, Advocate,
for respondent No.3/Insurance Company.

HARKESH MANUJA, J (Oral)

This order shall dispose of two appeals i.e. FAO No.5791 of 2014 and FAO No.7405 of 2014 filed at the instance of appellants/claimants/injured, impugning the Award dated 01.10.2013 passed by Court of learned MACT, Narnaul (hereinafter referred to as “the Tribunal”).

By way of present appeals, the prayer has been made for enhancement of compensation. For the convenience, facts are being taken from FAO No.5791 of 2014.

In the present case, on 27.10.2011, both the appellants namely Jai Parkash and Vijay Kumar were going towards Kanina from Rewari, on a motorcycle, being driven by Vijay Kumar. Near bus stand of Village Jadra, near Hanuman temple, the motorcycle got hit by Maruty Swift Dzire bearing No.HR-26AX-3397, being driven by respondent No.1. As a result of this impact, both the appellants fell

down in the ditches, towards the left side of the road and sustained multiple/grievous injuries including fractures on both legs. FIR No.226 dated 27.10.2011 under Section 279/337 IPC was also registered at Police Station, Rampura, District Rewari.

Both the appellants on account of injuries suffered by them filed claim petitions seeking compensation to the tune of Rs.20,00,000/- each in the aforesaid accident. It was pleaded that the accident in question took place on account of rash and negligent driving of respondent No.1.

On the other hand, the claim petition was contested by the respondents disputing the factum of accident as well as the averment of rash and negligent driving at the instance of respondent No.1 besides it, respondent No.3-Insurance Company also raised objections about the valid driving licence possessed by the respondent No.1 at the time of accident, besides terms and conditions of the insurance policy.

Learned Tribunal vide its impugned Award dated 01.10.2013, recorded the positive findings in favour of appellant/claimants as regards the involvement of the offending vehicle in the accident besides holding respondent No.1 to be rash and negligent while driving the same. The learned Tribunal awarded a sum of Rs. 1,95,000/- as compensation payable in favour of appellant-Jai Parkash whereas, in case of appellant-Vijay Kumar compensation awarded was Rs. 3,30,000/- besides granting interest @ 7.5% per annum from the date of filing the claim petition till its

realization. Details of the compensation awarded by the learned Tribunal in favour of appellants to the following effect:-

Sr. No.	Heads of compensation	Jai Parkash	Vijay Kumar
1	Pain and Suffering	Rs.20,000/-	Rs. 25,000/-
2.	Expenditure incurred on Special diet, attendant services and transportation	Rs.10,000/-	Rs.15,000/-
3.	Medical Expenses	Rs. 95,000/-	Rs.18,000/-
4.	Disability and loss of enjoyment of life	Rs. 50,000/-	Rs. 1,80,000/-
5.	Loss of Income	Rs.20,000/-	Rs. 1,00,000/-
	Grand Total	Rs.1,95,000/-	Rs.3,28,000/- rounded off Rs. 3,30,000/-

Impugning the Award passed by the learned Tribunal, learned counsel for the appellant submits that taking into consideration the disability suffered by the appellants-claimants, while calculating loss of earning/future earning capacity, the multiplier method should have been adopted after assessing the functional disability/functional loss as well as the monthly income. He also submits that even the compensation awarded on account of special diet, attendant charges, transportation was not adequately assessed by the Tribunal besides not granting anything on account of future medical expenses or on account of physiotherapy etc.

On the other hand, learned counsel for the respondent-Insurance Company submits that the impugned award does warrant any interference as the appellants-claimants have already been suitably compensated by the Tribunal.

I have heard learned counsel for the parties and perused the paper-book as well records of the case. I find force in the argument raised by learned counsel of the appellant that while calculating the pecuniary compensation, it failed to adopt the appropriate mechanism as neither it assessed the monthly income of the appellant; nor it determined the functional disability to properly assess the loss of future income. Therefore, the just compensation as stipulated in the Motor Vehicles Act, is required to be determined in view of principles of law laid down in **R.D.Hattangadi Vs. Pest Control (India) (P) Ltd.**, reported as (1995) 1 SCC 551; **Raj Kumar Vs. Ajay Kumar**, reported as (2011) 1 SCC (Civ) 164 as well as **Pappu Deo Yadav Vs. Naresh Kumar and others**, reported as AIR 2020 SC 4424.

Claimant/appellant in FAO No.5791 of 2014 has claimed that he was working as a Foreman at M/s Maa Durga Stone Crusher and was earning Rs.9,000/- per month. While the claimant/appellant in FAO No.7405 of 2014 has claimed that he was working at M/s Mayank Motor Body Builders and was earning Rs.10,000/- per month. However, apart from the bare statement they have not been able to substantiate by bringing on record any written or oral evidence. Therefore, in that circumstance and considering the nature of work being performed by both the appellants, monthly income of both the appellant is taken to be Rs.5,000/- which is approximately equivalent to income of the skilled labourer which was Rs.5148/- per month at the relevant time. Further in view of **Pappu Deo Yadav (supra)** and **"National Insurance Company Ltd. Vs. Pranay Sethi**

and others", 2017(4) RCR (Civil) 1009, future prospects @ 40% of the annual income are awarded.

Functional disability and the compensation granted in case of each appellant will require separate discussion and hence, it is being discussed separately for each of the appellant.

FAO No.5791 of 2014

Appellant /claimant in this case got treatment for fracture of supra condifore and fracture lateral condyle of tibia left. As per the disability certificate brought on record as Ex.PW3B, he suffered permanent disability to the extent of 25% on account of range of motion of right knee joint reduced by 40%, left knee joint by 10% with deep complication (osteomyelitis right femur). From the testimony of PW3 Dr.Dinesh Podar, Deputy Civil Surgeon, Narnaul, who has verified the disability certificate, it has also come on record, that even after physiotherapy chances of recovery are remote. It shows that his movements will be restricted on account of this disability and he will not be able to perform his functions in an efficient manner which is physically intensive in nature, therefore, his functional disability shall be considered at least @ 50%.

Compensation awarded by the learned Tribunal on account of special diet, attendant services and transportation is also extremely on lower side and considering the fact that for many ancillary expenses, it is not possible to obtain the bill, Rs.50,000/- are granted under all these joint heads.

In view of the discussions made hereinabove, the appellant is entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	Nature	Amount in Rupees
1.	<i>Annual Income of deceased (Rs.5,000x 12)</i>	<i>Rs.60,000/-</i>
2.	<i>Add 40% of Future prospects</i>	<i>Rs.24,000/-</i>
3.	<i>Total Income (Rs.48,000/- + Rs.1,20,000/-)</i>	<i>Rs.84,000/-</i>
4.	<i>Multiplier of 16 as per age of 35 years (Rs.84,000/- X 16)</i>	<i>Rs.13,44,000/-</i>
5.	<i>Loss of future earning capacity/ income [50% (percentage disability) of total income]</i>	<i>Rs.6,72,000/-</i>
6.	<i>Transportation, Special Diet, Attendant Charges</i>	<i>Rs.50,000/-</i>
7	<i>Medical Expenses (as awarded by Ld Tribunal)</i>	<i>Rs.95,000/-</i>
8.	<i>Pain and sufferings and mental agony (as awarded by Ld Tribunal)</i>	<i>Rs.20,000/-</i>
9.	<i>Disability and Loss of amenities and enjoyment of life</i>	<i>Rs.50,000/-</i>
10.	<i>Loss of income during treatment (as awarded by Ld Tribunal)</i>	<i>Rs.20,000/-</i>
	Total Compensation	<i>Rs.9,07,000/-</i>
	Amount Awarded by the Tribunal	<i>Rs.1,95,000/-</i>
	Enhanced Amount	<i>Rs.7,12,000/-</i>

FAO No.7405 of 2014

Appellant /claimant in this case got treatment for fracture of right clavicle as he suffered injuries on several parts of his body including fracture of right hand and both the legs. As per the disability certificate brought on record as Ex.PW3A, he suffered permanent disability to the extent of 90% on account of flail right shoulder, elbow, wrist and fingers of right upper limb. From the testimony of PW3 Dr.

Dinesh Podar, Deputy Civil Surgeon, Narnaul, who has verified the disability certificate, it has also come on record, that even after, physiotherapy chances of recovery are remote. It shows that his right hand side has become almost dysfunctional and in that circumstance his ability to carry out the work in an efficient manner will substantially reduce, therefore, his functional disability shall be considered at least @ 80%.

As discussed in case of claimant/appellant in FAO No.5791 of 2014, Compensation awarded by the learned Tribunal on account of special diet, attendant services and transportation is also extremely on lower side and considering the fact that for many ancillary expenses it is not possible to obtain the bill Rs.50,000/- are granted under all these joint heads.

There is one inconsistency which can be observed in this case, as the appellant in this case on account of medical expenses has been awarded Rs.18,000/- while he remained in the hospital from 27.10.2011 to 25.11.2011. On the other hand, claimant/appellant in FAO No.5791 of 2014 remained in hospital from 27.10.2011 to 02.11.2011, however, he has been awarded medical expenses to the tune of Rs.95,000/-. It simply shows that the claimant/appellant in the present case, though remained hospitalized for a much longer duration, has not been able to bring on record all the bills for expenses incurred by him. Therefore, on account of medical expenses he is awarded Rs.1,00,000/- as compensation.

However, it is required to be taken into consideration that Tribunal while granting lump sum compensation as Rs.1,00,000/- for loss of income considered the fact that his future earning capacity will be affected on account of disability. As the claimant/appellant in this case has already been suitably awarded under the head of future loss of income, compensation granted under this head is required to be partly reduced and therefore, for the loss of income during treatment , compensation of Rs.50,000/- is being granted.

In view of the discussions made hereinabove, the appellant is entitled for following enhanced compensation, as detailed in the table given hereunder:-

Sr.No.	Nature	Amount in Rupees
1.	Annual Income of deceased (Rs.5,000x 12)	Rs.60,000/-
2.	Add 40% of Future prospects	Rs.24,000/-
3.	Total Income (Rs.48,000/- + Rs.1,20,000/-)	Rs.84,000/-
4.	Multiplier of 16 as per age of 35 years (Rs.84,000/- X 16)	Rs.13,44,000/-
5.	Loss of future earning capacity/ income [80% (percentage disability) of total income]	Rs.10,75,200/-
6.	Transportation, Special Diet, Attendant Charges	Rs.50,000/-
7.	Medical Expenses	Rs.1,00,000/-
8.	Pain and sufferings and mental agony (as awarded by Ld Tribunal)	Rs.25,000/-
9.	Disability and Loss of amenities and enjoyment of life	Rs.1,80,000/-
10.	Loss of income during treatment	Rs.50,000/-
	Total Compensation	Rs.14,80,200/-
	Amount Awarded by the Tribunal	Rs.3,30,000/-
	Enhanced Amount	Rs.11,50,200/-

The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; therefore as per the observations made by the Hon'ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other**, (2009) (4) SCC 513, which were approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimant from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

Consequently, both the appeals i.e. FAO No.5791 of 2014 and FAO No.7405 of 2014 are disposed off in the above terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

November 9, 2022
Anil

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>:</i>	
<i>Whether reportable</i>	<i>Yes/No</i>