

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on:28.10.2022

DATE OF PRONOUNCEMENT: November 7, 2022

1. **FAO-9790-2014 (O&M)**

SanjeetAppellant
Versus
Sudeep Kumar and anotherRespondents

2. **FAO-9791 of 2014**

Surender SinghAppellant
Versus
Sudeep Kumar and anotherRespondents

3. **FAO-10198-2014 (O&M)**

Manjeet Appellant
Versus
Sudeep Kumar and another Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Vijay Kumar Sheoran, Advocate, for the appellants.

Mr. Vipul Sharma, Advocate,
for respondent No.2/Insurance Co.

HARKESH MANUJA, J.

This order of mine shall dispose of the following three appeals arising out of the common award dated 08.07.2014 passed by learned Motor Accident Claims Tribunal, Bhiwani, (for short 'the Tribunal'):-

- i) FAO-9790-2014 titled as **Sanjeet Vs. Sudeep Kumar and another** (filed by the claimant/appellant for enhancement of compensation who is hereinafter referred as appellant No.1) ;

- ii) FAO-9791-2014 titled as **Surrender Singh Vs. Sudeep Kumar and another** (filed by the claimant/appellant for enhancement of compensation who is hereinafter referred to as appellant No.2) ;
- iii) FAO-10198-2014 titled as **Manjeet Vs. Sudeep Kumar and another** (filed by the claimant/appellant for enhancement of compensation who is hereinafter referred as appellant No.3) ;

Brief facts of the case are that on 24.04.2012, all the appellants/ claimants along with one Ajmer Singh were coming to Village-Dhirana-kalan from Kitlana, in Maruti Car bearing Registration No.HR-29E/1659, which was being driven by Ajmer Singh. When the car reached near sub minor within the area of village Pehladgarh, it was hit straight by one Tata Sumo bearing Registration No.HR57-1773 being driven by respondent No.1 on the wrong side in a rash and negligent manner. Due to the heavy impact of the accident, the occupants of the Maruti car received serious injuries on their person and FIR No.182 dated 25.04.2012 under Sections 279, 337 IPC was registered in this regard. Appellants No.1, 2 and 3 filed separate claim petitions before the Learned Tribunal for compensation on account of injuries suffered by them in the accident which were decided by a common award dated 08.07.2014.

After going through the claim petitions and evaluating the evidence led by both the parties, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of respondent No.1 and a lump sum compensation awarded to appellant

No.1 was Rs.1,43,000/- which included Rs.1,03,000/- on account of purchase of medicines, Doctor's charges and hospitalization besides Rs.40,000/- on account of pain and suffering. Lump sum compensation awarded to appellant No.2 was Rs.30,000/- on account of purchase of medicines, Doctor's charges, hospitalization, special diet and on account of pain and suffering. Lump sum compensation awarded to appellant No.3 was Rs.2,66,000/- which included Rs.2,26,000/- on account of purchase of medicines, Doctor's charges and hospitalization and Rs.40,000/- on account of pain and suffering.

Being aggrieved against the award dated 08.07.2014, the present appeals have been preferred by the appellants/ claimants for enhancement of the compensation.

Learned counsel for the appellants contends that apart from proven medical bills, a paltry sum has been awarded on account of pain and suffering. He further contends that no compensation has been awarded under the head of 'future loss of income', though, due to the injuries suffered in the accident, there has been restriction of movement which has resulted into their functional disability. He also contends that they will not be able to get service in police & military on account of permanent disability suffered by them. In addition, he contends that no compensation has been awarded under the heads of 'special diet', 'attendant charges', 'future treatment' and 'loss of marriage prospects'. Apart from that, considering the tender age of the appellants, it has been submitted that the compensation under

the non-pecuniary heading should have been on higher side. With respect to 'transportation charges', learned counsel contends that no compensation has been awarded despite the statement of PW6-Wazir Singh in this regard.

On the other hand, learned counsel for respondent No.2 /Insurance Company contends that as no disability certificate for any of the appellants has been brought on record, learned Tribunal has been right in awarding no compensation under the head of loss of future income. He further contends that the compensation awarded is just and fair in the facts and circumstances of this case.

I have heard learned counsel for both the parties and perused the paper-book as well as records of this case. I find force in the submission made by the learned counsel for the Insurance Company that as disability certificate was not brought on record by any of the appellants, it was not possible for the learned Tribunal to assess the functional disability and consequentially to assess the compensation under the head of 'future loss of income'. Further, though counsel for the appellants contended that they have been advised by the doctors that permanent disability cannot be determined properly until the rods inserted during the operation are not removed, however, till date even before this Court, no disability certificate qua any of the appellants has been brought on record and hence learned Tribunal rightly did not award any compensation under this head by applying the multiplier method by assessing the loss of income and earning capacity of the injured.

However, at the same time, I also find some force in the submission made by learned counsel for the appellants that due to the injuries suffered by the appellants in their tender age, they will not be able to get service in police or military. Though, at this stage, it would be quite speculative to determine what profession appellants would have pursued, however, it cannot be denied that their options have certainly been reduced and limited by this accident as they would not be able to pursue their career in a field which could be physically demanding. In these circumstances, compensation under non-pecuniary headings should have been on higher side. However, due to the different circumstances prevailing in each case separate discussion is necessitated in each by abiding 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.

FAO No.9790 of 2014 (Appellant/ Claimant-Sanjeet)

Lump sum compensation awarded to the appellant/claimant in this case was Rs.1,43,000/- which included Rs.1,03,000/- on account of purchase of medicines, Doctor's charges including hospitalization and Rs.40,000/- on account of pain and suffering.

PECUNIARY HEADINGS

From the testimony of PW4-Suresh Kumar, father of the appellant, it has come on record that at the time of accident, he was a

student of 10th class in SD High School, Rohtak and used to assist the family in running the dairy farming. It has been claimed that after the accident and till date, expenses of Rs. 2.5 Lakhs approximately have been incurred on treatment, transportation, special diet, hospitalization and attendant. Specific details from whom the loan was taken for this purpose has also been provided by him and bills of Rs.1,03,000/- were also brought on record.

Though the learned Tribunal granted the compensation of Rs.1,03,000/- for the bills, which were brought on record, however, testimony of PW6-Wazir Singh has not been taken into consideration qua the transportation charges incurred by the appellant. However, this fact is also required to be taken into consideration that vehicle hired by the appellant was also shared by the appellant No.3 and therefore, only half of the claimed amount i.e. Rs.16,250/- are awarded on account of 'transportation charges'.

Though, it has been admitted that no attendant was hired however, it cannot be denied that in such cases family person of the injured are burdened with this responsibility which is also applicable in this case as father and uncle of the appellant worked as an attendant. Also from the statement of PW1-Dr. Anil Goyal (Medical Officer, Jindal Hospital), it has come on record that appellant visited their hospital for further treatment as well. In addition, as the appellant remained in hospital from 27.04.2012 to 03.05.2012, expenses incurred on account of special diet cannot be denied. Apart from that during the hospitalization, it is not possible to arrange

the bill for each and every expense. Therefore, Rs.50,000/- are granted for compensation under the joint heads of attendant charges, future medical treatment and special diet.

NON-PECUNIARY HEADINGS

From the statement of PW1, it has also come on record that appellant was treated for fracture right femur and fracture mandible and a rod was inserted in right thigh. It was also stated that appellant had to visit the hospital for a long time for the follow up treatment. No doubt, due to the advancement of the medical treatment, appellant has been able to recover from the injuries suffered in the accident, however, the artificial replacement cannot equal the efficacy of natural body part and consequently, it will certainly affect the quality of life of the appellant. Therefore, Rs.1 Lakh is awarded as compensation on account of 'loss of amenities and enjoyment of life', however, the amount awarded by the learned Tribunal as Rs.40,000/- under the head of pain and suffering is not being interfered with.

As the appellant was a student of class 10th and his treatment would have certainly affected his studies, Rs.30,000/- is granted on account of 'loss of studies'. Sight cannot be lost of the fact that Indian Society is very conservative while arranging the marriages and the physical status and the avocation of the prospective groom are prime considerations. In my considered opinion, on this account as well, the appellant should be adequately compensated and

accordingly Rs.1,00,000/- is granted on account of loss of prospect of marriage.

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

Sr.No.	Particulars	Amount (Rs.)
1.	Medical Expenses	Rs.1,03,000/-
2.	Transportation Charges	Rs.16,250/-
3.	Special Diet, Attendant Charges and Future Medical Treatment	Rs.50,000/-
4.	Loss of Amenities and Enjoyment of Life	Rs.1,00,000/-
5.	Loss of Studies	Rs.30,000/-
6.	Loss of Marriage Prospects	Rs.1,00,000/-
7.	Pain and Suffering	Rs.40,000/-
	Total Compensation	Rs.4,39,250/-
	Amount Awarded by the Tribunal	Rs.1,43,000/-
	Enhanced Amount	Rs.2,96,250/-

In view of the above, **FAO-9790-2014 is disposed of** in the aforesaid terms.

II- FAO-9791-2014 (Appellant/ claimant-Surender Singh)

Lump sum compensation awarded to the appellant No.2 was Rs.30,000/- on account of purchase of medicines, Doctor’s charges and hospitalization, special diet and on account of pain and suffering.

PECUNIARY HEADINGS

From MLR Ex.PW7/B, it has come on record that appellant received injuries on his left thigh, left foot and neck and

remained in hospital for two days, though no medical bill was placed by the claimant/appellant in this case. In his testimony as PW7, it has been claimed by him that Rs.50,000/- was spent on his treatment, transportation, special diet, hospitalization and attendant. Further, he admitted that he had resumed his work as labourer.

Though, in the absence of any bills brought on record, it is difficult to award the compensation under the pecuniary heads, however, it cannot be denied that expenses must have been incurred on account of hospitalization, transportation, medical bills, special diet and attendant charges. Apart from that during the hospitalization, it is not possible to arrange the bill for each and every expenses. Therefore, Rs.30,000/- is granted for compensation under the joint heads of hospitalization, medical bills, special diet and attendant charges.

NON PECUNIARY HEADINGS

Injuries in the case of this appellant, have not been grievous and he was discharged from the hospital after two days but being with other appellants at the time of accidents must have caused an unforgettable impression on his mind. Therefore Rs.30,000/- are granted under non-pecuniary damages on account of 'pain and suffering' and 'loss of amenities and enjoyment of life'.

However, considering that the injuries of the appellant were not serious in nature and he was able to resume his regular life shortly after the accident, no compensation is being granted under the head of 'loss of studies' and 'loss of marriage prospects'.

In view of the discussions made hereinabove, the claimants are entitled for following enhanced compensation, as detailed in the table:-

Sr.No.	Particulars	Amount (Rs.)
1.	Medical Expenses, Transportation Charges, Special Diet, Attendant Charges and Future Medical Treatment	Rs.30,000/-
2.	Loss of Amenities and Enjoyment of Life & Pain and Suffering	Rs.30,000/-
	Total Compensation	Rs.60,000/-
	Amount Awarded by the Tribunal	Rs.30,000/-
	Enhanced Amount	Rs.30,000/-

In view of the above, **FAO-9791-2014 is disposed of** in the aforesaid terms.

FAO-10198 of 2014 (Appellant/ claimant-Manjeet Singh)

Lump sum compensation awarded to the appellant/claimant in this case was Rs.2,66,000/- which included Rs.2,26,000/- on account of purchase of medicines, Doctor’s charges and hospitalization and Rs.40,000/- on account of pain and suffering. As the case of this appellant is similar to the appellant recorded in FAO No.9790 of 2014, for the sake of brevity, recording of reasoning will not be repeated, as it will be primarily on the same grounds.

PECUNIARY HEADINGS

From the testimony of PW5-Manjeet Kumar, appellant himself, it has come on record that at the time of accident, he was a student of 1st year in Polytechnic at village Nimriwali and used to earn Rs.20,000/- by way of selling milk though he has not been able to

substantiate his income. It has been claimed that after the accident and till date, expenses of Rs. 3 Lakhs approximately has been incurred on treatment, transportation, special diet, hospitalization and attendant and bills of approximately Rs.2,26,000/- were also brought on record.

In view of the discussion held in FAO No.9790 of 2014, Rs.16,250/- are awarded on account of 'transportation charges' and Rs.80,000/- are granted for compensation under the joint heads of attendant charges, future medical treatment and special diet.

NON PECUNIARY HEADINGS

From the statement of PW1, it has also come on record that appellant was operated upon for fracture of bone of femur and fracture of right forearm. Nails were inserted in both of his thighs and a plate was inserted in right forearm and he has to visit the hospital for a long time for the follow up treatment. Therefore, Rs.1 Lakh is awarded as compensation on account of 'loss of amenities and enjoyment of life', however, the amount awarded by the learned Tribunal as Rs.40,000/- under the head of pain and suffering is not being interfered with.

As the appellant was a student of 1st year in Polytechnic and his treatment would have certainly affected his studies, Rs.40,000/- is granted on account of 'loss of studies'. In addition, Rs.1,00,000/- is granted on account of loss of prospect of marriage.

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

Sr.No.	Particulars	Amount (Rs.)
1.	<i>Medical Expenses</i>	<i>Rs.2,26,000/-</i>
2.	<i>Transportation Charges</i>	<i>Rs.16,250/-</i>
3.	<i>Special Diet, Attendant Charges and Future Medical Treatment</i>	<i>Rs.80,000/-</i>
4.	<i>Loss of Amenities and Enjoyment of Life</i>	<i>Rs.1,00,000/-</i>
5.	<i>Loss of Studies</i>	<i>Rs.40,000/-</i>
6.	<i>Loss of Marriage Prospects</i>	<i>Rs.1,00,000/-</i>
7.	<i>Pain and Suffering</i>	<i>Rs.40,000/-</i>
	Total Compensation	<i>Rs.6,02,250/-</i>
	Amount Awarded by the Tribunal	<i>Rs.2,66,000/-</i>
	Enhanced Amount	<i>Rs.3,36,250/-</i>

In view of the above, **FAO-10198-2014 is disposed of** in the aforesaid terms.

The grant of interest @ 6% per annum is not just in view of the facts and circumstances of the present case, therefore, in each case rate of interest is enhanced to 9% per annum on the amount of compensation awarded to them from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

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

A photocopy of this order be placed on the files of other connected cases.

NOVEMBER 7, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>