

231 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on : 22.07.2022

FAO-8451-2015 (O&M)

Babli Appellant

Versus

Deepak and others Respondents

FAO-8456-2015 (O&M)

Raj Kumar Appellant

Versus

Deepak and others Respondents

FAO-3136-2017 (O&M)

Deepak and another Appellants

Versus

M/s Reliance General Insurance Co. Ltd. and another Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. J.S.Rozera, Advocate
for the appellant.

Mr. Sanjay Vashisht, Advocate
for respondents No.1 and 2.

Mr. Sanjeev Kodan, Advocate
for the insurance company.

Manjari Nehru Kaul, J.(Oral)

This order shall dispose of three appeals i.e. FAO No.8451 and 8456 of 2015 and FAO No.3136 of 2017 as all of them have been filed against the same award dated 20.08.2015 passed by the Motor Accident

Claims Tribunal, Faridabad. Brief facts of the case are taken from FAO No.8451 of 2015.

The injured-claimant is in appeal before this Court to impugn the award dated 20.08.2015 passed by Motor Accident Claims Tribunal, Faridabad (hereinafter called as 'the Tribunal') in the claim petition under Section 166 of Motor Vehicles Act wherein the following compensation was assessed and awarded to the injured-claimants on account of injuries received by them in an accident on 28.03.2013:-

Compensation awarded to Babli

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Cost of medicines	Rs.1,500/-
2	For pain and suffering	Rs.5,000/-
3	Transportation	Rs.1,000/-
4	Loss of income	Rs.5,000/-
	Total compensation	Rs.12,500/-

Compensation awarded to Raj Kumar

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Cost of medicines	Rs.92,000/-
2	For pain and suffering	Rs.20,000/-
3	Transportation	Rs.10,000/-
4	Loss of income	Rs.24,000/-
5	Disability	Rs.60,000/-
	Total compensation	Rs.2,06,000/-

The Tribunal held that the injured-claimants were entitled to receive 50% amount of the aforesaid compensation. Hence, it was ordered that 50% amount of compensation along with interest @ 7.5% p.a. from the date of filing of the petition till its realization to be paid jointly and

severally by respondents No.1 and 2, which was to be indemnified by respondent No.3-Insurance Company.

In the claim petition filed under Section 166 of Motor Vehicles Act, it was claimed that when appellant Raj Kumar alongwith his wife Babli, his son Mohan aged 7 years and two daughters namely Sonam and Dolly, aged 5 and 3 years respectively was going to his village Chandpur on motorcycle bearing registration No.HR-29AC-5438, a tractor marked Eicher of red colour alongwith trolley bearing registration No.HR-29T-8510 (hereinafter referred to as 'offending vehicle') came in a rash and negligent manner driven by respondent No.1 and collided with the motorcycle of the appellant. Resultantly, the appellant alongwith his children fell on the road and sustained injuries over their bodies. The injured-claimants were removed to the hospital by Satish Kumar, brother of appellant-Raj Kumar. While appellant Raj Kumar remained hospitalized from 28.03.2013 to 01.04.2013, appellant Babli was admitted in the hospital on 28.03.2013 and discharged on the following day. FIR No.32 dated 28.03.2013 under Sections 279, 337 and 338 IPC was registered at Police Station Chhainsa Faridabad against respondent No.1.

Learned counsel for the appellant(s) while impugning the compensation awarded by the Tribunal has vehemently argued that the compensation awarded to appellant Babli was inadequate and thus, required to be reassessed and modified. It is submitted that the Tribunal failed to appreciate that on account of the injuries suffered by the appellant, she had to undergo a lot of pain and suffering, however, the Tribunal neither awarded any compensation towards her future medical expenses nor any

compensation for loss of income for the period she was hospitalized and recovering from her injuries as she was doing dairy farming. Further, it was submitted that she was inadequately compensated for special diet etc.

While impugning the compensation awarded to appellant Raj Kumar, learned counsel submits that he was a young man of 27 years, who suffered 30% visual disability but the Tribunal awarded only Rs.24,000/- towards loss of income and a meagre sum of Rs.60,000/- for the disability. It is further submitted that the income alongwith the disability of Raj Kumar should have been the criteria while assessing the loss of income, which erroneously had not been done of by the Tribunal. Learned counsel has further challenged the award on the ground of Tribunal holding it to be a case of contributory negligence. Learned counsel submits that the Tribunal failed to appreciate that no doubt, there were five persons travelling on the motorcycle when the accident in question took place, however, three of them were minors and it was only the appellant and his wife, who were adults. Further more, he has vehemently argued that two adults i.e. appellant(s) alongwith three minor children could be comfortably seated on a motorcycle and hence, it could not be said that it was a case of contributory negligence.

Per contra, learned counsel for the respondents while opposing the prayer and submissions made by counsel for the appellant(s) has submitted that it was not disputed by the appellant(s) and rather it stood proved during evidence that the appellant(s) alongwith their children were riding on a motorcycle, hence, it was a clear cut case of contributory negligence. Learned counsel have submitted that the Tribunal therefore,

could not be faulted with for fastening the liability to the extent of 50% upon the appellant(s) for contributing to the accident. It is further submitted that the compensation awarded to appellant Babli did not warrant any interference as it was a matter of record that she had not received any serious injuries on her person in the accident but only a few simple abrasions on her body. It is submitted that she was discharged on the very next date from the hospital, which further proved that neither had she suffered any permanent disability much less any temporary disability in the accident in question.

Qua the injuries of injured-claimant Raj Kumar, learned counsel conceded that he had indeed suffered 30% permanent disability in the accident in question but for which, he had been adequately compensated. A prayer was, therefore, made for dismissal of the appeal filed by the injured-claimants.

Heard learned counsel and perused the impugned award passed by the Tribunal.

Coming to the first contention of learned counsel for the appellant that it was not a case of contributory negligence as held by the Tribunal, this Court does not find any merit in his submission. It has not been disputed rather stands admitted that both the appellants were accompanied by three of their children on the motorcycle, when the accident in question took place. The appellants need not be reminded that a motorcycle is designed for only two persons whereas there were five of them travelling on the motorcycle. Obviously, the appellant Raj Kumar, who was riding the motorcycle at the time of accident would not have been

able to control his motorcycle on coming face-to-face with the offending vehicle. Hence, there can be no manner of doubt that the Tribunal rightly concluded that it was a case of contributory negligence of the appellants as well as the offending vehicle in the ratio of 50% each.

This Court also does not find any merit in the submissions made by the learned counsel that the compensation, which was awarded to appellant Babli was inadequate and required to be reassessed and modified. It is a matter of record that appellant Babli received only simple abrasions all over her body in the accident and she was discharged after just one day of hospitalization. This Court fails to comprehend as to how there was any loss of income to the appellant Babli after the accident in question and as to why any compensation towards her future medical treatment was required to be granted. The Tribunal assessed her monthly income at Rs.5,000/- per month and after considering all other material placed on record including the expenses incurred on her treatment, she was awarded the compensation, which stands reproduced in the earlier part of this judgment. The appeal FAO No.8451 of 2015 thus, stands dismissed being devoid of any merits.

Coming next to the contention of learned counsel qua the appellant Raj Kumar not being adequately compensated, this Court does find merit in his submissions. The Tribunal erred in not granting any compensation towards loss of future earnings to the appellant Raj Kumar, who was 27 years of age and a labourer. Admittedly, he suffered permanent disability to the extent of 30% as he lost vision of one of his eyes. Therefore, in view of his vocation, his functional disability is assessed at 30%. Hence, this Court deems it fit to reassess and grant the following

compensation to the appellant:

<i>Sr. No.</i>	<i>Head</i>	<i>Amount</i>
1	Monthly income	Rs.6,000/-
2	Future prospects (40%)	Rs.1,500/-
3	Annual income (Rs.6,000 + Rs.1,500 x 12)	Rs.90,000/-
4	Multiplier	17
5	Permanent functional disability	30%
6	Total loss of future capacity (Rs.90,000 x 17 x 30%)	Rs.4,59,000/-
7	Cost of medicines	Rs.92,000/-
8	For pain and suffering	Rs.20,000/-
9	Transportation expenses	Rs.10,000/-
10	Loss of income during treatment	Rs.24,000/-
	Total compensation	Rs.6,05,000/-

In the circumstances, the appellant-claimant Raj Kumar is entitled to afore-detailed enhanced compensation of Rs.3,99,000/- (Rs.6,05,000-Rs.2,06,000) along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till its actual realization in the same ratio as ordered by the Tribunal vide the impugned award dated 20.08.2015.

With the above modifications, the instant appeal i.e. FAO No.8456 of 2015 stands disposed of.

Since the award in the appeal filed by injured-claimant Raj kumar has been modified and enhanced, the appeal i.e. FAO No.3136 of 2017 filed by the driver and owner stands dismissed.

22.07.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No