

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 7216/2018 and

FAO No. 7392/2018

Date of decision: 08.12.2022

Vijender

.....Appellant

Vs.

Saurabh Goyal and another

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sushil Sheoran, Advocate for the appellant-owner
of the offending vehicle in FAO 7216/2018 and for
Said owner/respondent No. 2 in FAO 7392/2018

None for claimant-respondent No.1 in FAO 7216/2018-
Appellant/claimant in FAO 7392/2018

Nidhi Gupta,J.

This common order shall dispose of two cross appeals bearing
FAO 7216/2018 filed by Vijender-owner of the offending vehicle; and the
other bearing FAO No.7392/2018 filed by injured claimant- Saurabh Goyal,
both appeals arising out of Award dated 15.5.2018 passed by Motor Accident
Claims Tribunal, Charkhi Dadri (hereinafter referred to as 'the Tribunal') in
MACP No. 262/2015 filed under Section 166 of the Motor Vehicles Act,
whereby injured claimant-Saurabh Goyal was held entitled to a total
compensation of Rs.2,42,067/- for the injuries suffered by him in a motor

vehicular accident that took place on 22.5.2014 due to alleged rash and negligent driving of motorcycle bearing registration no. HR-19-C-0255 (hereinafter referred to as 'the offending vehicle') being driven by Bhupender (since deceased) and now represented through his LR's. Since the offending vehicle was not insured, the entire liability was fastened upon the appellant Vijender – appellant/ owner of offending vehicle. FAO 7216 of 2018 has been filed by the owner of the offending vehicle challenging the Award. FAO7392 of 2018 has been filed by the injured-claimant seeking enhancement of the Award.

For facility, facts are being taken from FAO 7216 of 2018. The parties shall be referred to by their litigative status before this Court in FAO 7216 of 2018. The facts for the purpose of disposal of these two cross appeals are that claimant - Saurabh Goyal (appellant in FAO 7392/2018 and respondent no.1 in FAO 7216/2018), filed a claim petition MACP 262/2015 under Section 166 of the Motor Vehicles Act on account of injuries suffered by him in a motor vehicular accident which took place on 22.5.2014. His case before the Tribunal was that on 22.5.2014 at about 1 pm, he was going on a bicycle from his house when the offending vehicle which was being driven by respondent no.2 - Bhupender (since deceased) in a very rash and negligent manner and at a high speed came and struck into the bicycle of the claimant. Due to this collision, claimant alongwith his bicycle fell on the road and received multiple injuries including fracture of left leg femur bone. The driver/respondent no.2 fled away from the spot, however, eye witness Ravi Kumar saw the accident and took the claimant for treatment to General Hospital, Charkhi Dadri where the claimant remained under treatment till 20.6.2014. Accordingly, a prayer for grant of compensation to the tune of

Rs.30 lacs was made before the Tribunal. Even FIR No.192 dated 22.5.2014 was registered at PS City Dadri against the respondent no.2-Driver u/s 279 and 337 IPC Ex. P-29.

Upon notice of the claim petition the respondents appeared and filed reply and the parties led evidence.

Upon appraisal of the pleadings and evidence the learned Tribunal held that the accident in question took place due to the rash and negligent driving of the offending motorcycle bearing registration No. HR-19-C-0255 driven by Bhupinder. Accordingly, the learned Tribunal awarded a total compensation of Rs.2,42,067/- to the claimant as follows:-

Period of hospitalization	30 days Rs.23942/- as proved
Sr. Number	Amount (in rupees)
1. Loss of income from (period not mentioned)	Rs.50,000/-
2.Medical expenses including hospital charges i) medicines ii)Hospital charges iii)Attendant charges iv)Special diet v)Future medical expenses	Rs.38,125 + 40,000 of physiotherapy Nil. Nil Rs.5,000/- Nil
3. Transportation	Rs.5,000/-
4. Reduction in life expectancy Loss of amenities	Nil
5. Pain & suffering- per fracture/per surgery	Rs.30x1000 = 30,000/-
6. Disability in percentage	-
7. Loss of earning	50,000/-
8.Income x % of loss of earning power x multiplier	Nil
9. Total	Rs.2,42,067/-

Learned counsel for the appellant-owner has submitted that the above finding of the learned Tribunal is incorrect as, PW1 the injured – claimant Saurabh Goyal has himself stated in his cross-examination as follows:

“It is correct that I did not mention the registration number of motorcycle and name of the driver in the statement made before the police by me. Police met me 2/3 times after recording of my statement for want of medical records. Ravi is my known. It is correct that registration number and name of driver of motorcycle was also not mentioned by Ravi in his statement. It is correct that I never mentioned about the colour and registration number of motorcycle to police in any of my statements.”

It is accordingly stated, that the accident did not take place due to the rash negligent driving of the yeah driver Bhupinder of the offending vehicle.

Learned Counsel for the appellant Insurance Company has also assailed the Award on the ground that the finding of the learned Tribunal to the effect that “*mechanical report which is part of report under Section 173 Cr.PC shows that the motorcycle No. HR-19-C-0255 was in damaged condition*”, is also factually incorrect as a perusal thereof at page 7 of the paper book shows that the motorcycle only had scratches. Therefore, the Tribunal was incorrect in holding that the accident was caused due to rash and negligent driving of respondent no.2-Bhupender.

It is further submitted that the Tribunal has wrongly awarded Rs.40,000/- for physiotherapy as no opinion of any qualified Doctor was taken in awarding this sum, neither any Doctor was examined. Therefore, Rs.40,000/- for physiotherapy has been awarded to the claimant merely on assumption and guesswork as there is nothing on record to suggest that the

claimant even requires Physiotherapy. Learned counsel has further submitted that Tribunal has granted Rs.50,000/- towards loss of income of the claimant during the period of one month when he was hospitalized. It is submitted that this amount has been wrongly awarded as, according to ITR (PW3/D) of the claimant for the year 2014-15, the income of the claimant was Rs.1,15,800/- per annum which comes to Rs.8877/- per month and therefore, deduction of Rs.40,000/- is required.

I have heard learned counsel for the appellant-owner of the offending vehicle and find merit in the submissions made by him. A perusal of the record of the case shows that Mr. Prashant Sethi, Advocate has appeared in the past on behalf of Respondent no. 1 – claimant. However, on the last date, as also today, there is no representation on behalf of the claimant. Accordingly, this case is being heard in his absence.

There is no denying that the claimant suffered fracture of left femur due to rash and negligent driving of the driver Bhupinder. Though the claimant has admitted in his cross-examination that he did not provide the colour or number of the offending motorcycle to the police in any of his statements, yet it is not denied that FIR Ex. P29 was registered in pursuance to the accident and investigation was carried out by the police. As such, the claimant is entitled to compensation as discussed hereinbelow.

A perusal of the impugned Award shows that learned Tribunal has awarded an amount of Rs.50,000/- on account of loss of income for the period during which the claimant was hospitalized on the ground that “*certainly when the petitioner/claimant was ridden to bed he was deprived his normal income for a period of 6 months*”. In my view, this assumption is not borne out as, besides the bald statement on part of the claimant, it is

nowhere suggested that the claimant was bed ridden for a period of six months. Ex. P25 shows that the claimant remained admitted in hospital from 22.5.2014 to 20.6.2014 as indoor patient. The claimant was hospitalized for a period of one month only.

Moreover, the claimant has received a relatively minor injury inasmuch as the left leg femur bone was fractured, and there is no disability certificate on record. No other injuries are stated to have been suffered by the claimant. Medical report MLR Mark 'C' which is part of the challan shows that only two injuries have been suffered by the claimant. Nothing has been placed on record to show that the claimant required any follow-up treatment or any physiotherapy. For this reason, I also reduce the sum of Rs.40,000/- granted to claimant towards physiotherapy to Rs.20,000/-. Ex. PW4/A receipt issued by PGIMS, Rohtak shows that an amount of Rs.23,492.50 was spent on treatment of the claimant. Ex. P1 to Ex. P23, Ex. P30 and Ex. P31 are other medical bills produced by the claimant amounting to Rs.38,125/-.

Further, a perusal of the computation of compensation by the Tribunal shows that Rs. 50,000/- has been awarded towards loss of income at Sr. No.1; and another Rs. 50,000/- has been awarded as Loss of earning at Sr. No.7. As per ITR (PW3/D) of the claimant for the year 2014-15, the income of the claimant was Rs.1,15,800/- per annum which comes to Rs.8877/- per month and therefore, I delete the amount awarded under loss of income. Even otherwise, Rs.30,000/- towards pain and suffering has already been awarded to the claimant at Sr. No.5.

In view of the above discussion, the compensation is reworked as under:-

Period of hospitalization	30 days Rs.23942/- as proved
Sr. Number	Amount (in rupees)
1. Loss of income from (period not mentioned)	--
2. Medical expenses including hospital charges i) medicines ii) Hospital charges iii) Attendant charges iv) Special diet v) Future medical expenses	Rs.38,125 + 20,000 for physiotherapy Nil. Nil Rs.5,000/- Nil
3. Transportation	Rs.5,000/-
4. Reduction in life expectancy Loss of amenities	Nil
5. Pain & suffering- per fracture/per surgery	Rs.30x1000 = 30,000/-
6. Disability in percentage	-
7. Loss of earning	50,000/-
8. Income x % of loss of earning power x multiplier	Nil
9. Total	Rs.1,72,067-00

Both appeals are accordingly, disposed of in the above terms.

A copy of this order be placed on the file of FAO 7392/2018.

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

08.12.2022
Joshi

Whether speaking/reasoned
Whether reportable

(Nidhi Gupta)
Judge

Yes
Yes/No