

FAO-353-2002(O&M) &
FAO-359-2002(O&M)

-1-

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

(1) FAO-353-2002(O&M)

Ram Chander Dahiya

...Appellant

Versus

Dera Nand and others

...Respondents

(2) FAO-359-2002(O&M)

Hoshiar Singh

...Appellant

Versus

Dera Nand and others

...Respondents

Date of Decision:-14.2.2023

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Angrej Singh, Advocate
for the appellant in both appeals.

Mr.R.C. Gupta, Advocate
for the respondent No.3 – Insurance Company.

H.S. MADAAN, J.

1. By this order, I shall dispose of two FAOs i.e. FAO-353-2002
filed on behalf of appellant – Ram Chander Dahiya and FAO-359-2002
filed on behalf of appellant – Hoshiar Singh, which have arisen out of the

same award.

2. Briefly stated, facts of the case are that Petitioner/claimant Ram Chander Dahiya had filed a claim petition bearing MACT Case No.93-RBT of 1999, petitioner Naresh had filed a claim petition bearing MACT Case No.94-RBT of 1999 and petitioner Hoshiar Singh had filed a claim petition bearing MACT Case No.95-RBT of 1999 under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against Dera Nand – driver, General Manager, Alianj Capital and MNGT Services Ltd., New Delhi – owner and National Insurance Company, New Delhi – insurer of Opel Astra Car bearing registration No.DL-3-CJ-2442 (hereinafter referred to as the offending car), claiming compensation on account of injuries suffered by them in the motor vehicular accident.

3. As per the case of the claimants on 27.3.1999, claimants Ram Chander Dahiya, Naresh and Hoshiar Singh were going in a Maruti Zen car bearing registration No.DL-3-CK-8374 driven by Om Parkash Antil; they had paid obeisance at Kakla Mandir, Delhi and were proceeding towards Ramra village (U.P.); Naresh and Hoshiar Singh were sitting on the rear seat of the car while Ram Chander Dahiya was sitting on the front seat by the side of the driver; the car was being driven on the extreme left side of the road; when the Maruti Zen car came from India Gate and was crossing the chowk, suddenly the offending car appeared being driven in a rash and negligent manner by respondent No.1 Dera Nand and struck their Maruti Zen car; resultantly all the occupants of the car sustained injuries; they were taken to All India Institute of Medical Sciences, New Delhi, where they were medico legally examined and medically treated, then

they were shifted to Parshant Hospital, Nursing Home, Delhi.

4. The claimants alleged that an FIR No.142/99 was got registered by respondent No.1 Dera Nand with Police of Police Station TilakMarg, New Delhi wrongly and in collusion with the police.

5. The petitioner/claimant Ram Chander Dahiya sustained multiple, grievous and serious injuries including injuries on left leg with fracture of face etc. and he got himself treated from AIIMS, New Delhi and Parshan Nursing Home, Delhi, incurring a sum of Rs.1,00,000/- on his treatment; he is still getting treatment; he was 50 years of age at the time of accident and was employed as SDEO, Ganaur under Education Department, Haryana; he was getting salary of Rs.10,000/- - Rs.12,000/- per month. He claimed compensation of Rs.6,50,000/-.

6. Whereas according to petitioner/claimant Naresh, he had sustained multiple injuries on his face; he is an agriculturist having monthly income of Rs.10,000/-. According to him, he had incurred a sum of Rs.30,000/- on his treatment and special diet. He claimed compensation of Rs.75,000/-.

7. Petitioner/claimant had claimed that he had also suffered multiple grievous injuries including fracture of collar bone; he is employed as Superintendent in Education Department, Haryana, getting salary of Rs.8,000/- - Rs.10,000/-. According to him, he had incurred a sum of Rs.50,000/- on the treatment and special diet also. He claimed compensation of Rs.2,50,000/-.

8. Since all the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Sonapat

(hereinafter referred to as the Tribunal).

9. Notice of all the claim petitions was given to the respondents, who put in appearance and offered a contest.

10. After hearing arguments, the Tribunal awarded a sum of Rs.2,82,000/- as compensation to claimant Ram Chander Dahiya; Rs.20,000/- to claimant Naresh and Rs.35,000/- to claimant Hoshiar Singh. The details of the awarded amount under different heads are as under:

Petitioner/claimant Ram Chander Dahiya

1.	Pain and sufferings	Rs.75,000/-
2.	Expenses borne on the purchase of medicines, equipment and transportation etc.	Rs.1,75,000/-
3.	Loss of salary	Rs.32,000/-
	Total	Rs.2,82,000/-

Petitioner/claimant Naresh

1.	Pain and sufferings	Rs.10,000/-
2.	Expenses on the medical treatment etc.	Rs.10,000/-
	Total	Rs.20,000/-

Petitioner/claimant Hoshiar Singh

1.	Pain and sufferings	Rs.30,000/-
2.	Expenses on his medical treatment	Rs.5,000/-
	Total	Rs.35,000/-

As the driver of the Maruti Zen car was also found equally negligent in causing the accident, all the three respondents were held to be

jointly and severally liable to indemnify the claim to the extent of 50% in all the three claim petitions.

11. Claimants Ram Chander Dahiya and Hoshiar Singh were dissatisfied with the compensation awarded to them and they have filed separate appeals before this Court seeking enhancement of compensation.

12. Notice of the appeals was issued to the respondents. However, only respondent No.3 insurance company has put in appearance through counsel in both the appeals to offer contest.

13. I have heard learned counsel for the parties besides going through the record.

14. Though learned counsel for the appellants/claimants have contended that the Tribunal fell in error in coming to the conclusion that it was a case of contributory negligent when from the evidence adduced by the parties on the record, it came crystal clear that the accident had taken place on account of fault of driver of the offending car, therefore, only 50% of the liability was put on the respondents, when they should have been asked to pay the entire compensation.

15. Whereas, learned counsel for the insurance company has strongly contested the argument stating that the Tribunal has dealt with this aspect in detail while coming to the conclusion that it was a case of contributory negligence and no interference therewith is called for.

16. After hearing the rival contentions, I find that the Tribunal was fully justified in returning a finding that it was a case of contributory negligence. The Tribunal had kept in view the fact that the FIR with regard to the accident had been registered against the driver of the Maruti

Zen car in which the claimants were travelling. In para No.11 after discussion considering almost all the relevant facts, the Tribunal has rightly come to the conclusion that both the drivers of the vehicles involved in the accident were guilty of lack of care and caution and both are to share blame for the accident. I find myself in agreement with the Tribunal in returning that finding.

17. Learned counsel for the appellants has stated that the driver of the Maruti Zen car cannot be blamed for the accident simply for the reason that he could take necessary precaution. In support of his contention, he has referred to judgment *Smt.K. Anusha & Others Versus Regional Manager, Shriram General Insurance Co. Ltd., 2021(4) RCR(Civil)569*. However, this judgment does not help the appellants in any manner due to different facts and circumstances and the context in which such observations had been.

18. Now coming to the quantum of compensation awarded to the claimants.

19. Firstly coming to the case of Ram Chander Dahiya, who has filed FAO-353-2002. He had suffered multiple injuries and was hospitalized on account of suffering of injuries resulting in shortening of his leg and such permanent disability has been found to be 50%. He is said to have remained hospitalized and bed-ridden for a period of about 4 months. The Tribunal has awarded him a sum of **Rs.75,000/-** under the head pain and suffering, which cannot be said to be on higher side and towards expenses borne on purchase of medicines, equipment and transportation etc., a sum of Rs.1,75,000/- has been awarded to him. I find

that the Tribunal was not justified in clubbing all the heads. Rather a sum of **Rs.1,75,000/-** could be awarded towards medical expenses including purchase of medicines, equipments, hospitalization etc. I order accordingly.

With regard to transportation, another sum of Rs.25,000/- is awarded to the claimant Ram Chander Dahiya.

The Tribunal has not awarded any amount towards special diet. I award a sum of Rs.25,000/- under that head.

Further the Tribunal has not awarded any amount towards attendant charges. I award a sum of Rs.50,000/- on that count.

The Tribunal has awarded a sum of **Rs.32,000/-** towards loss of salary, which is kept intact.

The claimant Ram Chander Dahiya on account of injuries suffered by him would not be able to walk, run or sit as he could do prior to the accident. A sum of **Rs.50,000/-** is awarded to him on account of loss of amenities and loss of expectation of life.

Under the head 'damages for loss of expectation of life' on account of injuries resulting in shortening of normal longevity, inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life, a sum of **Rs.50,000/-** more is awarded to him.

The total compensation comes out to Rs.4,82,000/-.

The Tribunal has awarded compensation of Rs.2,82,000/-.

In this way, the enhanced amount comes out to Rs.200000/-
(482000 – 282000).

20. Next coming to the case of petitioner/claimant Hoshier Singh,

who has filed FAO-359-2002.

The Tribunal has awarded a sum of Rs.5,000/- to the petitioner/claimant Hoshiar Singh under the head expenses on his medical treatment etc. Keeping in view the fact that petitioner/claimant Hoshiar Singh had suffered a fracture in the collar bone, besides other multiple grievous injuries and had received treatment from AIIMS, New Delhi and Parshant Nursing Home, New Delhi, though he could not produce any proof of hospitalization. According to him he had spent a sum of Rs.30/35,000/- on his treatment, though he stated that he had lost his medical bills on the way to Sonipat Courts. The Tribunal should have believed him in that regard and awarded a sum of Rs.35,000/- to him considering the nature, extent and type of injuries suffered by him. Thus, the amount of Rs.5,000/- is enhanced to **Rs.35,000/-**.

The Tribunal has awarded a sum of Rs.30,000/- to petitioner/claimant Hoshiar Singh on account of pain and suffering. I find this amount to be on lower side. I award a sum of **Rs.50,000/-** under that head.

The Tribunal has not awarded any amount to the petitioner/claimant towards special diet, transportation and attendant charges.

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. I award a sum of **Rs.25,000/-** under that head.

Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up

treatment also, a sum of **Rs.25,000/-** is awarded to him on account of transportation.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.25,000/-** is accordingly awarded to the appellant/claimant on that score.

The total compensation comes out to Rs.1,60,000/-.

The Tribunal has awarded compensation of Rs.35,000/-.

In this way, the enhanced amount comes out to Rs.95,000/- (482000 – 282000).

21. The claimants Ram Chander Dahiya and Hoshier Singh would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization of the amount. The other terms and conditions given in the relief clause of the impugned award shall apply to the enhanced amount as well.

With such modifications, both the appeals are allowed partly with costs.

14.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No