

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

FAO 4863/2008(O&M)

Date of decision: 09.05.2023.

Krishna DeviAppellant
Vs.

Paramjit Singh and othersRespondents

FAO 1055/2009

Gurmail SinghAppellant
Vs.

Krishna Devi and otherRespondents

FAO 3994/2008

Mandeep SinghAppellant
Vs.

Paramjit Singh and othersRespondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Harsh Aggarwal, Advocate for appellants
Mr. DS Pheruman, Advocate for respondents 1 and 2.
Ms. Puneeta Sethi, Advocate for respondent no.3-Insu.Co.

Nidhi Gupta, J.

1. By this common order I shall dispose of three appeals,
same being:

a) FAO No.4863/2008 - emanating from Award from dated 10.5.2008 passed
by Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as
'the Tribunal') in MAC Petition no. 23 of 3.3.2006 filed by the claimants on
account of death of their son Sandeep Singh, whereby lumpsum compensation
of Rs.3 lac has been awarded to the claimants ;

b) FAO No.3994 of 2008 - emanating from Award dated 10.5.2008 passed by the learned Tribunal in MAC Petition No.22 of 3.3.2006 filed by injured-claimant Mandeep Singh, whereby compensation of Rs.90,500/- has been awarded to the injured claimant; and

c) FAO No. 1055 of 2009 - emanating from MAC Petition No.23 of 3.3.2006 filed by owner of Truck bearing registration No. PB-10-F-9902 (hereinafter referred to as 'the offending vehicle'). In both the cases interest was awarded @ 6% per annum from the date of filing of the claim petition till realization.

2. All three appeals are being disposed of by common order as they arise out of one and the same accident that took place on 4.12.2005, and the facts and law involved in all the appeals are identical.

3. Parties are being referred by their litigative status before the Id. Tribunal.

4. Brief facts of the case are that on the date of accident i.e. 4.12.2005 deceased Sandeep Singh along with injured-claimant Mandeep Singh were going from Village Bassi Maroof Siala to Village Soos on their motorcycle bearing No. PB-07-J-9901. The motorcycle was being driven by Sandeep Singh, and Mandeep Singh was the pillion rider. They were being followed by Inderjit Singh and Resham Singh on a separate motorcycle bearing registration No. PB-07-L 4727. At about 1.15 p.m., when they were a little short of Village Kuntan on Bullowal-Bhogpur Road, the offending vehicle with a Concrete Mixture Machine tied on its rear side came from Bhogpur side which was being driven by respondent no.1 in a rash and negligent manner at high speed as a result of which the rope with which Concrete Mixture Machine was tied with the offending vehicle broke and the

said Machine struck against the motorcycle of the deceased Sandeep Singh as a result of which both Sandeep Singh and Mandeep Singh sustained serious injuries. Deceased Sandeep Singh subsequently succumbed to his injuries whereas Mandeep Singh suffered serious injuries including fracture for which he remained hospitalized for over a month up to 9.1.2006.

5. Ld. Tribunal on the appraisal of facts, pleadings and evidence on record held that the deceased Sandeep Singh had died due to injuries suffered by him in motor vehicular accident that took place on 4.12.2005 due to rash and negligent driving of offending vehicle; as also that the injured-claimant Mandeep Singh was injured in the said accident which took place due to rash and negligent driving of the offending vehicle by respondent no.1.

6. Having noted the facts of the case and findings of the Id. Tribunal above, the arguments advanced and findings of this Court thereon are dealt with separately hereunder.

FAO No.4863/2008

7. It is submitted by the Id. counsel for the appellant/ mother of deceased Sandeep Singh, that compensation of Rs.3 lacs granted by the Id. Tribunal is not as per law. It is submitted that it has been proved on record that the deceased was doing M.A. and was a State level Body Builder and was a Gold Medalist in the Punjab State Amateur Body Building. It is submitted that a perusal of the Certificates Ex. A3 to A28 prove that the deceased was excellent in extracurricular activities. It is submitted that the Id. Tribunal has ignored all these facts and disposed of the claim petition by merely holding the claimant entitled to Rs.3 lacs in lumpsum along with interest @ 6% per annum. It is

submitted that in actual fact, Id. Tribunal ought to have assessed notional income of the deceased as per the relevant Minimum Wage Notification as Rs.4,000/- per month. It is submitted that the deceased was only 25 years at the time of his death and therefore, claimants were entitled to compensation in accordance with law.

8. In response it is submitted by the Id. counsel for the Insurance Company that as per relevant Minimum Wage Notification income of the deceased admissible to a skilled labourer would be Rs.3,000/- per month, and not Rs.4000/-.

9. No other argument has been raised.

10. Heard Id. counsel.

11. Perusal of the record of the case shows that as per certificates on record, date of birth of the deceased was recorded as 6.8.1991 and thus, on the date of accident i.e. 4.12.2005 age of the deceased was proved to be 24 plus i.e. less than 25 years at the time of his death. Perusal of the documentary evidence as well as testimony of various witnesses including testimony of AW-2, appellant herein, proves that deceased was student of Master of Arts in GGSD College, Haryana; deceased was also a State level Body Builder and was a Gold Medalist in Punjab State Amateur Body Building Association and used to actively participate in extra curricular activities. It is, therefore, clear that the deceased had a bright future ahead of him.

12. In view of the above undisputed facts, income of the deceased should be taken as that of skilled labourer at Rs.3,000/- per month.

The deceased being less than 25 years of age, future prospects have to be awarded @ 40%, and multiplier of 18 has to be applied. The deceased was a bachelor at the time of death hence deduction of 50% is to be made towards personal expenses. Under conventional heads, appellant is entitled to Rs.77,000/-. Thus, the claimant is held entitled to the compensation, as reworked hereunder: -

Sr.No.	Head	Compensation as granted by Tribunal (amount in Rupees)	Reworked compensation in present appeal (amount in Rupees)
1.	Compensation	3,00,000/-	Re-worked hereinbelow
2.	Monthly income	-	3000/-
3.	Future prospects @ 40%	-	1200/-
4	Monthly income	-	4200/-
5.	Less 50%	-	2100/-
6.	Multiplier	-	(18)
7.	Total loss of dependency	-	2100x12x18= 4,53,600/-
8.	Conventional heads	-	77,000/-
9.	Total	-	5,30,600/-
10.	Interest	6% p.a.	6% p.a.

FAO 3994/2008.

13. It is submitted by the ld. counsel for the injured-claimant/ appellant herein, that claimant remained hospitalized from 4.12.2005 to 9.1.2006 as evident from Discharge Summary Ex. A4. It is submitted that due to injuries suffered in the accident, claimant is 30% permanent disabled. It is submitted that AW2 Dr. SS Dardi had duly proved the Disability Certificate Ex.A3. It is submitted that in the accident in question claimant had suffered compound fracture i.e. dislocation of left knee, fracture of metacarpal right

hand. It is submitted that in these circumstances, Id. Tribunal has awarded only Rs.90,500/- of which Rs.10,500/- is granted towards medical expenses. It is submitted by the Id. counsel for the injured-claimant that the claimant is a Diploma Holder in Refrigeration from ITI Hoshiarpur and prior to the accident he was doing the job of repair of refrigerators and air conditioners, however, due to the accident the claimant has suffered 30% disability due to which there is shortening of his leg by 1.5". It is submitted that this is a case of multiple injuries with removal of knee cap bone as well as internal derangement of knee which led to shortening of leg with limited flexion of the knee as a result of which claimant was unable to squat. It is submitted that accordingly, claimant is unable to do his job and therefore, his functional disability should also be taken as 30%.

14. In response, it is submitted by Id. counsel for the Insurance Company that as per law, functional disability has to be 50% or half of permanent disability and therefore, for the purpose of computation of compensation, disability of the claimant should be taken as 15%.

15. No other argument has been raised.

16. Heard Id. counsel.

17. Perusal of the record of the case shows that age of the injured claimant was determined to be 19 years at the time of accident. It was further proved on record that the claimant was a Diploma Holder in Refrigeration from ITI Hoshiarpur and was a Mechanic/ doing the job of repairing refrigerators and air conditioners. Disability of the claimant to the extent of 30% also stood proved on record by way of Disability Certificate

Ex A3 which was duly proved by AW-2 Dr. SS Dardi.

18. It is established position in law that functional disability has to be assessed as per the difficulty experienced by the injured-claimant in doing his job. In the present case, prior to the accident, the claimant was a Mechanic/ doing the job of repairing refrigerators and air conditioners. However, due to fracture of metacarpal right hand and shortening of the leg claimant is 30% disabled as a result of which he shall be unable to do his job. Accordingly, in my view functional disability of the claimant should be assessed as 30% only. Thus, as per relevant Minimum Wage Notification income of the claimant has to be taken as that of skilled labourer as Rs.3,000/- per month. As the claimant is 19 years of age, multiplier of 18 has to be applied, and future prospects @ 40% have to be granted. As the disability of the claimant has been assessed as 30% accordingly, future loss of income comes to Rs.2,72,160/- (i.e. monthly income @ Rs.3000/-, Age 19 years, Multiplier 18, Future prospects 40%, permanent disability-30%). Thus, loss of income during treatment for three months will come to Rs.90000/-. In addition to that claimant is entitled to Rs.10,000/- towards attendant charges; Rs.5000/- as special diet; and Rs.5000/- towards transportation charges. The sum total of future loss of income and pecuniary heads comes to Rs.3,16,660/- out of which he has already been awarded a compensation of Rs.90,500/- by the Tribunal. He will also be entitled to interest @ 6% per annum from the date of filing of the claim petition till realization.

19. Thus, the claimant is held entitled to the compensation, as reworked hereunder:

Sr.No.	Head	Reworked compensation (in Rupees)
1.	Medical expenses	10,500/-

2.	Future loss of income(Income 3000/- p.m., age 19 years, multiplier 18, future prospects @ 40% Permanent disability 30%	2,72,160/-
3.	Loss of income for 3 months	9,000/-
4.	Attendant charges	10,000/-
5.	Special Diet	5,000/-
6.	Transportation	5,000/-
7.	Loss of marriage prospects	5,000/-
8.	Total	3,16,660/-
9.	Already granted by MACT	90,500/-
10.	Enhancement	2,26,160/-

20. **FAO No. 1055/2009.**

By way of impugned Award ld. Tribunal has granted recovery rights to Insurance Company against the appellant herein, who is the owner of the offending vehicle as, at the time of accident respondent no.1- driver of the offending vehicle did not hold a legal and valid driving licence.

21. It is submitted by the ld. counsel for the appellant/owner of the offending vehicle that right of recovery as granted by the Tribunal is in contravention of the facts and findings on record.

22. Ld. counsel for the Insurance Company at the very outset submits that owner of the offending vehicle has filed present appeal bearing FAO No.1055/2009 only in MAC Petition No.23/2006. It is submitted that accordingly, the fact that appellant has not filed appeal in connected claim petition No.22/2006 implies that he has admitted all the findings against him in

the said case and as both the claims/appeals emanate from the same accident, therefore, present appeal deserves to be dismissed.

23. I find merit in this submission made on behalf of the Insurance Company.

24. Ld. counsel for the appellant/owner of the offending vehicle admits that no appeal has been filed against Award passed in MAC Petition No.22/2006. It therefore, implies that the appellant has admitted the findings returned by the learned Tribunal against the appellant in the said claim petition bearing MAC petition No. 22 of 2006; which findings are admittedly, identical to the findings, returned by the learned Tribunal against the appellant in connected claim petition bearing MAC petition No. 23 of 2006.

25. Accordingly, present appeal stands dismissed.

26. Pending Application(s), if any, stand disposed of.

27. A copy of this order be placed on the files of FAO No. 1055/2009 and FAO No.3994/2008.

09.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No