

Date of decision: March 14, 2023

FAO-4146-2007 (O&M)

Dharamvir

...Appellants

versus

Baljeet Singh and others

....Respondents

FAO-3544-2006 (O&M)

The Rajasthan State Roadways Transport Corporation

...Appellant

versus

Dharamvir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. H.N.Sahu, Advocate,
For the appellant/claimant in FAO-4146-2007 and for respondent
No.1 in FAO-3544-2006.

Mr. Anil Gahlawat, Advocate,
For the appellant in FAO-3544-2006 and respondent No.2 in FAO-
4146-2007.

Mr. Neeraj Khanna, Advocate,
For respondent-National Insurance Company Limited in
Both the appeals.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, above-mentioned two appeals are being disposed of since they arise out of the same award dated 15.04.2006 rendered by learned MACT. For brevity, recitals are taken from FAO-4146-2007.

2. Appellant (in FAO-4146-2007) before this Court is claimant challenging impugned Award dated 15.04.2006 passed by learned Motor Accidents Claims Tribunal, Jind (for short 'Tribunal') for enhancement of compensation on account of injuries suffered by the appellant/claimant in a motor vehicular

accident, whereas appellant (in FAO-3544-2006) before this Court is the owner of offending vehicle seeking to set aside aforesaid impugned Award.

3. Succinct facts, as noted by learned Tribunal, are as below:

“Briefly, it has been averred in the present claim petition that on 04.09.2003 Ajmer Singh and Dharambir were returning from Gogameri to their village in Jeep No. RJ-31C-0216 and when they reached Bhadra Town Bye-Pass, then the offending vehicle came from front side which was driven by respondent No.1 in a rash and negligent manner and struck against the jeep. Dharambir and Ajmer fell down from the jeep on the metalled road and received multiple grievous injuries. Ajmer died at the spot while Dharambir sustained the multiple and grievous injuries. Dharambir was shifted to the hospital and was treated in hospital at Bhadra, Hisar, PGIMS, Chandigarh etc. The petitioners Rani Devi etc. have claimed a sum of Rs.25,00,000/- as compensation along with the interest @18% per annum whereas Dharambir injured has claimed a sum of Rs.30,00,000/- as compensation along with interest at the rate of 18% per annum.”

4. Upon notice, respondent No.1 and 2-driver and owner, respectively, of the offending bus denied the averments made in the claim petition and pleaded that petition was not maintainable as the claimants did not have any cause of action. Defence was that respondent No.1 was driving his vehicle at a very slow speed whereas the jeep was being driven rashly and negligently. Deceased Ajmer Singh and Petitioner Dharambir were standing on the pedestal of the Jeep being driven at high speed when it took a sharp turn, due to which petitioner Dharambir and deceased Ajmer fell on the road. The offending vehicle did not hit the said jeep. The jeep driver ran away from the spot along with the jeep leaving behind these two passengers on the road. Thus, dismissal of the claim petition was prayed.

4.1 Respondents No.4 and 5 (Driver and owner of Jeep), *inter alia*, raised objections that there was no cause of action to institute the claim and it suffered from non-joinder and mis-joinder of necessary parties; want of locus standi. Negligence was not on the part of respondent No.4. They claimed that vehicle was

insured and was driven by respondent No.4, who was having valid and effective driving licence.

4.2 Respondent No.6 (Insurer of Jeep) also contested the petition on the ground that there is no cause of action against jeep No.RE-31C/0216 as the accident took place due to rash and negligent driving of the offending vehicle and that jeep driver was not holding a valid and effective driving licence. All the averments of the claim petition were also denied.

5. No replication was filed. Learned Tribunal framed the following issues:

- “1. Whether the accident in question has occurred due to rash and negligent driving of bus No. RJ-13P/1856 by the driver Baljeet Singh respondent No.1, causing into the death of Ajmer Singh, as alleged and injuries to Dharambir Petitioner? OPP*
- 2. Whether the petitioners are entitled for compensation, if so to what amount and from whom they are entitled to receive? OPP*
- 3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident, as well as respondent No.4 Jai Parkash also not holding a valid driving licence at the alleged time, if so to what effect? OPR*
- 4. Relief.”*

6. On appraisal of record/ evidence, learned Tribunal decided issues No.1, 2 & 3 in favour of claimant and against respondents. Consequently, claimant was held entitled to receive compensation of Rs.6,20,000/-. On its apportionment and mode of payment the learned Tribunal directed that 50% amount be given in cash to petitioner-Dharambir and remaining 50% amount will be deposited in nationalized bank in an interest bearing scheme for a period of three years.

7. I have heard learned counsel for the parties and gone through the record.

8. Shorn of unnecessary details, the submissions in FAO-3544-2006 are that the findings returned by learned Tribunal are against the facts of the case and

are based on conjectures and surmises; and are contrary to law and evidence on record.

9. Having perused the impugned award, my considered opinion is that the submissions made before learned Tribunal were duly dealt and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions of learned counsel for the appellant in FAO-3544-2006 that the impugned Award is based on conjectures and surmises.

10. No new arguments have been raised by learned counsel for the appellant in FAO-3545-2006 other than reiteration of the stand taken before learned Tribunal.

11. To my mind, award under challenge qua the factum of accident and involvement of offending vehicle has been rendered after due and correct appreciation of record, including the evidence adduced by the parties. FAO-3544 of 2006 is liable to be dismissed

12. In FAO-4146-2007, learned counsel appearing on behalf of claimant herein submits that claimant remained under treatment in hospital at Bhadra, Metro Hospital and PGIMS Chandigarh. He spent about Rs.5 to 6 lakh on his treatment. He was working as agriculturist and used to earn 3 to 4 lakh per year. He is owner of three acres of land and had also sown fodder for cattle as well by taking 7 acres of land on lease. Compensation awarded by the Tribunal needs to be enhanced. He relies on the Apex Court judgment rendered in **National Insurance Co. Ltd. v. Pranay Sethi**, reported in (2017) 16 SCC 680.

13. The learned Tribunal in the absence of any cogent proof, assessed the monthly income of the claimant at Rs.10,000/-. To my mind, this is a fair and

reasonable assessment and needs no change. Award of the Tribunal is, inter alia, premised on following reasoning:

“18. PW 3 Dharambir, the injured witness has categorically stated about the injuries suffered by him in this accident and has also stated that he remained under treatment in hospital at Bhadra, Metro Hospital and PGIMS Chandigarh. He has also stated that he spent about Rs.5 to 6 lacs on his treatment. He has also stated that he was working as agriculturist and used to earn Rs.3 to 4 lacs per year. He has stated that he is owner of three acres of land and also sown fodder for cattle as well as taking 7 acres of land on lease. There is no documentary proof with regard to the taking of the land on lease and garden, buffaloes owned by him.

19. PW4 Dr. Sanjay Verma has stated about the treatment given by him and has stated that he has charged a sum of Rs.1, 20,000/- when he was hospitalized w.e.f. 4th September, 2003 to 21st October, 2003. He has also stated he was again hospitalized on 03.01.2004 but he was discharged on 12.01.2004 and was shifted to PGI, Chandigarh.

20. PW5 Dr. M.L.Kochar has only stated about 20% disability on the person of Dharambir which they found on 15.09.2004 when he was examined by board of doctors as per certificate Ex.PW5/A.

21. On the other hand RW Baljeet is silent about income of the deceased or the injured as well as amount spent by them on the treatment etc.

22. Ex.P3 and Ex.P4 are the treatment charts from Metro Hospital, Hisar. Ex. P5 is the post mortem report of Ajmer aged 26 years. Ex. P2 is the Matric certificate of deceased Ajmer Singh. Ex. P6 is Jamabandi of the land owned by Jai Bhagwan father of deceased Ajmer Singh who own only to 10 kanals and 3 marlas of the land in village Ramgarh, whereas Jai Bhagwan owns about 73 kanals land in village Bibipur. Ex.P8 is the mutation sanctioned I their favour on the basis of decree suffered by Dariya Singh. Ex.P9 is the discharge slip from PGIMS, Chandigarh of injured. Ex. P10 is the treatment of Dharambir. Ex. P11 is the test report of Dharambir. Ex. P12 is regarding the treatment of Dharambir at Jind. Ex. P13 to Ex.P156 are the bills with regard to the purchase of medicines as well as conducting various test. Ex.P157 is the test report. Ex.P158 is ultra sound film. Ex.P159 is the test report. Ex.P159 is the ultra sound report. Ex.P-160 to Ex.P-166 are the bills. Ex.P-167 to Ex.P-170 are the test reports of Dharambir. Ex.P171 to Ex.P-177 are the taxi bills. Ex.P178 and Ex.P179 are the jamabandies of the land owned by Dharambir who is having 1/21 share in the land measuring 21 kanals 6 marlas whereas she has also having 1/21 share in the land measuring 65 kanals 6 marlas that is to so he is only having 14 kanals of the land. As per Ex.P180 Ram Kishan has transferred his share in favour of his sons Ajit etc. whereas Ajit Singh transferred the land with Kavita etc. as per mutation No.1721. Ex.P181 shows that Smt. Ginna etc. have sold the land to Raghbir and Dharambir etc. on 01.05.2001.

23. *Keeping in view the land owned by the injured, I assess his income as Rs.10,000/- per month. It is also clear that he remained under treatment after the accident in various hospitals as well as for bed rest and he was also discharged from PGIMS on 08.03.2004. He also remained under treatment till May, 2004 as per various bills and reports placed on the file. Thus, I hold that he must not be unable to join his work as an agriculturist at least for a period of ten months. Thus, I award a sum of Rs.1,00,000/- towards of income. I also award a sum of Rs.3, 20,000/- towards medical expenses as well as award a sum of Rs.5000/- for transportation. I also award a sum of Rs.1, 35, 000/- towards his disability as per Ex.PW5/A. I also award a sum of Rs.60,000/- for pain suffering and trauma of life. The total amount of compensation comes to Rs.6, 20,000/- in case Dharambir Vs. Baljeet etc.”*

14. No fresh grounds of interference are made out qua the well reasoned findings as above.
15. Applying the principles in the case of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22, National Insurance Co. Ltd. v. Pranay Sethi**, reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**, amount of compensation is recalculated as below:

Injured	Dharamvir
Date of accident	04.09.2003
Age	36 years
Permanent disability	20%
Monthly income of the injured	Rs. 10,000/-
Annual income	Rs.1, 20,000/-
Future prospects @ 40@	Rs. 48,000
Total	Rs. 1,68,000/-
Loss of future earning @ 20% by applying multiplier of 15	1,68,000 X20% X 15=5,04,000/-
Medical Bills	Rs.3,20,000/-
Pain and suffering	Rs.60,000/-
Attendant	Rs.5,000/-
Transportation	Rs.5,000/-
Total	Rs.8,94,000/-
Awarded amount	Rs.6,20,000/-
Amount to be enhanced	Rs.2,74,000/-

16. Accordingly, the impugned award is modified in terms of the above computations. Revised compensation shall be payable to the claimant along with interest as already imposed by the learned Tribunal, from the date of filing of the claim petition till the actual date of payment. The same shall be payable to the claimants within a period of 2 months of their approaching the insurance company along with web print of the instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of the claim petition. Revised compensation amount be disbursed to the claimant in lump sum after adjustment of payment, if any, already made.

17. In the premise, **FAO-3544-2006** stands dismissed and **FAO-4146-2007** stands partly allowed, in the above terms

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

19. A photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

March 14, 2023
Shalini/vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No