

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) **FAO-10603-2014 (O&M)**

Mandeep Singh
...Appellant

VERSUS

Satgur Singh and others
...Respondents

(ii) **FAO-1026-2019 (O&M)**

Chhattar Singh
...Appellant

VERSUS

New India Insurance Company Ltd. and others
...Respondents

Date of Decision: April 25, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Gaurav Pathak, Advocate
for the appellant (in FAO-10603-2014).

Mr.Manish Kumar Singla, Advocate
for the appellant (in FAO-1026-2019) and
for respondent No.2 (in FAO-10603-2014).

Mr.Pardeep Goyal, Advocate
for respondent-insurance company.

Mr.Shubhashish Kukreti, Advocate
for respondents No.2 to 5 (in FAO-1026-2019).

Mr.Mohit Sadana, Advocate
for respondent No.6 (in FAO-1026-2019).

ARCHANA PURI, J.

dated 14.05.2014 and order dated 10.09.2018.

At the very outset, it is pertinent to mention that aforesaid both the appeals have arisen from the same accident, which had taken place on **07.04.2013**.

As per the version of the claimants, as put forth, in their respective claim petitions is that on 07.04.2013, at about 6.00 a.m., Mandeep Singh along with his brother-in-law (Sanddu), namely Amarjit Singh, was going to Chandigarh side from the side of Jhansla, on motorcycle bearing registration No.PB-65G-0336. Jaspal Singh, was also going to Chandigarh from the side of Jhansla and was behind the ill-fated motorcycle. The ill-fated motorcycle was being driven by Mandeep Singh, whereas, Amarjit Singh was pillion rider of the same. When they reached the turn of village Jangpura, then a truck bearing registration No.**PB-13W-9958**, being driven by respondent-**Satgur Singh**, rashly, negligently and with high speed, came from Rajpura side. After overtaking the vehicle of above-said Jaspal, respondent-Satgur Singh, struck his truck against Indica car bearing registration No.**HR-24L-0460**, coming from the opposite side and thereafter, respondent-Satgur Singh, suddenly, turned his truck on left side, as a result thereof, the truck, struck into the ill-fated motorcycle, upon which, both Mandeep Singh and Amarjit Singh, occupants of the motorcycle, fell down on the road and they had sustained grievous injuries.

In the respective claim petitions, it is the categoric claim that the accident in question had taken place, on account of rash and negligent driving of the truck bearing registration No.PB-13W-9958, driven by

respondent-Satgur Singh. With the help of passer-by, Jaspal Singh, who was following the ill-fated motorcycle, took both the injured to Gian Sagar Hospital, from where, they were referred to PGI, Chandigarh. Amarjit Singh, occupant of the motorcycle, had succumbed to the injuries sustained, in the accident in question, whereas, injured Mandeep Singh, remained admitted in PGI, Chandigarh, from 07.04.2013 to 24.04.2013.

Claim petition No.**MACT-02769-2013** was filed by injured Mandeep Singh, before learned **Motor Accident Claims Tribunal, Ropar**, whereas, claim petition No.**MACT-638-2013** was filed by LR's of deceased Amarjit Singh, before learned **Motor Accident Claims Tribunal, Patiala**.

After conducting of the requisite proceedings, respective Awards were passed.

FAO-10603-2014 has been filed by appellant-claimant Mandeep Singh, thereby, seeking enhancement of the compensation, granted by learned Tribunal.

FAO-1129-2015 was filed by The New India Assurance Company Ltd., thereby, assailing the Award dated **04.09.2014** passed by learned MACT, vide which, compensation to the extent of **Rs.40,50,000/-** was granted to the claimants, vis-a-vis, death of Amarjit Singh and the insurance company, which was respondent No.3, before the Tribunal, was made liable to pay the compensation amount to the claimants. At this juncture, it is pertinent to mention that this liability was so fastened upon the insurance company, even though, it was concluded by learned Tribunal that the truck bearing registration No.PB-13W-9958, **was not having valid**

route permit.

Feeling aggrieved, the insurance company had filed FAO-1129-2015, relating to the compensation granted, on account of death of Amarjit Singh, in a motor vehicular accident. However, this Court had made the following observations, in the order dated 29.05.2018, as herein given:-

“XXXX XX XX XXXX
Perusal of findings of the Tribunal would reveal that the entire approach adopted by the Tribunal in first placing onus of additional issue upon the claimants and thereafter deciding the said issue against the insurance company is faulty, thus, findings recorded by the Tribunal on issue No.1 are liable to be set aside and the matter needs to be remitted to the Tribunal for adjudication afresh on the additional issue to be framed in the following terms:-

Whether truck bearing No.PB-13W-9958 was being plied without a permit on 07.04.2013?OPR-3.

The parties are directed to appear before the Tribunal on 13.07.2018. They shall be at liberty to adduce additional evidence for adjudication of the aforesaid issue afresh. The Tribunal is directed to complete the exercise within a period of two months from the parties putting in appearance.

Disposed of accordingly.

It is clarified that the cross objections filed by the claimants shall be decided independently.”

Thus, FAO-1129-2015 was disposed of and it was also clarified that the cross-objections, filed by the claimants, shall be decided independently. The cross-objections were kept pending, but thereafter, the cross-objections were also dismissed as withdrawn, vide order dated 29.05.2019.

In pursuance of the aforesaid order, additional issue, so framed,

by learned Tribunal, reads as herein given:-

“Whether truck bearing No.PB-13W-9958 was being plied without a permit on 07.04.2013?OPR-3.”

On this additional issue, on the statement suffered by learned counsel for the insurance company, which was impleaded as respondent No.3, to the effect that *'in view of the reply to the application for production of documents dated 28.3.2013 and in view of the statement made by Sh.Sanjay Garg, Advocate, learned counsel for respondents No.1 and 2 dated 09.07.2014, he does not further want to lead any evidence and closed the evidence.'* However, to rebut the aforesaid stand of the insurance company, respondents No.1 and 2, who are driver and owner, had tendered into evidence, the copy of verification certificate, with regard to alleged permit as Mark R1 and closed the evidence.

After hearing counsel for the parties, vide impugned order dated **10.09.2018**, learned Tribunal, reached the conclusion that respondents No.1 and 2 (before the Tribunal) have failed to produce any legal and valid permit and consequently, respondent No.3-insurance company, has **right of recovery** against respondents No.1 and 2 (driver and owner). Accordingly, the additional issue, so framed, was decided in favour of the insurance company.

Feeling aggrieved by the order dated **10.09.2018**, appellant-owner of the offending truck bearing registration No.PB-13W-9958, has filed **FAO-1026-2019**.

During the course of arguments on the said appeal, it has been

fairly conceded by learned counsel for the insurance company that the verification report, which is **Mark R1**, has been so relied upon, in the other claim petition filed by Mandeep Singh and has been proved on record as **Ex.R3**. Perusal of the same verifies about the existence of the route permit of the truck in question. In the light of the same and also considering document Mark R1, having come on record, during the course of evidence recorded on the additional issue, valid permit is established to be there. It is pertinent to mention that strict rules of evidence, do not apply in motor accident claims, as it is a summary proceeding. The Motor Vehicle Act is benevolent piece of legislation. Precisely, on this account, even though, statement had earlier been made by learned counsel for driver and owner, about not being in possession of the any document, more specifically of the route permit, but however, later on, verification report, as such, coming on record, in pursuance of framing of additional issue, copy whereof is Mark R1, is sufficient to be taken into consideration. Even though, no witness, as such, has been examined to prove the said verification report, but however, still it can be taken into consideration, more particularly, when in the other claim petition, arising from the same accident, it has been duly proved as **Ex.R3**. Considering the same, it stands established that the truck in question, was having valid route permit, as on the date of accident and such being the position, the insurance company, as such, is not entitled to **recovery rights**, as held vide impugned order dated **10.09.2018**.

In view of the aforesaid terms, **FAO-1026-2019**, is hereby **allowed** and the impugned order, vis-a-vis, recovery rights is set aside and

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the insurance company is held liable to pay the compensation amount, as so observed by learned Tribunal, vide Award dated **04.09.2014**.

Now, coming to **FAO-10603-2014**, so filed by appellant-claimant Mandeep Singh.

So far as, the fact of accident and imputation of rashness and negligence is concerned, as concluded by learned Tribunal, relating to the injury case of Mandeep Singh, no appeal, has been filed by the persons, so made liable

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of **Rs.13,91,858/-**, to appellant-claimant, on account of injuries sustained by him, in the accident in question.

Being dissatisfied with the compensation, so granted, the appellant-claimant has filed the present appeal for seeking enhancement of the compensation.

In this backdrop, at the very outset, learned counsel for the appellant-claimant has assiduously submitted that appellant-claimant had suffered permanent disability to the extent of **85%**, as on account of injuries sustained in accident in question, his **right leg above knee** and **right arm below elbow**, were amputated, which fact stands amply established from the evidence, so adduced. Thus, it is submitted that he had become totally invalid. Learned Tribunal, considering the evidence adduced by the appellant-claimant, as such, had not taken into consideration, the impact of permanent disability, upon the life of the appellant-claimant, not only to his

income generating capacity but also about non-quantifiable implications, on his life.

Besides the same, learned counsel for the appellant assiduously submitted that looking at the nature of the injuries sustained by the appellant, additional medical exigencies are necessitated and expenses are to be incurred for regular medical treatment in future. It is submitted that even there is need of expenditure to be incurred, on account of arrangement of prosthetic limbs, during his lifetime, which has also not been taken care of. Thus, learned counsel for the appellant has made a prayer for extensive enhancement of the amount, so awarded by learned Tribunal.

On the other hand, learned counsel for the insurance company has refuted the claim of the appellant-claimant, while asserting that sufficient amount of compensation has been granted by learned Tribunal, taking into consideration, the aforesaid facts, as now pleaded. Thus, he submits that the appeal sans merit and deserves to be dismissed.

In *Smt.Sarla Verma vs. Delhi Transport Corporation and anr.*, 2009(3) RCR (Civil) 77, the Supreme Court held that the 'just' compensation is adequate compensation and the Award must be just that- '**no less and no more**'. The plea of the victim suffering from a cruel twist of fate, when asking for some more, is not extravagant, but it is for seeking appropriate recompense, to negotiate with the unforeseeable and the fortuitous twists, in his impaired life. Therefore, while the money awarded by Courts can hardly redress the actual sufferings of the injured victim (who is deprived of the normal amenities of life and suffers the unease of being a

burden on others), the courts can make a genuine attempt to help restore the self-dignity of such claimant, by awarding ‘**just compensation**’.

A three Judges’ bench in *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, while considering the enhancement of compensation awarded, vis-a-vis, injuries suffered by the victim, a reference has been made to the decision rendered in *Laxman vs. Divisional Manager, Oriental Insurance Co. Ltd., 2012 ACJ 191 (SC)*, wherein, the Hon'ble Apex Court, has held as under:-

“(12) The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead normal life and enjoy amenities, which we would have enjoyed but for disability caused due to the accident.”

Furthermore, while making reference to various case law, it held that the compensation can be granted for disability as well as for loss of future earnings and the first head relates to the impairment of a person's capacity, while the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself.

Thus, considering the same, if the victim of the accident suffers permanent disability, then efforts should also be made to award compensation, not only for the physical frame and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed, but for the disability caused, due to the accident. In *Jagdish's case (supra)*, the Hon'ble Supreme Court was

considering the case of a carpenter, who had sustained injuries and lost both his hands. Therein, considering the serious disability, suffered by him, on account of loss of use of both of this hands, it was observed by the Court, as herein given:-

“.....For a person engaged in manual activities, it requires no stretch of imagination to understand that loss of hands is a complete deprivation of the ability to earn. Nothing, at least in the facts of this case, can restore lost hands. But the measure of compensation must reflect a genuine attempt of law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.”

Considering the facts of the case, the disability, which was worked upon as '90%', was taken to be total disability by the Hon'ble Supreme Court and thereupon, enhancement was made.

Now, reverting to the case in hand. It is specific claim of the appellant-claimant Mandeep Singh that he had sustained serious injuries in the accident in question. It is his claim that he remained admitted in PGI, Chandigarh, for treatment from 07.04.2013 to 24.04.2013 and that his **right leg above knee** and **right arm below elbow** were amputated. To so substantiate, the appellant-claimant has stepped into witness box as **CW-1** and in his affidavit **Ex.CW1/A**, he has categorically, deposed about the same.

Even, eye witness **CW-2** Jaspal Singh, has so deposed in his

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affidavit. Besides the same, disability certificate of the appellant-claimant has been proved as **Ex.C2**. The record, relating to the same, was brought by **CW-3** Varinder Pal, Junior Assistant, Civil Hospital, Ropar, whereas, Dr.Navtej Pal Singh, who examined the injured-claimant, being Ortho specialist and made the assessment of disability, has also stepped into witness box as **CW-5** and he has also stated that disability was assessed as **permanent** and **85%**. The disability certificate has again been proved as **Ex.CW5/A**.

CW-4 Dr.Sandeep Patel, Senior Resident, PGI, Chandigarh, who had brought the treatment record of Mandeep Singh, has also deposed about Mandeep Singh to have remained admitted in PGI from **07.04.2013 to 24.04.2013** and that he was operated on **07.04.2013**. He also deposed **amputation (above knee) of right lower limb and amputation (below elbow) for right upper limb** was carried out. He proved the discharge and follow up card as **Ex.C3**. In cross-examination, he has stated that the injured was operated three times.

From the aforesaid evidence, it stands established that there was amputation of **right lower limb above knee** and of **right upper limb below elbow**. Even though, it is categoric claim of the appellant-claimant that he was working as driver with Bharat Petroleum and was earning Rs.10,000/- per month, but however, it has been rightly concluded by learned Tribunal that his employment with Bharat Petroleum, as such, does not stand established. However, fact remains that it is categoric claim of the appellant-claimant that he was working as driver, which, he has also stated

in his affidavit and this fact, as such, has not been rebutted.

In view of the oral evidence, coming on record, Mandeep Singh is established to be a skilled worker, being driver. However, it does not stand established that he was a truck driver and as such, cannot be taken to be highly skilled. In the given circumstances, considering the appellant-claimant, to be skilled worker (being driver) and minimum wages, as existing on the date of accident, his earnings are taken to be **Rs.7372/-** per month, instead of **Rs.6000/-** as taken by learned Tribunal. Considering it to be so, the compensation, so worked upon, by learned Tribunal, needs re-appraisal.

On account of amputation of his **right leg above knee** and **right arm below elbow**, which fact, as observed aforesaid, stands amply established, the appellant-claimant has become totally invalid, to carry out the avocation, so followed by him. Besides the same, considering him to be falling in the age group of 26-30 years, his youthful dreams, pertaining to his growth in his own field of work and future hopes were snuffed to a great extent by this accident.

Considering the aforesaid circumstances, which the appellant-claimant had to face, on account of injuries sustained in the accident, the attempt should always be made to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his life, on account of his physical disability. The Courts should be mindful of the fact

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that though, the physical disability may be on a lesser count but the functional disability, on account of injury sustained, can always be on higher side.

Considering the same and also considering the fact of the appellant-claimant, being driver, he was a skilled worker. At the prevalent time, the minimum wages of skilled worker were Rs.7372/-, as already observed aforesaid. As such, considering the appellant-claimant to have become 100% invalid, as he is not able to carry on with his avocation and could not indulge in any labour activity also, his disability is taken as 100%. On this account, there is loss of future earnings also, on which account, addition of 40% ought to be made, on account of future prospects, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009*, which comes to be Rs.2948.8/-, which is rounded off as Rs.2949/-. Considering the same, loss of income comes to be Rs.7372-2949=Rs.10,321/- per month and annual comes to be Rs.10321x12=Rs.1,23,852/-.

Considering the appellant-claimant to be falling in the age group of 26-30 years, the suitable multiplier of '17' is applicable, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*. Thus, by applying the suitable multiplier, the loss of income comes to be Rs.123852x17=Rs.21,05,484/-.

In addition to the same, on account of the expenditure incurred on his treatment, as per the bills so proved, learned Tribunal had rightly granted an amount of Rs.1,06,458/-, on account of '**medical expenses**'.

However, looking at the kind of injuries sustained by the appellant-claimant, the amount, on the count of '**pain and suffering**' as granted by learned Tribunal to be **Rs.75,000/-**, stands enhanced to **Rs.1 lakh**.

However, it is pertinent to mention that for some period of time, after the accident, the appellant-claimant must have been looked after by a by-stander or attendant. Though, learned counsel for the insurance company has submitted that no material is produced by the appellant qua actual expenses, so incurred upon the services of attendant and it is also argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability so suffered, besides family members, the appellant ought to be having one attendant to look after him, as there was need for assisted living. Thus, on count of '**attendant charges**', a sum of **Rs.1 lakh** is granted.

It is quite obvious that the appellant must have been put to nutritious diet also, for good extent of time, after the accident. Considering the kind of injuries sustained by him, on the count of '**special diet**' also, the amount, so granted by learned Tribunal is enhanced to **Rs.50,000/-**.

Further, it is pertinent to mention that learned Tribunal had granted consolidated amount of Rs.1.5 lakh, on the counts of 'future medical expenses', 'loss of enjoyment of life' as well as 'transportation charges', but however, said counts, should be bifurcated and considered. It is quite obvious that the appellant-claimant had remained admitted in hospital and also, on account of the injuries, so sustained, must be making frequent visits to the hospital, for follow up treatment. Thus, on the count of

'transportation charges', the appellant-claimant is separately awarded an amount of **Rs.30,000/-**. So far as, 'future medical expenses' are concerned, it should be taken note of that there is amputation of **right leg above knee** and **right arm below elbow**, and therefore, prosthetic limbs ought to be required by the appellant.

The Hon'ble Supreme Court in *Mohd. Sabeer @Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation, 2023(1) RCR (Civil) 349*, while considering the case of injury sustained in a motor vehicular accident and the prosthetic limb required, it was observed that provision has to be made for the purchase and maintenance of the prosthetic limb. Considering the age of the injured, provision for three prosthetic limbs, in his lifetime, was made, apart from the maintenance cost. Thus, taking guidelines from the aforesaid decision, in the present case, considering the appellant-claimant to be young man, at the time of accident and he being required to purchase prosthetic limbs, both for his arm as well leg and further, considering his future need for the replacement of the prosthetic limbs and the maintenance thereof, another sum of **Rs.5 lakh** is granted.

Accordingly, the appellant-claimant is held entitled for compensation as under:-

Permanent disability	:	Rs.21,05/484/-
Medical bills	:	Rs.1,06,458/-
Pain & suffering	:	Rs.1,00,000/-
Attendant charges	:	Rs.1,00,000/-
Diet and Nutrition	:	Rs.50,000/-
Transportation charges	:	Rs.30,000/-

Purchase and maintenance of prosthetic limb	:	Rs.5,00,000/-
Total	:	Rs.29,91,942/-

With the above observations, the present appeal stands **allowed**. The impugned Award dated 14.05.2014 stands modified, to the extent, as indicated aforesaid. Apart from this modification regarding enhancement of compensation, the interest component, as ordered by learned Tribunal, shall remain same.

In view of the aforesaid said terms, both the appeals i.e. **FAO-10603-2014** and **FAO-1026-2019**, stand allowed

April 25, 2023 Vgulati	(ARCHANA PURI) JUDGE
Whether speaking/reasoned	Yes
Whether reportable	Yes/No