

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 31.05.2023.****FAO 2058/2016 (O&M)****Smt. Meena Rani****Appellant****Vs.****Virender Kumar and others****Respondents****(2) FAO 2144/2016 (O&M)****Jyoti****Appellant****Vs.****Virender Kumar and others****Respondents****(3) FAO 3496/2016 (O&M)****Arun Khera****Appellant****Vs.****Virender Kumar and others****Respondents****(4) FAO 3497/2016 (O&M)****Smt. Sushila Khera****Appellant****Vs.****Virender Kumar and others****Respondents****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Surinder Gandhi, Advocate for the appellants.
Mr. Vinod Gupta, Advocate for the respondent-
Insurance Company

Nidhi Gupta, J.

By this common order I shall dispose of aforesaid four
appeals the same being FAO No.2058/2016 filed by injured-claimant
Smt. Meena Rani ; FAO No.2144/2016 filed by injured-claimant Jyoti;

FAO No.3496/2016 filed by injured-claimant Arun Khera; and FAO No.3497/2016 filed by injured-claimant Smt. Sushila Khera.

2. These four appeals are being decided together as facts, arguments and questions of law involved in all these appeals are identical and they arise out of the one composite Award dated 18.12.2015 passed by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal').

3. FAO No.2058/2016 arises out of claim petition bearing MACT No.216/2013; FAO No.2144/2016 arises out of claim petition bearing MACT No. 217/2013; FAO No.3496/2016 arises out of claim petition bearing MACT No. 215/2013; and FAO No.3497/2016 arises out of claim petition bearing MACT No. 214/2013. All the claim petitions were filed under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

4. For the sake of convenience, parties are being referred to by their litigative status before the Id. Tribunal.

5. Vide impugned Award dated 18.12.2015, the Id. Tribunal has awarded different amounts of compensation to the claimants/appellants along with interest from the date of filing of the claim petition till realization.

6. Ld. Tribunal on appraisal of facts, pleadings and evidence on record held that the four claimants suffered injuries in a motor vehicular accident that took place on 14.2.2005 due to rash and negligent driving of Tata Sumo bearing registration No. HR-20-H-7945 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent

no.3. Respondents were held jointly and severally liable to pay the compensation.

7. Though, the arguments advanced by the Id. Counsel for the parties in all these appeals are identical, yet the appeals are being taken up and decided individually on the basis of the facts and circumstances of each case, as hereinbelow.

FAO 2058/2016

8. This appeal arises out of claim petition No.216/2013.

9. Ld. Counsel for the appellant Smt. Meena Rani submits that though the appellant had suffered multiple grievous injuries in the accident in question, yet Id. Tribunal has awarded a lumpsum sum of Rs.50,000/- only. It is submitted that the appellant had remained hospitalised for a long period of time and had spent Rs. 2 lacs on her treatment and her treatment is still going on, yet Id. Tribunal has not awarded anything for pain and sufferings, and even under other heads like transportation, special diet etc. nothing has been awarded.

10. Per contra it is submitted by the Id. Counsel for the respondent Insurance Company that date of accident is 14.2.2005 whereas the claim petition has been filed 8 years thereafter, on 6.12.2013. It is submitted that claim petition deserved to be dismissed on this ground alone.

11. Heard Id. Counsel for the parties.

12. Perusal of the impugned Award shows that discussion in respect of appellant Smt. Meena Rani is contained in paras 27 to 29 of the impugned Award wherein it has recorded that in the accident in question the claimant had suffered fracture of right side ribs. Ld.

Tribunal upon examination of the evidence on record found that the appellant had suffered fracture on her person and had remained hospitalised for about 7 days and had spent some amount on medicines. Accordingly Id. Tribunal awarded consolidated amount of Rs.50,000/-. Admittedly, the appellant has not suffered any permanent disability, nor is there anything on record to suggest that appellant has undergone any further treatment after the accident. Moreover, claim petition was filed after an inordinate delay of 8 years. Accordingly, I find no merit in this appeal and the same is hereby **dismissed**.

FAO No. 2144/2016

13. This appeal arises out of claim petition No.217/2013. Ld. Counsel for the appellant submits that in the present case at the time of accident the appellant was 12 years of age, and appellant has suffered 100% permanent disability in the accident in question. Despite that Id. Tribunal has only awarded lumpsum compensation of Rs.10 lacs. It is submitted that the appellant in this case had suffered head injury due to which she had remained hospitalised for many months together. The appellant had produced medical bills, which were duly proven in accordance with law. Claim petition was filed on behalf of the appellant by her parents. Parents of the claimant/appellant deposed that they are unable to go anywhere as they had to look after the appellant as a result of which the business of father of the appellant had suffered tremendous loss. It is further submitted that the appellant has spent more than 15 lacs on her treatment.

14. In response, it is submitted by the Id. Counsel for the Insurance Company that claim petition was filed after a delay of 8 years

as the accident took place on 14.2.2005 and the claim petition was filed on 6.12.2013.

15. No other argument has been advanced by the Id. Counsel for the parties.

16. Heard Id. Counsel for the parties.

17. Perusal of the record of the case shows that undisputed facts are that appellant was 12 years old at the time of accident and is 100% disabled as a result thereof. Evidence of Dr. Ishwar Singh, Senior Professor, Department of Neurosurgery, PGIMS Rohtak, who was also member of the Medical Board constituted to assess the disability of the appellant, is very relevant. According to said witness, appellant was 100% disabled on account of “*dis-pallor bt. Letal eye with nystagmus bilateral with head injury (diffusional injury) with very severe ataxia with diysarthri with 50% intellectual impairment (IQ 60)*”. The disability certificate Ex.PW7/A was proved by Dr. Ishwar Singh.

18. It has further been deposed by PW8 Dr. VK Gupt, VK Neurocare Hospital, Hisar that the appellant was brought to his hospital as a case of head injury in an unconscious condition. Upon investigation/CT Scan etc. it was found that the appellant had suffered diffused xonal injury. The appellant had to undergo follow up treatment also. The appellant was re-admitted on 8.5.2013 and CT Scan of her head showed bilaterally hypo density in bilateral basal ganglia and thalami area. The CT Scan report was Ex.PW8/8. Admittedly, appellant has remained under continuous follow-up treatment. As per deposition of PW8 Dr. VK Gupta, it has been recorded by the Id. Tribunal that “*patient who have*

diffused external injury do not have good outcome, they may remain unconscious all throughout life or became conscious with disabilities”.

19. In my opinion in view of the above admitted facts, lumpsum compensation of Rs.10 lacs as awarded by the Id. Tribunal is grossly inadequate and compensation deserves to be re-assessed in accordance with latest judgment of the Hon’ble Supreme Court in **Kajal v Jagdish Chand and others, Law Finder Doc Id # 1679623**.

20. Admittedly, appellant was a child of 12 years only at time of accident and had her whole life ahead of her. Accordingly, in the present case, in accordance with judgment of Hon’ble Supreme Court in **Civil Appeal No.8510 of 2022 titled as “Sidram Vs. The Divisional Manager, United India Insurance Co. Ltd. & Another”**, Learned Tribunal ought to have granted 40% increase towards future prospects. Relevant part of said judgment is reproduced hereinbelow:-

“It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor-accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases – and admits

such possibility of future prospects, in case of the victim’s death.”

21. Further, reliance is placed on judgment of Hon’ble Supreme Court in **Civil Appeal No.1329 of 2017 titled as “Sandeep Khanuja Vs. Atul Dande & Another** wherein Hon’ble Supreme Court has held as follows:-

“...Though the High Court recognized this, it did not go forward to apply the principle of multiplier. We are of the opinion that in a case like this and having regard to the injuries suffered by the appellant, there is a definite loss of earning capacity and it calls for grant of compensation with the adoption of multiplier method, as held by this Court in *Yadava Kumar v. Divisional Manager, National Insurance Company Limited &Anr.*, 2010(4) RCR (Civil) 155 : 2010(5) Recent Apex Judgments (R.A.J.) 116 : (2010) 10 SCC 341.....”

22. No judgments to the contrary have been cited by Id. Counsel for the respondent-Insurance Company. It is also to be considered that the appellant will require an attendant for the remaining part of her life. Accordingly, in view of the above undisputed factual and legal position, compensation payable to the appellant is reworked as under:-

Sr. No.	Head	Compensation (amount in Rupees)
1.	Notional income	3000/-
2.	40% future prospects	1200/-
3.	Monthly notional income	4200/-
4.	Total loss of income	4200x12x15= 7,56,000/-
5.	Pain and suffering	5,00,000/-
6.	Marriage prospects	2,00,000/-
7.	Medical expenses	2,50,000/-
8.	Attendant charges	2000x12x15= 3,60,000/-
9.	Transporation charges	50,000/-
10.	Loss of amenities of life and enjoyment	1,00,000/-
11.	Total	22,16,000/-

12.	Already granted by the Tribunal	10,00,000/-
13.	Enhancement	12,16,000/-
14.	Interest	@ 7.5% from the date of filing of the claim petition till realisation

23. Accordingly the appeal stands **allowed** in the above terms.

FAO 3496/2016

24. This appeal arises out of claim petition No.215/2013.

25. Ld. Counsel for the appellant Arun Khera submits that the appellant had suffered fracture of both bones of right forearm due to which operation was conducted and plate was inserted in the right forearm in the accident in question, yet ld. Tribunal has awarded a lumpsum sum of Rs.35,000/- only by way of compensation. It is submitted that the appellant had remained hospitalised from 14.2.2005 to 18.2.2005 and had spent Rs. 1 lac on his treatment, yet ld. Tribunal has not awarded anything for pain and sufferings, and even under other heads like transportation, special diet etc.

26. Per contra it is submitted by the ld. Counsel for the respondent Insurance Company that date of accident is 14.2.2005 whereas the claim petition has been filed 8 years thereafter on 6.12.2013. It is submitted that claim petition deserved to be dismissed on this ground alone.

27. Heard ld. Counsel for the parties.

28. Perusal of the impugned Award shows that discussion in respect of appellant is contained in paras 25 and 26 of the impugned Award wherein it has been recorded that in the accident in question the claimant had suffered injuries on his person. Ld. Tribunal upon examination of the evidence on record found that the appellant remained hospitalised for 3 days

and had spent some amount on medicines. Accordingly ld. Tribunal awarded consolidated amount of Rs.35,000/-. Admittedly, the appellant has not suffered any permanent disability, and there is nothing on record to suggest that the appellant has undergone any further treatment after the accident. Moreover, it cannot be denied that the claim petition was filed after an inordinate delay of 8 years. Accordingly, I find no merit in this appeal and the same is hereby **dismissed**.

FAO 3497/2016

29. This appeal arises out of claim petition No.214/2013.

30. Ld. Counsel for the appellant Smt. Sushila Khara submits that though the appellant had suffered grievous and simple injuries in the accident in question, yet ld. Tribunal has awarded a lumpsum sum of Rs.10,000/- only by way of compensation. It is submitted that the appellant had remained admitted in hospital from 14.2.2005 to 15.2.2005 and had spent substantial amount on her treatment, yet ld. Tribunal has not awarded anything for pain and sufferings and even under other heads like transportation, special diet etc.

31. Per contra it is submitted by the ld. Counsel for the respondent Insurance Company that date of accident is 14.2.2005 whereas the claim petition has been filed 8 years thereafter on 6.12.2013. It is submitted that accordingly, claim petition deserved to be dismissed on this ground alone.

32. Heard ld. Counsel for the parties.

33. Perusal of the impugned Award shows that discussion in respect of appellant is contained in paras 23 and 24 of the impugned

Award wherein it has recorded that in the accident in question the claimant had received two injuries on her person. Ld. Tribunal upon examination of the evidence on record found that the appellant had not suffered any permanent disability. Accordingly ld. Tribunal awarded consolidated amount of Rs.10,000/-. Admittedly, appellant did not undergo any further treatment after her recovery from the accident. Moreover, claim petition was filed after an inordinate delay of 8 years. Accordingly, I find no merit in this appeal and the same is hereby **dismissed.**

34. Thus, FAO Nos.2058/2016; 3496/2016, 3497/2016 stand dismissed; while FAO No.2144/2016 stands allowed in the above terms.

35. Application(s), if any stand disposed of.

36. A copy of this order be placed on the file of each appeal.

31.05.2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No