

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.3116 of 2018 (O&M)

Date of Decision: 15.02.2023

Ravinder Kumar

....Appellant

Versus

Virender Pal and others

....Respondents

AND

FAO No.6186 of 2018 (O&M)

Date of Decision: 15.02.2023

Virender Pal and another

....Appellants

Versus

Ravinder Kumar etc.

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Praagbir Singh Dhindsa, Advocate for
Mr. H.S. Dhindsa, Advocate
for the applicants-appellants in FAO No.6186 of 2018 and
for the respondents in FAO No.3116 of 2018.

Mr. K.S. Pawar, Advocate for the appellant
in FAO No.3116 of 2018 and
for the respondents in FAO No.6186 of 2018.

Harsimran Singh Sethi, J. (Oral)

CM No.21610-C of 2018 IN
FAO No.6186 of 2018

The present application has been filed seeking condonation of delay of 65 days in filing the appeal.

Notice of the application was given to the non-applicant on 30.05.2019 but no reply has been filed raising any objections.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. Delay of 65 days in filing the appeal is condoned.

FAO Nos.3116 and 6186 of 2018

By this common order two cross First Appeals which arise out of the same award are being decided.

FAO No.3116 of 2018 has been filed by the claimant-victim for the enhancement of compensation whereas FAO No.6186 of 2018 has been filed by the owner of the offending vehicle for setting aside the award dated 01.12.2017 by which the compensation has been awarded by the Motor Accident Claims Tribunal, Chandigarh.

Certain facts need to be stated herein for the correct appreciation of the facts and evidence, which has come on record so as to adjudicate the prayer of the respective appellants.

On 29.04.2015, an accident took place in which appellant in FAO No.3116 of 2018 Ravinder Kumar suffered injuries and the offending Car bearing No.PB-65S-4511 was being driven by respondents No.2, namely, Ramandeep Kaur Dhoot in a rash and negligent manner. In respect of the said accident, FIR was also registered against the driver of the offending vehicle.

Keeping in view the injuries which were suffered by the appellant Ravinder Kumar, he filed the claim petition before the Motor Accident Claims Tribunal, Chandigarh seeking compensation on the ground that he has sustained injuries due to which, he has suffered 25% permanent functional disability on the right side of his upper and lower limb hence, as he has spent money on the treatment, he may be awarded the compensation as required to be paid to the injured as per the settled principles of law and keeping in view the facts and circumstances of the present case.

Keeping in view the evidence which came on record, the Motor Accident Claims Tribunal while passing award dated 01.12.2017, assessed that as victim was minor in which case, his monthly income was assessed @ ₹2500/- per month and on the basis of said income, he was held entitled for a sum of ₹6,41,583/- after holding the driver of the offending vehicle negligent.

In the present petition, the victim has challenged the award dated 01.12.2017 on the ground that the amount of income has wrongly been assessed which has led to the wrong computation of the compensation and further he was also entitled for enhancement of compensation on certain aspects including the effect of injuries on marriage prospects.

Whereas appellant-Virender Pal in FAO No.6186 of 2018 has challenged the said award on the ground that the same is excessive as per the settled principle of law.

First dealing with the grounds raised in FAO No.6186 of

2018, learned counsel for the appellants Virender Pal and Ramandeep

Kaur dated 01.12.2017 was asked the grounds to challenge the award. Learned counsel submits that while awarding compensation, the victim has also been allowed reimbursement of the medical bills though, the payment of said medical bills was done by the appellants in question, hence, the appellants in question cannot be asked to make the payment for the medical bills twice as by the impugned award, the appellant in FAO No.6186 of 2018 have been held liable for the said payment.

On being asked as to what evidence has come on record that the payment of the said medical bills has been made by the appellants concerned, learned counsel for the appellant has not been able to show any evidence that the payment of the medical bills was made by the owner of the offending vehicle and not by the victim. In the absence of any such evidence on record, the argument being raised by learned counsel for the appellants that they had made the payment of the medical bills hence, they cannot be asked to reimburse the same again to the victim, cannot be accepted.

The assertion of the learned counsel for the appellants that in the DDR it was mentioned that the owner of the offending vehicle has been paying the medical bills but in the absence of any corroborating evidence that the said amount was paid by the appellants to the victim qua the medical treatment, the said argument of the learned counsel for the appellants cannot be accepted being contrary to any facts/evidence which was on record.

No other argument was raised in the appeal i.e. FAO No.6186 of 2018. Keeping in view the above, no ground is made out for any interference by this Court qua appeal No.6186 of 2018.

Now, adverting to FAO No.3116 of 2018, the argument of learned counsel for the appellant-Ravinder Kumar is that his income has not been assessed by the Tribunal in a manner required for and rather the assessment of income @ ₹2500/- per month is contrary to the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.2205-2206 of 2022 titled as **Master Ayush Vs. The Branch Manager, Reliance General Insurance Co. Ltd. and another**, decided on 29.03.2022 wherein in case of victim, who was five years old, his income has been assessed as per the minimum wages Act applicable on the date of the accident. In the case of Master Ayush (supra), the accident took place on 21.09.2010 and the minimum wage of Rs.4868/- was fixed by the State was taken into account for computing the income of the minor.

Learned counsel for the respondents has not been able to dispute the fact that the assessment of the income of the victim in the present case has been done without there being any basis. Nothing has come on record to show as to what parameters have been taken into account by the Tribunal to assess and record a finding that Rs.2500/- be taken as income of the victim. That being so, judgment of **Master Ayush (supra)** will be applicable in the facts and circumstances of the present case.

Learned counsel for the appellants submits that as there is no evidence which has come on record qua the minimum wages fixed by the Government of Haryana in the year 2015, but the appellant will be satisfied in case the minimum wages fixed in Master Ayush's case (supra), wherein accident took place about five years prior to the date of

the accident in the present case and income of the appellant therein was taken as ₹5000/- per month hence, the income of the appellant in the present case also be assessed having income of ₹5000/- per month which will be acceptable to the appellant. Learned counsel for the respondent has not been able to rebut this fact that minimum wages fixed by the appropriate government in the year 2015 was less than Rs.5,000/-.

Keeping in view the facts and circumstances mentioned in the present case, once the appellant himself has agreed that his income be fixed @ ₹5000/- per month, keeping in view the judgment of Hon’ble Supreme Court, the said statement cannot be treated as arbitrary or against the law especially when learned counsel for the respondent has not been able to prove that the same is contrary to any notification issued by the concerned government, hence in the facts and circumstances of the present case, the income of the victim is assessed ₹5,000/- per month.

Learned counsel for the parties agree that keeping in view the increase in the wages of the victim, the compensation for which the appellant/victim Ravinder Kumar will be entitled for is as under:

Sr. No.	Head	Amount
1.	Loss of future earnings due to the permanent disability (5000(income assessed)x12x18 (multiplier)	Rs.10,80,000/-
2.	Medical expenses	Rs.4,46,583/-
3.	Future treatment	Rs.20,000/-
4.	Compensation on account of pain and suffering	Rs.50,000/-
5.	Marriage prospects	Rs.1,00,000/-
	Total	Rs.16,96,583/-

The award dated 01.12.2017 passed by the Motor Accident Claims Tribunal is modified as mentioned hereinbefore and the present appeal is allowed in the above terms. Appellant in FAO No.3116 of 2018 is held entitled for compensation of Rs.16,96,583/- along with interest as duly awarded by the Tribunal in the impugned award.

Photocopy of this order be placed on the file of other connected case.

February 15, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*