

Date of Reserve: 28.02.2024
Date of pronouncement:21.05.2024.

Major Singh and othersRespondents.

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Mr. Neeraj Khanna, Advocate for
Mr. R.N. Singal, Advocate
for respondent United India Insurance Company Limited
(in all cases).

Mr. Ashwani Talwar, Advocate for
respondent-New India Insurance Company (in all cases).

Sukhvinder Kaur, J.

This order shall dispose of **FAO-3379-2002 (Reshma through LRs Vs. Major Singh and others)**, **FAO-3380-2002 (Puran Chand Vs. Major Singh and others)** and **FAO-3383-2002 (Sahil Singla Vs. Major Singh and others)** since these appeals have arisen from the same award dated 13.02.2001 passed by the Motor Accident Claims Tribunal, Panchkula and are pertaining to the same accident.

2. In the present appeal, the parties are referred to as they were described in the claim petition.

3. Instant appeals have been filed by the appellants-claimants for modification of award dated 13.02.2001 passed by the Motor Accident Claims Tribunal, Panchkula, (for short, 'the Tribunal') whereby the claim petitions filed by the appellant-claimants were partly allowed and claimant Reshma Devi was awarded a compensation of Rs.1,62,000/- on account of injuries suffered by her, Claimant Puran Chand was awarded a compensation of Rs.45,000/- and claimant Sahil Singla was awarded a compensation of Rs.1,30,000/- in a motor vehicular accident that took place on 14.02.1998.

4. The brief facts as per the award are that on 14.02.1998, Kamal Kishore Singla, his wife Jaimala, his parents, namely, Puran Chand and Reshma Devi along with two children, namely, Ashish Singla and Sahil

Singla, were travelling in Maruti car bearing registration No.PCE56 and were going from Panchkula to Jalandhar. At about 4.00 p.m., when their car reached in the area of village Singh on Chandigarh-Ropar Highway, it was hit by a truck bearing registration No.CH01-M-9083 which was coming from the opposite side, being driven by respondent No.3 in rash and negligent manner, by going on the wrong side of the road. In the said accident, the aforesaid truck struck against the car of Kamal Kishore Singla and in the said accident, Kamal Kishore Singla and his wife Jaimala died and Reshma Devi, Puran Chand, Ashish Singla and Sahil Singla sustained injuries. On account of the said accident, an FIR No.23/1 dated 14.02.1998 under Sections 279, 337, 304-A and 427 IPC was got registered against the driver of the truck.

5. Claim Petition No.57 dated 30.03.1998/ 07.03.2000, was filed by claimant Reshma Devi wherein she claimed compensation to the tune of Rs.5,00,000/- alongwith costs and interest for the injuries suffered by her. It was pleaded that she suffered a compound fractures on both legs just below knees, composite fracture in right arm between elbow and wrist, hairline fracture on the back shoulder and cut in the lower part of abdomen. The major operation was conducted and steel plates were inserted. She received treatment from PGI, Chandigarh and suffered more than 80% permanent disability.

6. Claim petition No.60 dated 30.03.1998/07.03.2000 was filed by injured Puran Chand claiming compensation to the tune of Rs.5,00,000/- on accounts of the injuries suffered by him in this accident. It was pleaded

that he had suffered fracture in the upper and lower jaw, all the teeth were dislocated, surgery was performed and both the shoulders were freezed. He also sustained internal injuries. There was a cut below right leg and knees.

7. Claim petition No.61 dated 30.03.1998/ 07.03.2000 was filed by claimant Sahil Singla, who claimed compensation to the tune of Rs.10,00,000/- on account of the injuries suffered by him in this accident. It was pleaded that he suffered compound fracture in right leg near right ankle, fracture in the right arm below the elbow. He also suffered serious injuries on his eye ball. He also suffered cut injury on his face, forehead, eyes, nose, cheeks and lips. Major operation was performed regarding the injuries suffered by him. Steel plates and screws were fitted to cure the fractures.

8. Respondents No.1 to 3 contested the claim petitions by taking the plea that deceased Kamal Kishore was driving the Maruti Car without caring for the traffic rules and without blowing any horn and was driving on the wrong side of the road. It was alleged that respondent No.3 was driving his truck on his correct left hand side of the road at a moderate speed very carefully. It was further alleged that Kamal Kishore could not control his vehicle due to rash and negligent driving and caused the accident. It was also alleged that Kamal Kishore was not having any valid licence to drive the car and other material averments made in the petition were also denied.

9. Respondent No.4-New India Assurance Company also contested the claim petitions by taking the plea that no accident has taken place as alleged in the claim petitions. If the accident had happened, it was

due to wrong driving of the maruti car by its driver. A false case had been registered by the police against the truck driver. The usual, legal and preliminary objections were also raised.

10. Respondent No.5-United India Assurance Company, the insurer of car No.PCE-56 pleaded that there was no allegation of rash and negligent driving by deceased Kamal Kishore Singla raised in the petitions. So, respondent No.5 has been illegally, incorrectly and unnecessarily pleaded as a party to the claim petition.

11. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

12. After considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the claim petitions and awarded a sum of Rs.1,62,000/- to claimant Reshma Devi for the injuries sustained by her, claimant Puran Chand was awarded Rs.45,000/- as compensation on account of injuries sustained by him and claimant Sahil Singla was awarded a sum of Rs.1,30,000/- for the injuries suffered by him in the accident in question.

13. Feeling dissatisfied with the award dated 13.02.2001, the appellants-claimants have preferred the instant appeals.

14. I have heard learned counsel for the parties and have also perused the relevant record.

15. During pendency of the appeals before this Court, injured Reshma Devi and injured Puran Chand had expired and now they are being

represented by their legal heirs. The question which now needs to be deliberated is as to whether any amount can be allowed to the legal heirs of the injured persons. Admittedly, injured did not die on account of injuries suffered in the accident but due to some other cause.

16. This question came up for consideration before the Hon'ble Supreme Court in **The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his legal representative Narinder Kahlon Gosakan and another, 2022(13) SCC 494**, wherein it was held that “we are therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to an could be pursued by the legal representatives of the deceased in the appeal. It was further held that the compensation under the head pain and suffering being personal injuries is held to be unsustainable and is disallowed.”

17. The Co-ordinate Bench of this Court also held in **Gulab Singh (deceased) through LRs Vs. Nahar Singh and others**, FAO No.3824 of 2006, decided on 25.05.2017, “on a consideration of the controversy, it is clear that a claim petition would not abate on the death of the claimant insofar as the claim relates to the pecuniary loss caused to the deceased as a result of the motor accident. If there was any loss of the estate of the deceased, cause of action would survive. If the deceased suffered economic loss also and had initiated action prior to his death, the beneficiaries shall be allowed to recover the same from the persons responsible for causing that

loss. Loss of the estate may include loss of earnings of the deceased and loss to the property. On their substitution, the legal representatives shall be permitted to prosecute only that part of the claim of the deceased, which related to the loss to the estate.” It was also held that the disability, if any, was personal to him and that right came to an end subsequent to his death.

18. The counsel for the appellants are unable to dispute the aforesaid legal position in respect of proposition of law that in case of death of injured and claimant during pendency of the claim petition or the appeal arising therefrom, the claim of legal representatives can only be limited to loss of estate.

FAO-3379-2002 in MACT Case No.57

19. Claimant Reshma Devi has produced on record the bills regarding her treatment. It has also come in the evidence that she was operated twice and plaster cast was also applied. She has received treatment for very long period i.e. from 14.02.1998 to 14.12.1999. The Tribunal has awarded a sum of Rs. 55,000/- on account of her treatment, special diet and transportation etc. But the sum awarded on that account seems to be on the lower side, which is increased to Rs.1,00,000/-.

20. Claimant Reshma Devi was also awarded a sum of Rs.35,000/- by the Tribunal on account of pain and suffering. But as observed above, the compensation under head 'pain and suffering; being personal injuries is unsustainable, so compensation under this head cannot be allowed to the legal representatives.

21. Considering the disability certificate Ex.P26, as per which

Reshma Devi suffered permanent disability relating to the whole body to the extent of 60%, she being a homemaker, the services being rendered by her to the family were taken into account by the Tribunal. The loss of said services has been assessed by the Tribunal as Rs.2,000/- per month which again appears to be on the lower side and this loss of services being rendered by her to the family is enhanced to Rs.3,000/-per month. So, the loss of services to the family is assessed as Rs.1800/- ($3,000 \times 60/100$) and thus the annual loss comes to Rs.21,600/-.

22. As per record, the age of Reshma Devi was considered as about 70 years by the Tribunal. So, keeping in view the age of the claimant, the multiplier of '5' is adequate which has been applied by the Tribunal. So, the compensation on account of loss of services is assessed as Rs.1,08,000/-. Thus, the total compensation to be awarded comes to Rs.2,08,000/-.

23. Thus, claimant Reshma Devi will be entitled to compensation of Rs.2,08,000/- along with interest @ 7.5% P.A. from the date of filing of the claim petition till its realization. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well. With such modifications, the appeal i.e. FAO-3379-2002 is partly allowed.

Pending applications, if any, shall also stand disposed of.

FAO-3380-2002 in MACT Case No.60

24. Claimant Puran Chand had suffered injuries on his jaws and had bleeding through the ear and his hearing capacity was impaired. He remained admitted at P.G.I. for 2/3 days and then had go to follow up treatment. He had fracture of mandible at two places and also suffered

injuries recorded by Neuro Surgeon. As per the disability certificate, Puran Chand Ex.P26/A, he suffered disability of right ear to the extent of 55% and 83% of the left ear.

25. The Tribunal has awarded a sum of Rs.10,000/- on account of his treatment, special diet and transportation, which needs to be enhanced to Rs.60,000/-.

26. Claimant Puran Chand has also been awarded a sum of Rs.10,000/- by the Tribunal on account of pain and suffering. But as observed above, the compensation under head 'pain and suffering' being personal injuries is unsustainable, so compensation under this head cannot be allowed to the legal representatives.

27. As per the statement of PW8-Dr. Vijay Garg, the claimant suffered disability i.e. 55% of the right ear and 83% of the left ear. But in his cross-examination, he has also stated that this type of disability cannot be ruled out due to old age and this type of disability will be possible with the weakness of nerves, severe injuries etc. No loss of income has been proved on record due to the disability suffered by Puran Chand. Disability, if any, was personal to him and that right came to an end subsequent to his death. It has been held by the Co-ordinate Bench of this Court in **Gulab Singh's** case (supra) that the disability, if any, was personal to him and that right came to an end subsequent to his death. So, no enhancement is required qua that head.

28. Thus, claimant Puran Chand will be entitled to compensation of Rs.60,000/- along with interest @ 7.5% P.A. from the date of filing of

the claim petition till its realization. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well. With such modification, the appeal i.e. FAO-3380-2002 is partly allowed.

Pending applications, if any, shall also stand disposed of.

FAO-3383-2002 in MACT Case No.61

29. As per record, injured Sahil Singla was about 11 years old at the time of sustaining injuries in the accident in question. As per PW2, Dr. Maharaj Saran Gupta, claimant Sahil Singla was admitted in the emergency of P.G.I on 14.02.1998 with the following injuries:-

1. Fracture talus body right side
2. Fracture medial malleolus right side.
3. Fracture both bones fore arm right.
4. Injury to eye ball right side.
5. Faciomaxillary injury.

30. As per the evidence on record for the injuries No.1 and 2, the patient was operated on 16.02.1998 and for injury No.3, the patient was treated in the form of close reduction and POP application. His treatment/ medical bills have also been produced on record. He remained admitted at P.G.I. and also had to go for follow up treatment. He had to take special diet for his speedy recovery.

31. The Tribunal has awarded Rs.30,000/- as compensation on account of treatment, special diet and transportation, which also appears to be on the lower side. So the compensation qua this head is enhanced to Rs.70,000/-.

32. As per the record, the claimant had suffered multiple fractures and he was just child of 11 years, he had to undergo surgery and POP cast was applied. Certainly he must have remained under lot of pain and suffering. The Tribunal has awarded Rs.25,000/- on account of pain suffering, which again is quite on the lower side and this amount is enhanced to Rs.60,000/-.

33. PW7 Dr. Umesh Modi, has proved the disability certificate of Sahil Singla Ex.P25, as per which, injured suffered 20% disability. PW6 Dr. Aditya Aggarwal has stated that Sahil Singla cannot do any athletic activity. He is not fit to join military or para-military authorities. As he was only 11 years old, so the disability suffered by him has effected his career. He also suffered permanent scars on his face, so his prospects in terms of marriage also suffered. The Tribunal has awarded a sum of Rs.75,000/- as compensation on account of disability which does not appear to be adequate. The Hon'ble Supreme Court in **Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and another, 2013 (4) R.C.R. (Civil) 295**, has held that for awarding of compensation to a child, who suffered permanent disability in the motor accident, the structured formula is not to be followed. It was further held that while considering the claim by a victim child it would be unfair and improper to follow the structured formula as per the second schedule to the Motor Vehicles Act. The main stress in the formula is on pecuniary damages. For children there is no income. The compensation is to be worked out under the non pecuniary heads in addition to the actual amounts

incurred for treatment. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. It has been held that compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent inconvenience or discomfort arising out of the disability.

34. The Hon'ble Apex Court further held that “though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick.”

35. So, keeping in view the ratio of law laid down in **Master Mallikarjun's** case (*supra*), as in the instant case, the disability of Sahil Singla is to the tune of 20%, so the compensation qua the disability is assessed as Rs.3,00,000/-

36. Thus, claimant Sahil Singla will be entitled to total compensation of Rs.4,30,000/- along with interest @ 7.5% P.A. from the date of filing of the claim petition till its realization. The other terms and conditions given in the relief clause shall apply to the enhanced amount as

well. With such modifications in the award, the appeal i.e. FAO-3383-2002 is partly allowed.

Pending applications, if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

21.05.2023
komal

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