



FAO-3472-2006 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-3472-2006 (O&M)

Date of Decision: October 21, 2024

Sanjay

.....Appellant

Vs.

National Insurance Co.

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.Ms. Shamsheer Kaur, Advocate
for respondent-Insurance Co.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 08.03.2006 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') for enhancement of compensation, granted to the claimants/appellant.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 30.08.2003 at about 3:15 P.M, the claimant-appellant Sanjay was going on his motorcycle bearing registration No. HR-40-8135 from Assandh to Bastara Village side. One Mahabir was the pillion rider on the motorcycle. When the claimant reached near Madhuban, a three wheeler bearing registration No. HR-05-A-0539 was going ahead of the motorcycle. The three wheeler stopped abruptly because a buffalo had come in front of the three wheeler. The claimant-appellant applied full brakes of his

**FAO-3472-2006 (O&M)**

motorcycle, even then the motorcycle struck against the three wheeler and fell on the road. The claimant received serious and grievous injuries on various parts of his body. Dharam Pal-driver of the three wheeler took him to Arpana Hospital, Madhuban from where he was referred to the hospital of Dr. Ashok Gupta. DDR No. 6 dated 31.08.2003 was recorded in the police station Madhuban to this effect.

3. Upon notice of the claim petition, respondent appeared and contested the claim petition and denied the factum of the accident.

4. From the pleading of the parties, the Tribunal framed the following issues:-

- 1) Whether the Sanjay received injuries in accident which took place on 30.08.2003 in which motor cycle No. HR-40-8135 of the petitioner was damaged? OPP
- 2) If issue No. 1 is proved whether the petitioner is entitled to compensation of Rs.15 lac or any other amount, if so how much? OPP
- 3) If issue No. 1 is proved whether the petitioner is entitled to compensation of Rs.30,000/- on account of damage caused to his motorcycle No. HR-40-8135 or to any other amount if so how much? OPP
- 4) Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR
- 5) Whether the petition is not maintainable? OPR
- 6) Whether the petitioner has no *locus standi* to file the present petition? OPR
- 7) Whether the driver of the motorcycle was not holding a valid and effective driving licence, if so, its effect? OPR

**FAO-3472-2006 (O&M)**

8) Whether the driver of the motorcycle was driving the motorcycle in violation of the terms and conditions of the insurance policy, if so its effect? OPR

9)Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.70,852/- alongwith interest @ 6% per annum Hence the claimant/appellant filed the present appeal for enhancement of compensation awarded by the Tribunal.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the claimant/appellant contends that the compensation assessed by the learned Tribunal is on the lower side, as the appellant sustained grievous injuries on right foot and ankle. There was fracture of lower leg ankle and heel. He was operated and remained admitted in hospital for a considerable time. Even skin grafting was done. Further the appellant was having 15% disability for one year one month old mal-united fracture of right ankle joint with stiffness of the right ankle joint. This disability certificate (Ex P3) was proved by Dr. Rakesh Girdhar, who appeared as PW3. The appellant was awarded only Rs.5,000/- towards pain and suffering, Rs. 15,000 under Medical Expenses, Rs.12,500/- for loss of income during the period of treatment and Rs. 38,352/- towards future loss due to disability. The appellant was not awarded compensation towards transportation charges, special diet. Thus, the compensation granted for pain and suffering, loss of income to the appellant is on the lower side and deserves to be enhanced.

7. That Section 163-A of Motor Vehicles Act, 1988 is substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and

**FAO-3472-2006 (O&M)**

compensation should be enhanced as per the substituted statutory provision i.e. Section 164 of the Act.

8. That the present case is covered by the judgment rendered by this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others.**” wherein the claim under Section 163-A of the Motor Vehicles Act, 1988 was converted to Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) by relying upon the judgment of Hon’ble *Supreme Court in the case of Ram Murti and others Vs. Punjab State Electricity Board [2022(4) TAC 738]* wherein it was held that Section 164 of the Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) provides for payment of compensation in case of death in the amount of Rs.5 lakhs and in the case of grievous hurt of Rs.2.5 lakhs.

9. Per contra, learned counsel for respondent Insurance Company, however, vehemently argues that the award has rightly been passed and the amount of compensation as assessed by the learned Tribunal has rightly been granted.

10. I have heard learned counsel for the parties and perused the whole record of this case.

11. A perusal of the award indicates that in the present case, the claimant filed the claim petition seeking compensation on account of injuries suffered by him in the accident in question. Since section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and compensation should be enhanced as per the substituted statutory provision i.e. Section 164 of the Act, therefore, the appellant herein is entitled to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 of the Act provides for payment of compensation in the

**FAO-3472-2006 (O&M)**

case of death in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.

12. Further, this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others**” held as under:-

“11. Hon’ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board** [2022(4) TAC 738] held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.

12. This Court in **FAO-195-2006** titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, held that since Motor Vehicle statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions, under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon’ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.”



FAO-3472-2006 (O&M)

RELIEF

13. In view of the above, the claimant/appellant is held entitled to compensation to the tune of Rs.2.5 lakhs. The Tribunal has awarded compensation of Rs.70,852/- to the claimant/appellant, therefore, now the enhanced amount of Rs.1,79,148/- (Rs.2,50,000-70,852/-) be disbursed to the claimant/appellant.

14. So far as the interest part is concerned, as held by Hon'ble Supreme Court in Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma 2019 ACJ 3176 and R.Valli and Others VS. Tamil Nadu State Transport Corporation (2022) 5 Supreme Court Cases 107, the appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

15. The Insurance Company is directed to deposit the awarded enhanced amount alongwith interest with the Tribunal within a period of two months from today. The claimant/appellant is directed to furnish his bank account details to the Insurance Company/Tribunal. The Tribunal is further directed to disburse the enhanced amount of compensation alongwith interest in the bank account of the appellant-claimant.

16. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

October 21, 2024

G Arora

Whether speaking/non-speaking : Yes
Whether reportable : Yes