



In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 17.09.2024

1. FAO No.1107 of 2008(O&M)
Rajesh @ RajuAppellant
Versus
Umesh Kumar and othersRespondents

2. FAO No.1108 of 2008(O&M)
VijayAppellant
Versus
Umesh Kumar and othersRespondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Surinder Gandhi, Advocate for the appellant(s).
Mr. Rajesh Verma, Advocate for respondent No.6/Insurance Company.

RITU TAGORE, J.

1. These are burnt cases.
2. Learned counsel for the parties are *ad idem* to decide the present appeals on the basis of available record such as photocopy of grounds of appeal and photocopy of copy of impugned award dated 13.08.2007 passed by the Motor Accidents claims Tribunal (Fast Track), Bhiwani (in short ‘the Tribunal’), in claim petition No.24 of 2005 and petition No.22 of 2005.



3. These appeals pertain to injury cases. The facts, as detailed in the award, leading to the cause of accident are that, on 30.05.2005, both the injured Vijay and Rajesh @ Raju, along with Vicky, were travelling in a Maruti Car bearing registration No.HR-16CC/1400 and were returning to Bhiwani from village Kosi (U.P), when at about 10:30/11:00 PM, they met with an accident near by-pass road Mor Bahadurgarh. The accident was caused by respondent No.1/driver who was driving the offending vehicle i.e. Truck bearing Registration No.HR-55-9236, in a rash and negligent manner. Three claim petitions were filed by the occupants of the car against the driver, owner and insurance company of the offending truck as well as the owner and driver of the Maruti Car. All petitions were clubbed together.

4. Upon notice, the respondents appeared and filed their respective written statements, pleading that petitions are not maintainable against them. The driver and owner of the offending Truck denied the allegations and further claimed that accident occurred solely due to the negligence of the driver of the Maruti Car. On the contrary, driver of Maruti Car, attributed negligence to respondent No.1/driver of the Truck. The insurance company also alleged negligence on the part of respondent No.3 and collusion between the claimants and respondents No.1 and 2 in filing the petitions. By asking the claimants to prove their entitlement, respondents prayed for dismissal of petitions.

5. On the contest of the pleadings, learned Tribunal framed the issues, as detailed in the award and invited the parties to lead evidence. The parties led evidence. The Tribunal, on assessment of evidence, allowed the



petitions by holding respondent No.1 responsible for causing the accident and made respondents No.1, 2 & 6 jointly and severally liable to pay the compensation. Appellant-injured, Vijay, was awarded compensation of Rs.40,000/- and Rajesh @ Raju was awarded compensation of Rs.18,000/- along with interest @ 7% per annum. Being dis-satisfied with the inadequacy of the awarded amount, claimants preferred the instant appeals.

6. Learned counsel for the claimants submits that, from the evidence discussed in the award, it is explicit that Vijay (PW-3) sustained grievous injuries on his left wrist and was operated upon the right knee. Dr. Anil Sharma (PW-5), Jeevan Jyoti Hospital, Bahadurgarh, who treated the injured Vijay testified and proved the MLR (Ex.PW5/A) stating that claimant Vijay sustained superficial abrasion on left thigh with pain and swelling on left wrist and right knee. He further deposed that the claimant remained hospitalized from 30.05.2005 to 02.06.2005. Dr. R.P. Sharma (PW-6) proved the disability certificate (Ex.PW6/A) assessing 15% disability for the right knee joint only.

7. Learned counsel submits that the assessment of compensation for loss of earning capacity of the claimants on account of physical disability is not in consonance with the settled position of law as declared in Sarla Verma Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121, Kerala SRTC vs. Susamma Thomas, 1994 (2) SCC 176, Sidram Vs. The Divisional Manager, United India Insurance Company Ltd. And another, 2023(1) R.C.R. (Civil) 44 and Raj Kumar Vs. Ajay Kumar and another, 2011 (1) SCC 343, wherein it has been observed that the Court must apply



multiplier method while ascertaining the compensation to be awarded to the victim. It is stated that inadequate compensation has been given under the other heads such as pain and suffering, conveyance, diet charges etc., despite evidence on record indicating that the injured suffered a fracture injury on the knee, resulting in permanent physical disability of the limb.

8. Learned counsel submits that in the case of claimant Rajesh @ Raju, it is evident that the claimant suffered a fracture of mandible and granted only a meager amount under the heads of pain and suffering, conveyance and diet expenses. Learned counsel submits that just and adequate compensation be re-determined to reflect the claimant's true loss.

9. In response, learned counsel for the insurance company could not deny that both claimants had sustained grievous injuries. The injury sustained by claimant Vijay, resulted in 15% physical disability due to a fracture injury to the knee. However, it was urged that the learned Tribunal had granted adequate compensation to both the injured, taking into account the nature of injuries sustained by them and the consequent physical disability sustained by claimant Vijay as well as the potential impact on his earning capacity. Therefore, a prayer is made to dismiss the appeals for lacking merits.

10. I have considered the submissions of learned counsel for the parties in the light of observations made in the award and the evidence discussed therein as well as the law governing the issues involved in the present appeals.

11. From the observations made in the award, it is made out that the



claimant Vijay, sustained a fracture injury to his left wrist and also underwent surgery for an injury to the right knee, as testified by Dr. Anil Sharma (PW-5). The disability certificate (Ex.PW6/A), proved by Dr. R.P. Sharma (PW-6), shows that injured Vijay, suffered 15% permanent physical disability in relation to his right knee joint only. Dr. R.P Sharma, (PW-6) also testified that the disability was specific to a particular limb only and not the whole body.

12. From the award, occupation and income of injured Vijay remain unclear, however, his age is recorded as 20 years, a fact **which** could not be contested by the counsel for the insurance company. Given these circumstances, the injured Vijay is considered to be 20 years old and is treated as a casual labourer.

13. The learned Tribunal granted compensation to the tune of Rs.40,000/- to injured Vijay Kumar, which is detailed as under:-

1.	Conveyance Charges and special diet	Rs.4,000/-
2.	Future loss of earnings, pains and sufferings and future loss of enjoyment of life	Rs.20,000/-
3.	Medical expenses	Rs.16,000/-

14. In Kerala SRTC's case (supra), it has been held that the selection of multiplier is logically sound and legally well established component to assess compensation. The computation of compensation on the basis of aggregating the entire future earnings over a period of life was held as unscientific. The aforesaid observation has been reiterated in



Sidram's case (supra).

15. The grant of compensation in lump sum on account of disability by the learned Tribunal is wholly contrary to the settled principles as enunciated by the judicial precedents. Therefore, the compensation determined by the learned Tribunal needs to be reassessed based on multiplier method. While assessing the compensation for the permanent disability, loss of income would depend upon the effect and impact of such permanent disability on the earning capacity of the victim. In the present case, victim is a labourer and a 15% physical disability has been assessed with respect to the limb only, and not the whole body. Under these circumstances, the loss of income to the claimant can be taken to be 5% of his working capacity.

16. The process of determining compensation is essentially a very difficult task and can never be an exact science. Perfect compensation is hardly possible, particularly in claims of injury and disability. The Motor Vehicles Act, 1988, is a beneficial piece of legislation. The principle essentially followed by the Courts in assessing motor vehicle compensation claims is to grant 'just compensation', **which include all elements that would go to place the victim in as near as a position as he or she was in before the occurrence of the accident.** It is true that no amount of money or other material compensation can renew a physical frame that has been battered in accident, however, some measure by way of restitution in **the** form of monetary compensation can be provided to those who survive or the victims who have to face their lives.



17. The evidence discussed in the award, indicates that claimant Vijay suffered injury on his left wrist and right knee. The injury on right knee, caused the claimant to suffer from permanent physical disability, resulting in inconvenience, frustration and discomfort throughout his life. Additionally, the evidence indicate that claimant was operated upon for his right knee injury. Given the nature of the injuries sustained by claimant Vijay, he may have experienced significant physical pain, mental agony as well as incurred expenses on transportation, diet and attendant during the period of his recuperation. The compensation granted by the learned Tribunal does not align with the concept of just and adequate compensation, and therefore, needs to be reassessed. In the year 2005, the minimum wages in the State of Haryana for a casual labourer were Rs.2343/-. Therefore, the income of the injured is taken as Rs.2300/- per month. Considering his age, the future prospects are added @ 40% in view of judgments in 'National Insurance Company Limited vs. Pranay Sethi and others' (2017) 16 SCC 680 and Sidram's case (supra). After adding future prospects @ 40%, the income comes to Rs.3220/- p.m [Rs.2300/- + Rs.920/- (future prospects)]. Keeping in view the age of the deceased as 20 years at the time of accident, the appropriate multiplier would be 18. In this way, total loss of income would arrive at Rs.34,776/- (Rs.3220/- x 18x12 x 5%). The learned Tribunal granted lump sum amount of Rs.20,000/- towards pain and sufferings, future loss of enjoyment of life and disability. Given the nature of the injuries sustained by the claimant Vijay, this Court is of the view that another Rs.5000/- needs to be given under the head of pain and sufferings.



The learned Tribunal granted a lump sum amount of Rs.4,000/- towards conveyance charges and special diet. Considering the nature of the injuries, this Court is of the view that another amount of Rs.2000/- needs to be added under the head of special diet. The compensation granted under the head of medical expenses requires no interference, as this matter has not even been raised by the learned counsel for the claimant.

The total compensation re-assessed by this Court in the case of Vijay (FAO No.1108 of 2008) is detailed as under:-

1.	Conveyance Charges and special diet	Rs.6,000/-
2.	Future loss of earnings, pains and sufferings and future loss of enjoyment of life	Rs.39,776/- (Rs.34776/- + Rs.5000/-)
3.	Medical expenses	<u>Rs.16,000/-</u>
	Total:	<u>Rs.61,776/-</u>

The increased compensation is Rs.21,776/- (Rs.61,776/- - Rs.40,000/-).

18. Regarding the case of another injured Rajesh @ Raju, evidence discussed by the learned Tribunal, indicates that claimant Rajesh @ Raju suffered an injury on left mandible. Dr. Ashwani Sharma (PW-4) had proved the MLR (Ex.PW4/B) of the injured Rajesh @ Raju, showing a fracture on alveolar and he spent about Rs.9,000/- on his medical treatment. The learned Tribunal granted Rs.4,000/- on special diet and conveyance charges and Rs.5,000/- for pain and sufferings and Rs.9,000/- for the medical expenses. Considering the fracture injury sustained by the claimant



on his jaw, this Court finds that lump sum compensation awarded for conveyance and special diet is insufficient. The claimant must have followed a special and liquid diet for at least two months until the alveolar fracture was healed. Accordingly, the above amount for diet and conveyance is enhanced to Rs.6000/-. Additionally, the grant of Rs.5,000/- for pain and suffering is considered inadequate and is enhanced to Rs.8,000/-. Given the nature of injuries, the claimant likely did not require the services of an attendant, so no compensation is awarded under the said head. The compensation granted under the head of medical expenses requires no interference, as this issue was not contested by claimant’s counsel. The total compensation assessed by this Court in case of Rajesh @ Raju (FAO No.1107 of 2008) is detailed as under:-

1.	Medical expenses	Rs.9000/-
2.	Conveyance Charges and special diet	Rs.6,000/-
3.	Future loss of earnings, pains and sufferings and future loss of enjoyment of life	Rs.8,000/-
Total:		<u>Rs.23,000/-</u>

The increased compensation is Rs.5,000/- (Rs.23,000/- - Rs.18,000/-).

19. The **respondent No.6-insurance company**, is hereby directed to pay the claimants-appellants the increased amount of compensation awarded hereinabove, over and above, the amount awarded by the Tribunal, with interest at the rate of 6% per annum from the date of filing of the claim petitions till its realization, and amount assessed above be deposited within a



period of two months from the date of receipt of certified copy of this judgment, with the Tribunal. The remaining conditions of disbursal of the amount as given by the Tribunal shall remain unaltered. Needless to mention that the amount, if any, already deposited by the insurance company shall be adjusted.

- 20. No other point was addressed or raised.
- 21. Both the appeals stand partly allowed in the aforesaid terms. No order as to costs.
- 22. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

SEPTEMBER 17, 2024
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(RITU TAGORE)
JUDGE

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