



FAO Nos.3163 of 2013 & 5254 of 2012

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. **FAO-3163-2013 (O&M)**
Date of decision : 14.05.2024

Davinder Kumar ... Appellant(s)
Versus
Harvinder Pal Kaur & Ors. ... Respondent(s)

2. **FAO-5254-2012 (O&M)**

Harvinder Pal Kaur ... Appellant(s)
Versus
Gurmail Singh & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Talwar, Advocate
for the appellant in FAO-3163-2013 and
for respondent No.2 in FAO-5254-2012.

Ms. Ekta Thakur, Advocate
for the appellant in FAO-5254-2012 and
for respondent No.1 in FAO-3163-2013.

Mr. D.R. Bansal, Advocate and
Mr. Rahul Pathania, Advocate
for respondent No.3 in both the appeals.

ALKA SARIN, J. (ORAL)

1. The present order shall dispose off both the above-captioned



appeals - one being **FAO-3163-2013** filed by the owner of the offending vehicle challenging the award dated 16.07.2012 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as ‘Tribunal’) and second being **FAO-5254-2012** filed by the injured claimant-appellant for enhancement of compensation.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Amount towards salary and medical leave	Rs.2,68,473/-
2	In respect of permanent disability	Rs.44,000/-
3	Loss of amenities	Rs.50,000/-
4	Pain and Suffering	Rs.37,500/-
5	Special diet	Rs.6,000/-
6	Total Compensation	Rs.4,05,973/-
	Interest	6% per annum

4. Learned counsel for the injured claimant-appellant would contend that the disability suffered by the claimant-appellant is to the extent of 22% in relation to her whole body as per the Medical Disability Certificate (Ex.P9) which has been proved on record by PW2 Dr. Rajender Kumar Kanojia, Associate Professor, PGI Chandigarh and that the



compensation awarded by the Tribunal is on the lower side inasmuch as the Tribunal ought to have applied a multiplier method since the working capability of the claimant-appellant has been affected after the accident. It is further the contention of the learned counsel that even amounts awarded under the head pain and suffering, loss of amenities and special diet are also on the lower side.

5. Learned counsel for the owner of the offending vehicle (appellant in appellant in FAO-3163-2013 and respondent No.2 in FAO-5254-2012) would contend that the finding of the Tribunal that the driver of the offending vehicle was not holding a valid driving licence to drive the offending vehicle (Mahindra Jeep) at the time of the accident is erroneous inasmuch as the driving licence of the driver of the offending vehicle was proved on record by RW1 Vinay Puri, Criminal Ahlmad in the Court of CJM, Chandigarh who brought the record of the criminal file and testified that the driver was authorized to drive a car/jeep. It is further the contention of the learned counsel that the finding of the Tribunal that the driver was not competent to drive a transport vehicle is also erroneous inasmuch as there is nothing on the record to prove that the offending vehicle in question was a transport vehicle.

6. *Per contra*, the learned counsel for the respondent-Insurance Company would contend that the disability of the injured claimant-appellant cannot be taken as functional disability and that sufficient amount has already been awarded as compensation in the present case and that there is



no scope of any enhancement. The learned counsel would further contend that the finding of the Tribunal on issue No.3 is correct and the Tribunal has rightly granted recovery rights to the Insurance Company.

7. I have heard the learned counsel for the parties.

8. In the present case the claimant-appellant was working as a Staff Nurse in GMCH, Sector 16 Chandigarh. She was drawing a salary of Rs.25,000/- per month. The counsel for the claimant-appellant made a statement and conceded at the bar before the Tribunal that the medical bills relating to her treatment had been reimbursed by her Department. It was also admitted by the claimant-appellant herself in her cross-examination that the bills had been reimbursed. In the accident which took place on 11.06.2009 the claimant-appellant suffered multiple fractures and injuries on vital organs of her body including the perineal injury, fractures of right humerus, fracture on left BBF.A and fracture on both bones of left leg, rupture of bladder. Due to her serious condition, she was taken to GMCH, Sector 16, Chandigarh and from there she was referred to PGI where she remained admitted from 10.03.2010 to 19.03.2010. She underwent seven major operations and at the time of filing of the claim petition, she was stated to be still attending the OPD. It was further stated by her that chances of her promotion had adversely been affected. The copies of the discharge and follow-up cards revealed that the claimant-appellant remained admitted in PGIMER from 11.06.2009 to 07.08.2009 and yet again on 10.03.2010 to 19.03.2010. She remained on leave till 08.04.2010. As per the statement of



PW2 Rajender Kanojia, she required an attendant for her care in day-to-day activities during the period of treatment. It has also come on the record that the claimant-appellant had suffered 22% bodily disability. The Tribunal, keeping in view the disability suffered by the claimant-appellant and the fact that her duty as a Nurse required mobility, ought to have applied a multiplier method. Keeping in view the age of the claimant-appellant i.e. 32 years, multiplier of ‘16’ would be applicable. Further, keeping in view the fact that the claimant-appellant underwent seven major surgeries and remained admitted in hospital for a long period of time, the amounts awarded under the heads pain and suffering and loss of amenities and special diet are also on the lower side, the same are enhanced to Rs.1,50,000/- under the head pain and suffering, Rs.1,50,000/- towards loss of amenities and Rs.20,000/- for special diet. The attendant charges have already been awarded by the Tribunal and the same are maintained. The claimant-appellant would not be entitled to any amount under medical expenses since the same have already been reimbursed by her Department. The amounts awarded towards salary and medical leave are maintained. Accordingly, the reworked out compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income	Rs.3,00,000/-
2	Annual Income in respect of 22% permanent disability	Rs.66,000/-
3	Loss of income after applying multiplier ‘16’	[Rs.66,000x16]=Rs.10,56,000/-
4	Amount towards salary and	Rs.2,68,473/-



	medical leave	
5	Pain and suffering	Rs.1,50,000/-
6	Attendant Charges	Rs.35,000/-
7	Loss of amenities	Rs.1,50,000/-
8	Special Diet	Rs.20,000/-
	Total Compensation	Rs.16,79,473/-

9. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the claim petition till the realization of the entire amount.

10. So far as the contentions of the learned counsel for the owner of the offending vehicle (appellant in appellant in FAO-3163-2013 and respondent No.2 in FAO-5254-2012) are concerned, RW1 Vinay Puri, Criminal Ahlmad in the Court of CJM, Chandigarh testified that the driver of the offending vehicle was holding a valid driving licence and was authorised to drive a car/jeep. As per Section 2(47) of the Motor Vehicles Act, 1988, transport vehicle means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle and as per the Registration Certificate (Ex.R1) there is nothing to prove that the offending vehicle was a transport vehicle. Hence, the driver was holding a valid driving licence and was duly authorized to drive the offending vehicle (Mahindra Jeep). Thus, the finding of the Tribunal on issue No.3 is erroneous and the same is set aside and the respondent-Insurance Company is liable to indemnify the claim of the injured claimant-appellant.

11. In view of the above discussion, the impugned award passed by



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the Tribunal is modified and to that extent both the appeals stand allowed.
The amount of compensation is enhanced as detailed above and the Insurance Company is held liable to pay the amount of compensation to the claimant. Pending applications, if any, also stand disposed off.

14.05.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO