2025:PHHC:076929

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3745-2018 (O&M)
Reserved on : 26.05.2025
Pronounced on : 01.07.2025

HARPREET SINGH .... Appellant

VERSUS

ORIENTAL INSURANCE CO. LTD. AND ANR .... Respondents

AND

FAO-1431-2018 (O&M)
XOBJC-135-CII-2018

ORIENTAL INSURANCE CO. LTD. …. Appellant

VERSUS

TANVIR SINGH AND ORS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Kumar Sharma, Advocate
for the appellant in FAO-3745-2018
for respondent No.3 in FAO-1431-2018.

Mr. Amit Jaswal, Advocate
for respondent No.1 in FAO-3745-2018
for the appellant in FAO-1431-2018.

Mr. Ashwani Arora, Advocate and
Mr. Vipul Sharma, Advocate
for respondent No.2 in FAO-3745-2018
for respondent No.1 in FAO-1431-2018 and
for the cross-objector in XOBJC-135-CII-2018.

Service of respondent No.2 dispensed with
vide order dated 29.09.2022 in FAO-1431-2018.

ALKA SARIN, J.

CM-13111-CII-2018 in FAO-3745-2018

1. This is an application for condonation of delay of 70 days in filing the main appeal being FAO-3745-2018.

2. For the reasons stated in the application, the same is allowed and the delay of 70 days in filing the main appeal being FAO-3745-2018 is condoned.

FAO-3745-2018, FAO-1431-2018 and XOBJC-135-CII-2018

3. The present order shall dispose off the above noted two appeals being FAO-3745-2018 preferred by the owner of the offending vehicle and FAO-1431-2018 preferred by the Oriental Insurance Company Limited and the cross-objections therein being XOBJC-135-CII-2018 preferred by the claimant aggrieved by the award dated 20.12.2017 passed by the Motor Accident Claims Tribunal, SAS Nagar Mohali (hereinafter referred to as the 'Tribunal'). The parties are being referred to as the owner, the driver, the claimant and the insurance company for the sake of clarity.

4. The present appeals and the cross objections have arisen out of the impugned award dated 20.12.2017 passed by the Tribunal. The case, as set up by the claimant, was that on 23.10.2015 the claimant was going to Chunni for his work on his motorcycle bearing registration No.PB-65-G-3372 at a slow speed and on the correct side of the road. At about 9 am when he reached near National Public School, Kurali, a truck bearing registration No.HR-63-A-0852 (offending vehicle) came from the opposite side, which was being driven by the driver at a high speed and in a rash and negligent

manner. When the driver of the offending vehicle tried to overtake a vehicle, it came on the wrong side and struck against the motorcycle of the claimant from the front. Due to the impact, the claimant fell on the ground and suffered multiple and grievous injuries. He was taken to Civil Hospital, Kurali from where he was shifted to PGIMER, Chandigarh where his right leg, above the knee, was amputated.

5. On notice, only the insurance company appeared and contested the claim petition whereas the driver and the owner opted not to contest the claim petition and were proceeded against *ex parte*. Preliminary objections were raised by the insurance company qua maintainability, cause of action and that the driver was not holding an effective and valid driving licence.

6. From the pleadings of the parties, the following issues were framed :

> 1. Whether the petitioner suffered serious injuries in the motor vehicle accident dated 23.10.2015 on account of rash and negligent driving of vehicle No.HR-63-A-0852 by the respondent No.1 Ajaib Singh ? OPP
>
> 2. Whether the petitioner is entitled to compensation on account of injuries suffered by him, if so, to what amount and from whom ? OPP
>
> 3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident ? OPR-3

4. Whether the respondent No.2 has violated the terms and conditions of the insurance policy, if so, to what effect ? OPR-3

5. Whether the claim petition is not maintainable ? OPR

6. Relief.

7. The Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1.	Expenditure of ailment (Medical expenses)	₹2,30,000
2.	Pain and sufferings	₹20,000/-
3.	Special diet and attendant charges	₹20,000
4.	Transportation charges	₹20,000
5.	Income loss due to disability	₹8,07,840
6.	Future prospectus	₹3,23,136
	Total Compensation	**₹14,20,976**
	Interest	**@ 6.00% per annum in case the amount was paid within two months failing which interest @ 9.00% per annum**.

The insurance company was granted recovery rights against the driver and the owner. Aggrieved by the same, FAO-3745-2018 has been preferred by the owner and FAO-1431-2018 has been preferred by the insurance company and the cross-objections therein being XOBJC-135-CII-2018 have been preferred by the claimant.

8. The learned counsel appearing on behalf of the owner, who has preferred FAO-3745-2018, has submitted that along with the appeal an

application for additional evidence has been filed wherein the driving licence as well as the fitness certificate has been appended. Learned counsel for the owner has submitted that the owner was not aware of the proceedings as he resides in Mumbai and that the driver of the offending vehicle had also expired and therefore, they were not aware of the proceedings before the Tribunal.

9. During the pendency of the appeal the learned counsel for the insurance company has verified the documents and has stated that the documents are all in order.

10. Keeping in view the fact that all the documents have since been verified by the insurance company, as stated by the learned counsel for the insurance company, the appeal being FAO-3745-2018 along with the application for additional evidence are allowed. The finding qua the recovery rights given to the insurance company is accordingly set aside. Other pending applications, if any, also stand disposed off.

FAO-1431-2018 and XOBJC-135-CII-2018

11. The present appeal has been preferred by the insurance company aggrieved by the quantum of compensation awarded to the claimant as also the directions given by the Tribunal in granting enhanced rate of interest @ 9.00% if the amount was not deposited within a period of two months.

12. Learned counsel for the insurance company contended that the income, as assessed by the Tribunal, is on the higher side as the monthly income of an unskilled person, as per the minimum wages, would have to be

taken as income for a period of 26 days and not 30 days. It was further the contention of the learned counsel that the enhanced rate of interest @9.00% in case the amount was not deposited is wholly unwarranted. Learned counsel for the insurance company had also contended that the amount being sought by the claimant in his cross-objections is unjustified and that the application for additional evidence, adducing a bill dated 22.10.2018, is only an afterthought and the said document is not trustworthy. It was further contended that the amount claimed towards the prosthetic limb cannot be granted as only a photostat copy of the quotation was produced before the Tribunal. Learned counsel had further contended that the disability of the claimant has rightly been assessed by the Tribunal. Reliance has been placed on the law laid down in the case of **Navjot Singh Vs. Harpreet Singh [2020 (3) RCR Civil 216]** where the disability had been assessed as 40% in case of amputation of leg.

13. *Per contra*, the learned counsel for the claimant has contended that the amount awarded by the Tribunal is on the lower side inasmuch as the disability had been treated as 50%, which was 80% as per the disability certificate. Learned counsel has further contended that the claimant had undergone amputation of his right leg above the knee and had also undergone five operations and one procedure. It was further the contention that the claimant was working in Aditya Birla and his joining letter had been produced on the record as Ex.P-133, which showed that his income was ₹15,164. The learned counsel has further contended that no amount had been awarded towards future medical expenditure, including the cost of a

prosthetic leg. Learned counsel has further contended that the prosthetics also need to be changed and hence future medical expenses also ought to have been granted. It was further contended that the amounts awarded under the heads transportation, pain and suffering, loss of amenities, special diet and attendant charges are also on the lower side.

14. I have heard the learned counsel and with their assistance have also perused the record of the Tribunal.

15. In the present case the claimant had suffered amputation of his right leg above his knee. The doctor, while appearing in the witness box as PW3, stated that the claimant underwent surgeries on 23.10.2015, 26.10.2015, 30.10.2015 and again on 13.11.2015. The discharge summary, which is placed on the record, as issued by the Post Graduate Institute of Medical Education and Research Chandigarh (PGIMER), also reveals that the claimant underwent surgeries on 23.10.2015, 26.10.2015, 30.10.2015 and 13.11.2015 and another procedure on 30.04.2016. Besides the injury to the right leg leading to amputation above the knee, the claimant also suffered a liver injury.

16. The learned counsel for the insurance company has contended, as also reiterated in the written synopsis which had been handed over to the Court, that the income of the claimant had been assessed by the Tribunal by multiplying the daily income of an unskilled person i.e. ₹263.95 per day multiplying it by 30 instead of 26 as daily wages are to be multiplied by 26 keeping in view the permissible working days. It had further been stated in the written synopsis that the Tribunal had rightly taken the functional

disability of the claimant to be 50% relying on a judgment of the Hon'ble Supreme Court in the case of **Raj Kumar Vs. Ajay Kumar & Anr. [(2011) 1 SCC 343]** and had further relied upon the case of **Navjot Singh Vs. Harpreet Singh & Ors. [2020 (3) RCR Civil 216]** to contend that in the case of a student, who had suffered amputation of his right leg, the Hon'ble Supreme Court had assessed the functional disability to be 40%. It was further the contention that the claimant had only produced a photocopy of the quotation qua the prosthetic and that the bill now appended with application being CM-9666-CII-2025 is only an afterthought.

17. Dealing with the submission made by the learned counsel for the insurance company qua the calculation of the minimum wages, minimum wage in motor accident claim cases is only a benchmark for calculating the notional income of the deceased or the injured person. It is used as a yardstick for granting/calculating the compensation in the absence of any evidence qua the income. It is not that the Courts are calculating the income strictly as per the minimum wages, which are to be assessed in the motor accident claim cases. When minimum wages are being used as a yardstick, the question of multiplying the daily income by 30 or 26 would not even arise. The Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram & Anr. Vs. Mukesh Kumar Yadav & Ors. [2021(4) RCR (Civil) 492]** has held that while assessing the income, in the absence of any evidence, some amount of guesswork would also be necessary. It has been held as under :

"10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. <u>In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality</u>. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has

deposed that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., (2013) 10 SCC 695 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/-. As an amount of Rs.10,99,700/- is already paid towards the loss of *dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/-. Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors., 2018 SCC OnLine SC 1546 = (2018) 18 SCC 130 the appellants are also entitled for parental consortium of Rs.40,000/-each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited, (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record."*

Therefore, when the minimum wage itself is only a yardstick, the argument of the learned counsel for the insurance company that the daily wage, as stated in the minimum wages, is to be multiplied by 26 is wholly misplaced and hence stands rejected.

18. The learned counsel for the claimant has contended that the income of the claimant ought to have been assessed as ₹15,000 per month keeping in view the joining letter submitted by him. In the present case, though letter (Ex.P-133) was tendered in evidence by the claimant, however,

none stepped into the witness box from the concerned company to prove the said letter. In the absence of any evidence and in the absence of any person having stepped into the witness box to prove the said letter, the same cannot be considered. However, the claimant has placed on record his marksheet (Ex.P-131) for BA General 3rd year from Panjab University as well as his certification of having completed Jet King Certified Hardware and Networking Professional along with his marksheet, which clearly reveals that the claimant is an educated person and a highly qualified one. No evidence was led to the contrary by the insurance company and in the absence of any evidence to the contrary, this Court deems it appropriate to assess the income of the claimant as that of a highly skilled person at the relevant time. In October 2015 the income of a highly skilled person was ₹9,644. This Court, accordingly, deems it appropriate to assess the income of the claimant as ₹9,644 per month. The Tribunal had assessed the functional disability @ 50% to which neither the claimant has laid any challenge nor the insurance company inasmuch as in the written synopsis it has categorically been stated that the Tribunal had rightly taken the functional disability to be 50%. The same is accordingly maintained.

19. So far as the prosthetic limb is concerned, the argument of the learned counsel for the insurance company that the bill now appended as additional evidence is an afterthought cannot be accepted. It is an admitted fact that the claimant had undergone an amputation of his right leg above the knee and would require a prosthetic leg. The bill qua the prosthetic leg, which has been appended with the application for additional evidence,

reveals that the prosthetic leg costs ₹6,65,700. There is no reason to doubt the bill especially in the absence of any evidence to the contrary. Taking a cue from the judgment in the case of **Reliance General Insurance Co. Ltd. Vs. Rohit Kumar & Ors. [2017 (7) AD (Delhi) 602]**, wherein an amount of Rs.7,00,000/- was awarded towards cost of the artificial limb in the year 2017, this Court deems it appropriate to award an amount of Rs.10,00,000/- towards costs of the artificial limb and future maintenance of the said artificial limb. The Tribunal had awarded an amount of ₹20,000 under the head transportation, which is on the lower side, and the same is accordingly increased to ₹50,000. The claimant underwent five surgeries and one procedure, as detailed above, and hence this Court deems it appropriate to enhance the amount under the head pain and suffering to ₹3,00,000. No amount has been awarded under the head loss of amenities. Keeping in view the nature of disability, this Court deems it appropriate to award an amount of ₹5,00,000 under this head. Since there is no challenge to the multiplier of '17' and addition @ 40% as made by the Tribunal, the same are maintained.

20. Vide the impugned award, a consolidated amount of ₹20,000 had been awarded towards special diet and attendant charges. As noticed above, the claimant was admitted in hospital on 23.10.2015 and thereafter he underwent surgeries on 23.10.2015, 26.10.2015, 30.10.2015 and again on 13.11.2015 and another procedure on 30.04.2016. Thus, keeping in view the injuries of the claimant, he must have required an attendant during his treatment/hospitalization. Accordingly, this Court deems it appropriate to grant him attendant charges for a period of 6 months. The minimum wages

of an unskilled worker prevailing at the time of the accident i.e. in the year 2015 were ₹6,935 per month and thus, the claimant is held entitled for a sum of ₹41,610 (₹6,935 x 6) towards attendant charges.

21. Accordingly, the reworked compensation to which the claimant is held entitled to, is as under :

Sr. No.	Heads	Compensation Awarded
1.	Monthly income	₹9,644
2.	Annual Income	[₹9,644 x 12] = ₹1,15,728
3.	Future prospects @40%	[₹1,15,728 + ₹46,292] = ₹162,020
4.	Multiplier '17'	[₹162,020 x 17] = ₹27,54,340
5.	Loss of income on account of 50% functional disability	[₹27,54,340 - ₹13,77,170] = ₹13,77,170
6.	Pain and suffering	₹3,00,000
7.	Loss of amenities of life	₹5,00,000
8.	Transportation	₹50,000
9.	Attendant charges	₹41,610
10.	Prosthetic limb	₹10,00,000
Total compensation		**₹32,68,780**

22. The condition of imposing enhanced interest @ 9.00% by the Tribunal in case of failure to pay the amount is set aside. The enhanced amount shall also carry an interest @ 7.5% from the date of filing of the claim petition till its realization.

23. In view of the decision by the Hon'ble Supreme Court in **Parminder Singh Vs. Honey Goyal & Ors. [2025 INSC 361], Civil Appeal No.4299 of 2025 arising out of SLP (C) No.4484 of 2020 decided on 18.03.2025]**, after calculation of the enhanced amount, the same be transferred by the insurance company in the bank account of the claimant within a period of six weeks from today. The particulars of the bank account

along with the requisite documents in support thereof shall be furnished by the claimant to the insurance company within a period of two weeks from today and needful shall be done by the insurance company after verification thereof within a period of four weeks thereafter along with up-to-date interest. The compliance shall be reported by the Bank to the Tribunal concerned.

24. In view of the above, the present appeal being FAO-1431-2018 and the cross-objections being XOBJC-135-CII-2018 are disposed off and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

01.07.2025 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No