

**(2014) 07 P&H CK 0764**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** F.A.O. No. 2677 of 2004

Nirmal Singh

APPELLANT

Vs

Karnail Singh

RESPONDENT

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**Date of Decision:** July 14, 2014

**Hon'ble Judges:** Fateh Deep Singh, J

**Bench:** Single Bench

**Advocate:** Sagar Aggarwal, Advocate for the Appellant; Tanmoy Gupta, Advocate for Suman Jain, Advocate for the Respondent

**Final Decision:** Allowed

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**Judgement**

Fateh Deep Singh, J.

Appellant claimant Nirmal Singh has sought enhancement of the compensation so awarded vide award dated 7.4.2004 passed by learned Motor Accident Claims Tribunal, Karnal for the injuries sustained by him in a motor vehicular accident that took place on 18.10.1999 while claimant was standing near his Tata Sumo in the area of village Sarifgarh when offending truck bearing registration No. HNE-3845 which was being driven rashly and negligently by Karnail Singh struck against the claimant and his Tata Sumo resulting in injuries and consequently fracture of both bones of the left fore arm.

2. After hearing at length Mr. Sagar Aggarwal, Advocate, for the appellant and Mr. Tanmoy Gupta, Advocate for Sh. Suman Jain, Advocate for Insurance Company and perusing the records of the remnants as the original stood destroyed in the fire that engulfed the record room. Since the driver has not contested the proceedings inspite of notice having been issued and the learned Tribunal has returned the finding as to the mode of the accident in favour of the claimant and which has not been assailed by any of the respondents.

3. Counsel for the two contesting sides have hotly debated over the quantum of compensation so awarded by the Tribunal and Mr. Aggarwal had sought to highlight

the same ought to be enhanced which has been stoutly opposed by Mr. Gupta. Admittedly, the claimant though claims to be driver in a private vehicle but has not proved documentarily his avocation as well as his earning which he claims to be around Rs. 4000/- per month and even otherwise it has been conceded by the two sides that at the most the claimant can be considered as a daily wager and keeping in view the rates of daily wages at the time of this accident, it would be reasonable to hold that in all likelihood the claimant must be earning Rs. 3500/- per month. Though there is no tangible evidence of the likely hospitalisation of the claimant and the period within which the fracture has healed, the testimony of PW1 Dr. K.L. Sachdeva who claims to have treated the claimant and proved on record receipt/medical bills Ex. P1, Ex. P6 to Ex. P14 and Ex. P21 to bring home the likely expenses incurred by him for his treatment. Mr. Aggarwal, counsel for the appellant has admitted that the claimant has not suffered any permanent disability. Assuming with some approximation and hypothetical calculations, keeping in view the object of the Act which is more welfare in nature that in all likelihood, keeping in view the age of the claimant, who claimed to be 28 years, the injuries must have been healed and so the fracture within a period of approximately four months and certainly during that period, he would not have been able to undergo his avocation/employment. Applying well settled principles of law laid down in [R.D. Hattangadi Vs. M/s. Pest Control \(India\) Pvt. Ltd. and Others](#), the claimant is certainly entitled to following compensation which the learned Tribunal had failed to consider and have granted compensation merely on surmises and conjectures:-

(a) Pecuniary compensation:-

(b) Non Pecuniary compensation:-

4. The findings of the Tribunal qua the legality and validity of the driving licence of the driver has neither been assailed and there is categorical finding recorded by the Tribunal that by virtue of reports of the Licencing Authority Ex. R3, R4 and R6, the driving licence Ex. R1 was found to have never been issued by the concerned quarter. Since the insurer has been able to prove that the driver at the time of accident was not having valid, legal and effective driving licence and in view of the law laid down in New India Assurance Company Limited versus Kamla and others, 2001 (1) PLR 830 (SC) and [National Insurance Co. Ltd. Vs. Swaran Singh and Others](#), and the fact that at the time of the accident offending vehicle was insured by virtue of insurance policy Ex. R/2 and therefore, Karnail Singh driver, Baldev Raj owner along with insurer-New India Assurance Company Limited are jointly and severally liable to pay the compensation. However, in view of the categorical findings as to the validity of the driving licence, the insurer reserves the right to recover this amount from the owner and the driver jointly and severally. Rest of the stipulations of the Tribunal will remain the same including the rate of interest. Interim compensation, if any, paid shall be adjusted.

5. In view of the foregoing findings, the amount awarded is modified thereby accepting the appeal to that extent.