

**Jai Kumar Vs. Kuldeep Singh and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/950897](http://sooperkanoon.com/950897)

**Court :** Punjab and Haryana

**Decided On :** Nov-01-2011

**Reported in :** 2012(1)RCR(Civil)693

**Judge :** Vijender Singh Malik

**Appeal No. :** F.A.O.No.5765 of 2010

**Appellant :** Jai Kumar

**Respondent :** Kuldeep Singh and Others

**Advocate for Def. :** Mr. Ravinder Arora

**Advocate for Pet/Ap. :** Mr. Johan Kumar

**Judgement :**

**Vijender Singh Malik, J.**

These appeals having arisen out of a common award dated 6.11.2009 passed by the Motor Accidents Claims Tribunal, (Fast Track Court), Karnal (for short, "the Tribunal") have been heard together and are being disposed of by this common judgment.

2. In a road side accident that took place on 21.5.2008, claimants Jai Kumar and Dinesh suffered injuries and they brought their respective claim petitions under the provisions of section 166 of Motor Vehicles Act, 1988 (for short, 'the Act') seeking

compensation for their injuries suffered in the aforesaid accident. Their claim has been as under :-

3. On 21.5.2008, Jai Kumar along with Dinesh, his cousin, was travelling on motorcycle bearing registration No. HR-06P-2886. When they were 2 Kms. ahead of Assandh, a trailer bearing registration No. HR-39A-4647 driven by Kuldeep Singh came at a very high speed from the side of Salwan and had hit the motorcycle. Jai Kumar was driving his motorcycle at a moderate speed and was observing all the traffic rules. In the accident, Jai Kumar and Dinesh suffered multiple injuries. The matter was reported to the police where case was registered against respondent No. 1 for an offence punishable under sections 279, 337 and 338 of Indian Penal Code vide FIR No. 167 dated 22.5.2008.

4. Jai Kumar, claimant has claimed himself to be 22 years of age at the time of accident. According to him, he was working with a private company and was getting Rs. 6,000/- per month as salary. He has claimed that a sum of Rs. 30,000/- has been spent on his treatment at various hospitals and has prayed for Rs. 5,00,000/- as compensation.

5. Dinesh, claimant has claimed himself to be aged 23 years on the date of accident. According to him, he was working as salesman at a cloth shop and was earning Rs. 5,000/- per month. He has also claimed a sum of Rs. 30,000/- to have been spent in his treatment and has prayed for awarding him a sum of Rs. 2,00,000/- as compensation.

6. The petitions had been resisted by the respondents. Respondents No. 1 and 2 have denied the maintainability of the petitions in the present form as well as cause of action with the claimants to bring the petitions. It has been claimed by them that the motorcycle was being driven in zig-zag manner and as such, the petitioner, Jai Kumar himself was responsible for the accident and that there was no fault on the part of respondent No. 1 with regard to this accident.

7. The Oriental Insurance Company Limited, respondent No. 3, has also resisted the claim petitions. It is averred that driver of trailer No. HR39-A-4647 was not holding a valid and effective driving licence at the time of alleged accident. It is

alleged that the trailer was being driven in contravention of the terms and conditions of the insurance policy. The petition is claimed to be bad for misjoinder and nonjoinder of necessary parties. In this way, respondent No. 3 has claimed that it is not liable to indemnify the insured in case of any award passed against him.

8. On the pleadings of the parties, the following consolidated issues were framed by the Tribunal.

1. Whether the accident took place due to rash and negligent driving of respondent No. 1, as alleged? OPPs

2. Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy? OPR3

3. Whether the claim petitions are bad for misjoinder and nonjoinder of the parties? OPR

4. Whether Jai Kumar, claimant of first claim petition, is entitled to any compensation. If so, how much amount and from whom? OPP

5. Whether Dinesh Kumar, claimant of second claim petition, is entitled to any compensation. If so, how much amount and from whom? OPP

6. Relief.

9. Parties led their respective evidence. Hearing learned counsel representing them, learned Tribunal has allowed the claim petitions. A sum of Rs. 79,268/- has been awarded as compensation to Jai Kumar and a sum of Rs. 83,286/- has been awarded as compensation to Dinesh. The liability to pay the compensation has been held as joint and several of the respondents.

10. Dissatisfied with the award, the present appeals have been filed by Jai Kumar and Dinesh, claimants.

11. I have heard Mr. Johan Kumar, learned counsel for the appellants and Mr. Ravinder Arora, learned counsel for respondent No. 3-Insurance company. I have gone through the record carefully.

12. Learned counsel for the appellants has submitted that no compensation has been awarded on account of the disability of the appellants. According to him, Jai Kumar had suffered disability to the extent of 8%, while Dinesh has suffered the permanent disability to the extent of 3%. He has submitted that learned Tribunal has failed to award a single penny on account of this disability. According to him, the appellants have been aged 22 and 23 years respectively and they have been unmarried on the date of accident. He has submitted that learned Tribunal has not taken into consideration the loss suffered by the appellants to their matrimonial prospects. He has further submitted that learned Tribunal has not awarded any amount under the head "attendant charges". According to him, the appellants are still under treatment and they were required to be adequately compensated.

13. Learned counsel for the appellants has submitted that learned Tribunal has awarded a sum of Rs. 24,000/- for loss of income to each of the claimants and has awarded a sum of Rs. 10,000/- each for pain and suffering, Rs. 12,000/- each for special diet, Rs. 5,000/- each for transportation expenses and Rs. 29,268/- and Rs. 32,286/- respectively for expenses on treatment. He has submitted that learned Tribunal has even erred in making a total of the compensation awarded to Jai Kumar under different heads. He has submitted that the awarded amounts make a total of Rs. 80,268/- instead of Rs. 79,268/-. He has, therefore, prayed for adequately enhancing the compensation.

14. Learned counsel for respondent No. 3 has submitted that the disability is quite marginal. According to him, the same would not affect the earning capacity of the appellants and would in no way affect the matrimonial prospects of the appellants. He has submitted that the amount awarded in the name of loss of income is sufficient to compensate them with regard to the disability. He has submitted that some amount may be awarded to them for attendant charges and that they are not entitled to any big enhancement in the amount of compensation.

15. Disability of 8% in case of Jai Kumar and 3% in case of Dinesh can at the best be said to be marginal. If this disability would reduce the matrimonial prospects of the appellants, would depend on the nature of this disability and the part of the body affected thereby. The matrimonial prospects are affected if the disability is

quite significant and either mars the looks of the victim or his gait suffers therefrom.

16. Although, the appellants have suffered marginal disability, yet it cannot be said that they did not remain hospitalized. Apart from the period spent at the hospital, they must have required bed rest for recovery. Learned Tribunal has taken this period of recovery as 6 months in para No. 23 of the award. Taking the income of the claimants at a modest amount of Rs. 4,000/- per month, the amount of Rs. 24,000/- assessed as loss of income can be said to be the income lost by them during the treatment. It has no nexus with the loss, if any, suffered by them in their future income or in their future enjoyment of life including marriage prospects. So, some amount is atleast required to be awarded to the appellants for the loss caused to them by the permanent disability. Keeping in view the percentage of disability, I find it necessary to award a sum of Rs. 40,000/- to Jai Kumar and a sum of Rs. 20,000/- to Dinesh for loss of future income and enjoyment of life and matrimonial prospects.

17. There is nothing on the record to support the submission of learned counsel for the appellants that the appellants are still under treatment. Disability is assessed only when the treatment is over and there is no possibility of further improvement in the same by any future treatment. In these circumstances, no amount can be awarded to the appellants for the treatment, which is claimed to be continuing. However, some amount can be awarded to the claimants for attendant charges and a sum of Rs. 5,000/- each would be adequate compensation to the appellants in this regard.

18. Keeping in view the aforesaid discussion, the appeals deserve to be allowed and they are, consequently, allowed enhancing the compensation in case of Jai Kumar in FAO No. 5765 of 2010 to Rs. 1,25,268/- and in case of Dinesh in FAO No. 5766 of 2010 to Rs. 1,08,286/-. The other terms of the award of the Tribunal would remain the same.

Petition allowed.