

(1982) 12 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No's. 232, 254 and 316 to 324 of 1978

Pepsu Road Transport Corporation

APPELLANT

Vs

Satinder Sharma

RESPONDENT

Date of Decision : 09-12-1982

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1984) ACJ 316

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : Atma Singh Cheema, for the Appellant; V.P. Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—This order will dispose of the appeal referred to above as also F.A.O. No. 254 of 1978 Pepsu Road Transport Corporation v. Sukhwinder Kaur etc. F.A.O. No. 316 of 1978 Pepsu Road Transport Corporation v. Lahwanti etc. F.A.O. No. 317 of 1978 Pepsu Road Transport Corporation v. Surinder Singh F.A.O. No. 318 of 1978 Pepsu Road Transport Corporation v. Harjit Kaur etc. F.A.O. No. 319 of 1978 Pepsu Road Transport Corporation v. Rattan Lal F.A.O. No. 320 of 1978 Pepsu Road Transport Corporation v. Karnail Singh F.A.O. No. 321 of 1978 Pepsu Road Transport Corporation v. Amarjit Kaur etc. F.A.O. No. 322 of 1978 Pepsu Road Transport Corporation v. Tinku F.A.O. No. 323 of 1978 Pepsu Road Transport Corporation v. Sulakhan Singh and F.A.O. No. 324 of 1978 Pepsu Road Transport Corporation v. Hari Gopal as also the cross objections filed in the above appeal and also in F.A.O. Nos. 319, 321 and 323 of 1978. All these appeals arise from applications for compensation filed u/s 110-A of the Motor Vehicles Act pertaining to the same accident. They were disposed of by the Tribunal by one order and were consequently heard together. It may be mentioned that they were so dealt with as there was an agreement between the parties that evidence led in one case would be read as evidence in all cases,

though evidence was recorded separately in each case.

2. The claims for compensation here arise from the accident that bus No. PUV 2413 belonging to the Pepsu Road Transport Corporation (hereinafter referred to as P.R.T.C.) was involved in an accident on July 11, 1976. This accident took place on that day, that is, July 11, 1976 at about 3.30 p.m. near village Naya Chuhar Chak on the Jagraon Moga road. This bus had been carrying passengers at that time on the Patiala-Moga route. The accident resulted in the death of four persons travelling in this bus namely, Jaswant Singh, Ranjit Singh, Mool Chand and Dilbagh Singh, while Satinder Sharma, Sulakhan Singh, Rattan Lal, Tinku, Surinder Singh, Karnail Singh and Hari Gopal received injuries.

3. The version of the accident as put forth by the claimants was that the bus which was travelling on the Patiala-Moga route, was being driven at a very fast speed. When the bus left Jagraon and it reached near village Naya Chuhar Chak, a buffalo was seen going across the road from right to left. The bus driver instead of trying to slow down the bus by applying its brakes to allow the buffalo to go across instead accelerated the speed of the bus and took it to the extreme left side of the road with a view to pass the buffalo before it crossed the road, but he failed in this attempt and the bus hit against the buffalo killing it at the spot. The bus driver thereafter appears to have lost control over the bus as it went off the road and hit into a sheesham tree a furlong away. It was a result of the bus striking against this tree that four passengers travelling in the bus were killed while many others were injured.

4 According to the version of the General Manager of the P.R.T.C. the bus was being driven with due care and caution at normal speed. The accident took place due to the rash and negligent driving of the bus coming from the opposite direction. A woman with a buffalo suddenly appeared on the road and in order to save the buffalo and the woman the bus driver applied the brakes. He succeeded in saving the woman, but after striking against the buffalo the bus skidded and rammed into the sheesham tree. No negligence of the other bus was spelt out.

5. The driver of the bus had a different story to tell. There was no mention by him of any bus coming from the opposite direction at the time of the accident. His version was that when the bus had crossed village Naya Chuhar Chak all of a sudden a buffalo came from the left and struck against the left front side of the bus as a result of which it died. The bus was being driven at normal speed at that time. He tried to apply the brakes to control the bus, but due to failure of brakes the bus went out of control. He then tried to stop the bus with the help of gears but after covering a distance of 60 to 70 yards, the bus struck against a tree. It was at slow speed at that time. The front side of the bus was damaged and he too was amongst the persons who received injuries as a result thereof. According to him, therefore, the accident took place due to unavoidable circumstances.

6. Turning now to the evidence led in this case on the issue of negligence, there

is the statement of PW 4, Satinder Sharma the claimant in F.A.O. No. 322 of 1978. He was also examined as a witness in this behalf in F.A.O. No. 321 of 1978. Besides this, there are statements of PW 1 Amola Ram in F.A.O. No. 316 of 1978, PW4 Surinder Singh in F.A.O. No. 317 of 1978, PW 5 Maghar Singh in F.A.O. No. 318 of 1978, PW 4 Rattan Singh in F.A.O. No. 319 of 1978, PW 4 Karnail Singh in F.A.O. No. 320 of 1978, PW 5 Karnail Singh in F.A.O. No. 321 of 1978, PW 3 Sulakhan Singh in F.A.O. No. 323 of 1978 and PW 4 Hari Gopal in F.A.O. No. 324 of 1978. The evidence led by the Respondents, on the other hand, consists merely of the statements of RW 1 Nachhatar Singh, bus driver and RW 4 Charanjit Singh, conductor of the bus which was recorded in F.A.O. No. 232 of 1978. There is also the testimony here of RW 3 Gurdev Singh the motor mechanic, who examined the bus after the accident.

7. The main testimony to note with regard to the case of the claimants is that of PW 4 Satinder Sharma. According to him from the very beginning the speed of the bus was fast. When the bus reached near village Naya Chuhar Chak, a buffalo came from the right side and tried to cross the road. The bus driver then accelerated the speed and took the bus towards the left side to pass the buffalo, but struck against the buffalo and after covering a distance of about a furlong hit into a sheesham tree. A similar statement was made by him when he was examined as PW4 in F.A.O. No. 321 of 1978. To the same effect was the testimony of Karnail Singh who was the other witness examined in this case as an eye witness to the occurrence. It was in evidence too that the bus was, being driven at a fast speed and when a buffalo came on to the road, the bus driver swerved the bus in trying to save the buffalo and then hit against the sheesham tree. Karnail Singh also appeared as a witness in F.A.O. No. 320 of 1978 where he again deposed to as per the version given by Satinder Sharma. The other witness who appeared with regard to this matter was PW 5 Maghar Singh. His testimony too being in consonance with that of the other witnesses examined by the claimants. In the other appeals the witnesses examined on this issue made short statements regarding the negligence of the bus driver, which were not challenged.

8. The significant feature of the testimony of all the witnesses examined by the claimants on the point of negligence is the fact that either there was no cross examination at all and if cross examined the material aspects of the case against the Respondents were not challenged. It would be pertinent to notice here the cross examination of Satinder Sharma where the only suggestion put to him was that the bus driver had tried to swerve the bus to save the woman. His testimony otherwise regarding the manner in which the accident took place was left unchallenged.

9. Turning now to the testimony of the bus driver, who was examined as RW 1 in F.A.O. No. 232 of 1978, he deposed that the bus was being driven at the normal speed of 50/55 kilometers when all of a sudden near village Naya Chuhar Chak a buffalo came and struck against the front portion of the bus. He tried to save this

buffalo, but could not do so. He applied the brakes, but the buffalo got entangled in the bus and the tie rod got curved and the brakes did not work, the (sic.) broke and the steering was jammed. He tried to control the speed of the bus with the help of gears, but the bus eventually stopped only at a distance of 70 yards when it struck against a sheesham tree. In dealing with his testimony what deserves note is his statement in cross examination that the brakes and all the machinery of the bus were in order when the bus left Jagraon. In other words all this damage to the bus was caused by the buffalo getting entangled with the bus. It will be seen that no such plea was put forth in the written statement either by the driver or by the General Manager of the P.R.T.C. nor was any such suggestion made to any of the witnesses examined by the claimants.

10. The other point to note with regard to the testimony of Nachhatar Singh, the bus driver, is the direction from which the buffalo came on to the road. The testimony of all the witnesses was that it had come from the right side and this testimony was in no manner questioned. According to him, however, it had come from the left. The statement of RW 1 Nachhatar Singh regarding the manner in which the accident took place cannot thus be treated as worthy of belief, for the reasons set out above.

11. RW 4 Charanjit Singh, the conductor of the bus merely deposed that a buffalo came in front of the bus and the accident took place. He stated that his testimony does not warrant any different conclusion than that the accident took place as deposed to by the witnesses examined by the claimants.

12. Next to note is RW 3 Gurdev Singh, the mechanic, who examined the bus after the accident. He no doubt tried to support the stand of the bus driver by deposing that he found damage to this bus as mentioned by the driver Nachhatar Singh, in his testimony and coined that something must have got entangled in the lower portion of the bus resulting in this damage, but in cross examination, however, he was constrained to state that these defects could also have occurred by the striking of the bus against the tree.

13. Finally, there is the testimony of RW 2 Mr. M.S. Bhullar, the Depot Manager of the P.R.T.C. Faridkot who went to the scene of accident after it had taken place and it was his testimony that he saw the buffalo lying dead at the spot at a distance of 75 yards from the sheesham tree and there was the mark of the striking of the buffalo on the right side of the bus.

14. The circumstances of the case and the evidence led would clearly bring into play the doctrine of *res ipsa loquitur* which is based upon the famous statement of Erie, C.J. in *Scott v. London and St. Katherine Docks Co.* (1865) 3 H. & C. 596 :

There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the Defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of

explanation by the Defendants, that the accident arose from want of care.

15. Now buses do not normally go off the road and strike against the trees without negligence. The striking of the bus against the tree in the present case thus attracts the doctrine of *res ipsa loquitur* and thereby shifts the burden on to the bus driver to disprove negligence. There is no suggestion here that the road ahead was not clear at the time of the accident. There is a duty of care which lies upon the driver of a public transport bus to drive the vehicle with due care and caution, the fore-most requirement of which is that the bus must always be driven at a controllable speed. While driving in rural areas particularly near villages, animals and children suddenly straying on to the road is normal which is to be expected and guarded against. In the present case instead of trying to slow down the bus on seeing the buffalo the evidence is that the bus driver accelerated the speed of the bus. The version of the bus driver that he was driving the bus at normal speed cannot account for the bus striking against the tree at such a distance from the place where it hit against the buffalo. The fact that four passengers were killed in this accident and many others were injured is by itself indicative of the rash and negligent manner in which the bus was being driven at the time of the accident.

16. In these circumstances there can be no escape from the conclusion that the accident here took place entirely due to the rash and negligent driving of Nachhatar Singh, the driver of the bus involved in the accident.

17. Next arises the question of compensation that the claimants are entitled to. This has obviously to be determined having regard to the facts and circumstances of each case. Each case thus calls for separate consideration.

F.A.O. No. 232 of 1978

18. Taking up the above appeal and the cross objections filed therein, the claimant here was Satinder Sharma who was about 27 years of age at the time of the accident. He was employed as Sub-Divisional Officer in the Civil Works Sub-Division of the Punjab State Electricity Board at Moga. According to the evidence on record, his total emoluments then were Rs. 1,000/- per month.

19. It was the testimony of the claimant Satinder Sharma that in this accident he suffered fractures of his left shoulder, left ribs, right hip joint, right foot and left tibia and fibula. Immediately after the accident, he was taken to the hospital at Moga from where he was referred to the Christian Medical College Hospital, Ludhiana, (hereinafter referred to as C.M.C. Hospital). He remained admitted in the hospital at Ludhiana for about three months. In the hospital he was kept in the intensive care unit and then in the private ward. He also deposed to the bodily pain and suffering on account of his injuries and went on to state that both his left leg and left arm have been shortened as a result of the injuries suffered by him which is a permanent disability though he was now attending to his official duties, he could not work as he could, before the accident.

20. The medical evidence to corroborate the injuries suffered by Satinder Sharma in this accident consist of the testimony of PW 3, Dr. A.C. Gupta, who was the first doctor to see him after the accident. He stated that Satinder Sharma had been brought to Civil Hospital, Moga with serious injuries and multiple fractures. He was under shock and he was consequently referred to the C.M.C. Hospital, Ludhiana for specialised treatment. It was further his testimony that upon examining Satinder Sharma in court he found his left leg to be short by 1" and his left arm by ?".

21. The main evidence with regard to the medical condition of the claimant, Satinder Sharma is that of PW 1 Dr. Yogesh Markan, Registrar, Ortho Surgery at the C.M.C. Hospital, Ludhiana. He stated that Satinder Sharma was admitted in the hospital on July 11, 1976 and kept in the intensive care unit until July 14, 1976, where he was also given blood transfusion. The injuries on the person of Satinder Sharma were as under:

- (1) Closed fracture of the neck of the humerus left side.
- (2) Closed fracture of the 6th and 7th ribs on the left side.
- (3) Closed fracture with central dislocation of the right hip.
- (4) Closed fracture of the lower one-third, tibia and fibula on the left side.
- (5) Closed fracture of the calcaneum on the right side.
- (6) Swelling and blackness around the left eye.
- (7) Cut 2" ? 1" long on the right occipital region of the head, about 1" apart deep to the bone.

22. According to Dr. Yogesh Markan all the injuries on the person of Satinder Sharma were grievous except injury No. 6. He went on to depose that Satinder Sharma remained admitted in the hospital continuously from July 11, 1976 to October 6, 1976. An operation was performed upon him on July 16, 1976 for the right hip and his left tibia and fibula. During surgery a nail was put in the upper end of tibia and the lateral side of the right hip. He was then put on traction for the dislocated right hip. During this entire period Satinder Sharma remained restricted to bed.

23. Dr. Yogesh Markan further deposed that during his stay in the hospital Satinder Sharma also developed infection of his urinary tract for which too he had to be treated. On account of his injuries he also suffered mental tension and the psychiatrist had to be consulted who put him on to some drugs. According to Dr. Yogesh Markan, Satinder Sharma was still under disability on account of his ankle joint. It had limited motion and consequently he could not walk freely. In other words, he could walk with restriction.

24. The injuries suffered by the claimant, the pain and suffering caused to him thereby and the permanent disability which he is now saddled with constitute the

foundation of the claim for general damages which his counsel Mr. V.P. Gandhi put under three separate heads namely:

- (1) Pain and suffering, past, present and future.
- (2) Permanent disability.
- (3) Loss of enjoyment of happy and comfortable life.

A sum of Rs. 50,000/- each was claimed under the heads 1 and 3 while a sum of Rs. 1,00,000/- was claimed under the second head.

25. Besides this there is also a claim for special damages under various heads. There is, in the first instance, a claim for Rs. 14,000/- for medicines and the cost of treatment incurred by the claimant. It has come in evidence that it was in the private ward of C.M.C Hospital that the claimant remained hospitalised for over three months. During this period he was given blood transfusion and also had to take many medicines. Surgery was also performed upon him which by its nature was obviously major. It is the unrebutted testimony of Satinder Sharma that the amount spent by him on his treatment was Rs. 14,000/-.

26. There is next a claim for the special diet for which the claimant had to incur expenses on account of his injuries and hospitalisation. The claim here was at the rate of Rs. 20/- per day for a period of six months. The total amount thus works out to Rs. 3,600/-.

27. Travelling expenses of the claimant on account of the treatment from Moga to Ludhiana and Ludhiana to Patiala and back by taxi was the next head of claim. The amount claimed being Rs. 425/-. Further on account of his hospitalisation the claimant could not resume duty and on account thereof he remained on leave for some period at half pay and for the other without pay. There is thus a claim by the claimant for the loss of salary suffered by him on account thereof. The period during which he remained on leave at half pay was August 29, 1976 to October 7, 1976 and then again from November 26, 1976 to December 15, 1976 making it a total of 57 days. The period spent on leave without pay was October 8, 1976 to November 25, 1976. This being a period of 49 days. The total amount claimed by the counsel for the claimant on this account was Rs. 6,632/-. Next it has come in evidence that during the hospitalisation of the claimant, his wife who was employed at Moga came to Ludhiana every day to attend to him. During this period she too had to remain on leave without pay for a period of one month. Rs. 600/- being her salary was thus the amount claimed on this account. Besides this Mr. V.P. Gandhi contended that the claimant was also entitled to the expenses for his wife's travel to Ludhiana and back every day for a period of three months. The claim here was at the rate of Rs. 25/- per day. The total thereof being Rs. 2,250/-.

28. Finally, a sum of Rs. 1,500/- was claimed as the cost of the attendant employed by the claimant to look after him for a period of six months. The salary of this attendant being Rs. 250/- per month.

29. Mr. A.S. Cheema, the learned Counsel for the P.R.T.C. did not contest the liability for any of the amounts referred to above which had been claimed as special damages by the claimant except that relating to charges for the attendant employed by the claimant. It was contended that no claim under this head had been pressed before the Tribunal and the claimant was consequently not entitled thereto. He referred in this connection to the fact that no such claim finds mention in the impugned order of the Tribunal. This is no ground to deny this claim. A specific claim to this effect has been made in the claim application. Counsel for the claimant was emphatic that this claim had never been given up. What deserves note here is the fact that the order of the Tribunal in all these matters is so sketchy and perfunctory that it would be unjust to hold such omissions therein against the claimants. The nature and the extent of the injuries suffered by the claimant provided ample justification for the services of an attendant during the period in question and the amount claimed cannot but be treated as reasonable. There is thus no warrant to deny this claim.

30. In view of the discussion above it must be held that the claimant is entitled to the amounts asked for as special damages as claimed under the various heads referred to above, the total thereof works out to Rs. 29,005/-.

31. Reverting back to the main and principal head under which compensation has been claimed in the present case, by the very nature of things there can be no precise yardstick for determination thereof. The principles governing such case are, however, now well settled.

32. In Halsbury's Laws of England (Third Edition) Volume 11 at page 255, paragraph 427 there is an enunciation of the factors to be considered in assessing compensation for personal injury. It was stated therein that in a claim for damages for personal injury, when caused by negligence, the damages are, apart from special damages, at large and will be given for the physical injury itself and in case of loss of limb, disfigurement or disablement, for its effect upon the physical capacity of the injured person to enjoy life, as well as for his bodily pain and suffering or for shock or injury to health. Such damages cannot be a perfect compensation but must be arrived at by a reasonable consideration of all the heads of damages in respect of which the Plaintiff is entitled to and for impairment of the enjoyment of the amenities of life, that would also adversely affect his future prospects in his career, considering that he has field job requiring physical fitness always. It would be fair and just, therefore, to hold the claimant entitled to and to award to him a total sum of Rs. 1,00,000/- as compensation inclusive of the special damages referred to above. The claimant shall be entitled to this amount alongwith interest at the rate of 10 per cent per annum from the date of the application to the date of the payment of the amount awarded. The appeal filed by the P.R.T.C. is accordingly hereby dismissed and the cross objections filed by the claimant are accepted to the extent indicated above. The claimant shall be entitled to the costs of these proceedings. Counsel's fee Rs. 500/-.

33. Before parting with this case, it deserves mention that it has come on record that the claimant had put forth a claim with his employers, that is Punjab State Electricity Board for a sum of over Rs. 11,000/- for reimbursement of the medical expenses incurred by him on account of this accident. Any amount received by the claimant from the Punjab State Electricity Board on this account shall be refunded immediately upon payment to him of the amount awarded here. A copy of this order is consequently directed to be sent to the Secretary, Punjab State Electricity Board for information.

F.A.O. No. 254 of 1978

34. The claimants in this case are the legal representatives of Dilbagh Singh deceased who died as a result of the injuries sustained by him in this accident. Dilbagh Singh, deceased was 32 years of age at the time of his death. He was employed as a store keeper with the P.R.T.C. and his total emoluments were Rs. 365/- per month. The claimants are his widow Sukhwinder Kaur who gave her age as 20 years and their children Jatinder Singh, aged 4 years and Bhupinder Kaur, who was 2 years old. The other claimant is Gulzar Singh, the father of the deceased.

35. The Tribunal taking the income of the deceased to be Rs. 365/- per month took the loss suffered by the claimants to be Rs. 240/- per month and then taking the life expectancy of the deceased to be 70 calculated the total amount that the claimants have been deprived of on account of the death of the deceased was Rs- 1,09,440/-. One third was deducted from this amount on account of lump sum payment and in this manner a sum of Rs. 72,000/- as compensation was awarded to the claimants.

36. The award of compensation in this manner and to this extent can no longer be sustained, keeping in view the principles for computation of compensation in such cases as set out in *Lachman Singh v. Gurmit Kaur* 1979 A.C.J. 170 (P. and H.), where it was observed that the compensation to be assessed is the pecuniary loss caused to the dependents by the death of the deceased and for the purpose of calculating the just compensation, annual dependency of the dependents should be determined in terms of the annual loss accruing to them due to the abrupt termination of life. For this purpose annual earnings of the deceased at the time of the accident and the amount out of the same which he was spending for the maintenance of the dependents will be the determining factor. This basic figure will then be multiplied by a suitable multiplier. It was further observed that the suitable multiplier shall be determined by taking into consideration the number of years of the dependency of the various dependents, the number of years by which the life of the deceased was cut short and the various imponderable factors such as early natural death of the deceased, his becoming incapable of supporting the dependents due to illness or any other natural handicap or calamity, the prospects of the remarriage of the widow, the coming up of the age of the dependents and their developing independent sources of income as well as the pecuniary benefits which might accrue to the

dependents on account of the death of the person concerned.

37. In *Asha Rani v. Union of India* 1983 A.C.J. 52 (P. and H.), it was held that the normal multiplier in such cases is 16. It is, thus, on the principles as set out above, that compensation in this case has to be determined and computed.

38. Applying the principles laid down in the authorities referred to above to the facts of the present case and keeping in view the age of the deceased, his income, the prospects that lay ahead of him as also the respective ages of the claimants, the suitable multiplier here must be taken to be 16. Computed on this basis the amount of compensation that the claimants must be held entitled to would work out to Rs. 46,080/- (Rs. 240 ? 12 ? 16). To make it a round figure, the claimants are hereby awarded a sum of Rs. 48,000/- which they shall be entitled to alongwith the interest at the rate of 10 per cent from the date of the application to the date of the payment of the amount awarded. Out of the amount awarded a sum of Rs. 7,500/- be paid to the claimant Gulzar Singh and the balance should be paid to the widow of the deceased, Sukhwinder Kaur for herself and for the maintenance and well-being of the minor children. This appeal is consequently accepted to this extent. There will be, however, no order as to costs.

F.A.O. No. 316 of 1978

39. The appeal here is directed against the award of Rs. 12,000/- as compensation payable to the legal representatives of Mool Chand, deceased, who was killed in this accident. The claimants here being Lajwanti, the widow of the deceased and their four sons. The evidence shows that Mool Chand, deceased, was 35 years of age at the time of the death. According to PW 5 Mrs. Lajwanti, her deceased husband was running a karyana shop and his monthly income was Ks. 700/- and he was their sole bread- winner. This evidence was not challenged in cross examination. The Tribunal despite this fact treated the income of Mool Chand deceased, to have been what he would have earned as an ordinary labourer, namely Rs. 150/- per month and it was upon this basis that he awarded Rs. 12,000/- as compensation to the claimants. There is clearly no warrant for interference with the amount awarded, if anything, the amount awarded was grossly inadequate. This appeal is consequently hereby dismissed with costs. Counsel's fee Rs. 500/-.

F.A.O. No 317 of 1978

40. This case relates to the compensation claimed by Surinder Singh, who was injured in this accident. According to P W 3, Dr. A.C. Gupta, when Surinder Singh was brought to the Civil Hospital, Moga on July 11, 1976 he was found to have injuries in the nature of fractures in both of his legs and also injuries on the chest. He was then referred to the C.M.C. Hospital, Ludhiana for treatment. The Doctor who deposed with regard to his treatment there is P W 1 Dr. Yogesh Markan, who noticed the following injuries on his person:

(1) Closed head injury.

(2) Open wound on the left thigh 4" above the knee joint 3" in length, with bone exposed. Distal pulse was not palpable.

(3) Closed fracture of the right tibia and the fibula with swelling and deformity.

(4) Swelling around both the eyes.

In the opinion of Dr. Yogesh Markan, injuries 1 and 2 were dangerous to life, while injury No. 3 was grievous. The 4th injury was simple Surinder Singh, he further deposed, was discharged from the hospital on September 6, 1976, that is, after about two months. An operation was also performed upon him on August 11, 1976 and he had to remain under plaster in bed till October 9, 1976. A pin had to be put in the lower end of the tibia which was later removed. It was stated that the claimant was still continuing with artificial support on his left leg and there was a limp in his walk.

41. The claimant in this case as per his testimony as P W 4 was a repairer in a workshop at Moga where he earned Rs. 200/- per month besides his board and lodging. Further he also paid Rs. 2353.60, Rs. 18.42 ps. and Rs. 73/- as hospital charges as per the statement of P W 2 Mr. D.A. Longfellow, Accountant of the C.M.C. Hospital, Ludhiana.

42. The Tribunal awarded a total sum of Rs. 14,800/- as compensation for the injuries suffered by him in this accident and the expenses incurred by him on account thereof. There is clearly no ground justifying any interference in the appeal with the amount awarded, in awarding which if anything the Tribunal erred on the low side.

43. Mr. Atma Singh Cheema, the counsel for the Appellant also did not seek to challenge the amount awarded. This appeal is consequently hereby dismissed with costs. Counsel's fee Rs. 500/-.

F.A.O. No. 318 of 1978

44. The deceased in this case was Jaswant Singh who was about 32 years of age at the time of his death in this accident. According to P W 3 Vasdev Soni from the office of the Garrison Engineer, Faridkot, the deceased was employed as a mazdoor as a temporary hand and his total emoluments were Rs. 314/- per month. The claimants here are his widow Harjeet Kaur, aged 30 and their three sons Ravinder Singh aged 7, Dharminder Singh aged 4 and Harpal Singh who was then only 18 months old, the other claimant being Harnam Kaur, mother of the deceased.

45. According to the testimony of Harjeet Kaur PW 1 the deceased was their sole bread-winner.

46. The Tribunal taking the income of the deceased to be Rs. 314/- per month came to the finding that the financial loss suffered by the claimants was to the

tune of Rs. 200/- per month after making an allowance for the amount which the deceased must have been spending upon himself. On this basis the loss to the claimants was computed at Rs. 91,200/- (200 ? 12 ? 38). One third deduction was thereafter imposed on account of the amount being paid in lump sum. The amount awarded was thus Rs. 60,000/-.

47. The method for the computation of compensation adopted by the Tribunal cannot now be accepted as correct in view of the principles set out by the Full Bench in Lachman Singh's case 1979 A.C.J. 170 (P. and H.) and in Asha Rani's case 1983 A.C.J. 52 (P. and H.). Applying the principles laid down therein, the circumstances of the case clearly warrant 16 to be the appropriate multiplier in this case and the loss suffered by the claimants to be at the rate of Rs. 200/- per month. Computed on this basis the loss to the claimants would work out to Rs. 38,400/-. To make it a round figure, the claimants must be held entitled to a sum of Rs. 40,000/- as compensation. This appeal must consequently be accepted to the extent that the amount of compensation payable to the claimants is reduced from Rs. 60,000/- to Rs. 40,000/- the claimants shall be entitled to this amount of Rs. 40,000/- alongwith the interest at the rate of 10 per cent per annum from the date of the application to the date of the payment of the amount awarded. Out of the sum awarded an amount of Rs. 5,000/-, shall be payable as compensation to Harnam Kaur, mother of the deceased while the balance shall be paid to his widow for herself and for the maintenance and well being of her minor sons. This appeal is consequently accepted to this extent. There will be however, no order as to costs.

F.A.O. No. 319 of 1978

48. The claimant here is Rattan Lal, pre-medical student, who had sustained injuries in this accident, while travelling in this bus. The injuries suffered by the claimant were deposed to by P W 2, Dr. A.J. Bose of C.M.C. Hospital, Ludhiana. These injuries being (1) a closed fracture (r) femur shaft, (2) fracture of mandible and (3) torus fracture (left) tibia lower end. According to this doctor the Petitioner remained admitted in the hospital till August 17, 1976. The first injury was being treated by skeletal traction to be followed by a hip spical while the fracture of mandible was treated with interdental wiring. According to the claimant who appeared as P W 4, the pain in his leg was still persisting and his right leg had been shortened by 1". He also deposed that on account of this accident he had lost one year of his studies.

49. As regards the expenses incurred for the treatment of the claimant, there is the testimony of PW 1, Mr. D.A. Longfellow of the C.M.C. Hospital, Ludhiana, who deposed that a sum of Rs. 1,353.75 had been spent as hospital charges by the claimant. The Tribunal awarded Rs. 5,000/- as compensation to the claimant for the loss of one year of his studies, another 5,000/- for the pain and agony suffered by him besides, the hospital expenses, the total amount awarded being Rs. 11,350/-.

50. There is clearly no warrant for upholding the amount awarded as compensation to the claimant, having regard to the nature of the injuries suffered by the claimant and the pain and agony caused thereby, as also the loss of enjoyment of the amenities of life. There is also in this case a permanent disability which the claimant now suffers from, namely shortening of his leg which was not adverted to by the Tribunal while dealing with this matter. There is also then the matter of the loss of one year in the career of this young student. The consequences of this can indeed have far reaching effect upon the future career of this claimant. Keeping in view, therefore, the totality of the circumstances of the case, the claimant must be held entitled to a total sum of Rs. 30,000/- as compensation. He shall in addition be entitled to 10 per cent interest thereon from the date of the application to the date of the payment thereof. The compensation payable to him is thus enhanced.

51. In the result the appeal filed by the P.R.T.C. is hereby dismissed with costs, while the cross objections filed by the claimant are allowed to the extent indicated above. The claimant shall be entitled to costs in this matter. Counsel's fee Rs. 500/-.

F.A.O. No. 320 of 1978

52. The claim for compensation here is by Karnail Singh who received injuries while travelling in the bus at the time of the accident. The injuries on his person were deposed to by PW1 Dr. Surinder Singh of the C.M.C. Hospital, Ludhiana. The injuries being (1) 0.5 cm. diameter wound, anterior aspect of lower 1/3 right thigh, Supracondylar fracture right femur. (2) Deformity right leg. Closed fracture tibia and fibula right and (3) 1.5" cut right side face. According to the doctor both the injuries Nos. 1 and 2 were grievous, while the third was simple. Karnail Singh was admitted in the hospital on July 11, 1976 and was discharged on August 30, 1976. He was discharged on non-weight bearing crutch walking and knee mobilization. The doctor further deposed that Karnail Singh could now work while sitting on a chair.

53. As regards the amount spent by the claimant on account of his treatment in the hospital, there is the testimony of PW2 Mr. D. A. Longfellow of the C.M.C. Hospital, Ludhiana, who deposed that sum of Rs. 2,055.40 was spent by the claimant on this account.

54. The claimant appearing in the witness box as PW 4 stated that after his discharge from the hospital at Ludhiana he also consulted Dr. N.D. Aggarwal of the State Hospital at Patiala. The plaster was then changed and he was admitted in the hospital at Patiala for operation though no operation could be performed on account of pus. Later he got himself checked up in the Irwin Hospital at Delhi where again his plaster was changed and extra heel was put under his right foot. It was further his testimony that there was shortening of his right leg by 1".

55. The claimant Karnail Singh stated that he was self employed in the business of motor winding and repair work at Moga but on account of this accident he

could not attend to his shop for six months and he now has to get his business done in the shop by employees.

56. The amount awarded as compensation to the claimant by the Tribunal warrant no reduction as the amount awarded was only Rs. 11,055/- inclusive of the hospital charges incurred by the claimant for his treatment. The compensation awarded cannot but be termed as grossly inadequate having regard to the nature and extent of the injuries suffered and also the permanent disability that the claimant is now left with. As, however, no appeal or cross-objections have been filed by the claimant no further amount can be awarded, to him.

57. This appeal is consequently dismissed with costs. Counsel's fee Rs. 500/-.

F.A.O. No. 321 of 1978

58. The deceased in this case was Ranjit Singh, a cultivator who was about 35 years of age at the time of his death. He died leaving behind his widow Amarjit Kaur who gave her age as 36 years and their four minor children, Balvinder Kaur 14 years, Paramjit Kaur 11 years, Harvinder Singh 13 years and Swaran Singh 8 years old.

59. According to the evidence on record, the earnings of Ranjit Singh, deceased, were from cultivation by him of the land of his father. The deceased had three brothers and they were all cultivating the 13 acres of land owned by the father.

60. According to the claimants their monthly expenses were about 500/-. The Tribunal took the earning of the deceased at Rs. 150/- per month and after making an allowance of the amount the deceased must have been spending upon himself took the loss to the claimants to be at the rate of Rs. 100/- per month, allowing the deceased a life expectancy of 70 years, the loss was computed at Rs. 42,000/- from which a deduction of 1/3rd was made on account of lump sum payment. The total amount awarded to the claimants was Rs. 28,000/-. There is clearly no warrant for any reduction in the amount awarded rather there is a case for enhancement thereof as prayed for in the cross objections filed by the claimants.

61. Even if, the deceased had been treated as a mere cultivator and his earnings are taken to be that of an agricultural worker, it would be reasonable to take this total emoluments as Rs. 300/- per month and on this basis the loss suffered by the claimants can well be taken to be at Rs. 200/- per month. Keeping in view the principles set out in the Full Bench of our High Court in Lachman Singh's case 1979 A.C.J. 170 (P. and H.) the appropriate multiplier in this case must be taken to be 16. It is on this basis that compensation payable to the claimants deserves to be computed. This comes to Rs. 38,400/-. To make it a round figure the compensation payable to the claimants is enhanced to Rs. 40,000/-. Claimants shall be entitled to this amount with interest at the rate of 10 per cent thereon from the date of the application to the date of the payment of the

amount awarded. The entire amount shall be paid to the widow Amarjit Kaur for herself and for the maintenance and well being of the minor children.

62. In the result the appeal is dismissed but the cross-objections are accepted. The claimants shall be entitled to costs. Counsel's fee Rs. 500/-.

F.A.O. No. 322 of 1978

63. The challenge in this appeal is to the award of Rs. 5,000/- as compensation to the claimant Tinku for the pain and agony suffered by him on account of the injuries suffered in this accident and Rs. 625/- for the amount spent as hospital charges. This award warrants no interference, if any thing the amount awarded being far less than the claimant should have been awarded in this case.

64. PW 1 Dr. Yogesh Markan of the C.M.C. Hospital, Ludhiana deposed to the injuries on the person of the claimant Tinku. It may be mentioned here that the claimant here was only 10 years of age at the time of the accident. It was the testimony of Dr. Yogesh Markan that the injuries on the person of the claimant were as under:

- (1) Closed fracture of the pelvis with rupture of urethra.
- (2) Closed fracture of both the bones of the left fore arm.
- (3) Closed disassociation of the right sacro ilias joint.
- (4) Bilaterally pulmonary contusions.

Injury No. 4 was described as dangerous to life while injuries 1 to 3 were grievous. The claimant remained admitted in the hospital from July 11, 1976 to September 20, 1976.

65. As regards the hospital charges there is unrebutted testimony of PW2 Mr. D.A. Longfellow that these were Rs. 625.05ps.

66. As has been mentioned above, keeping in view the nature and extent of the injuries suffered by the claimant no reduction in the amount awarded is called for. This appeal is accordingly dismissed with costs. Counsel's fee Rs. 500/-.

F.A.O. 323 of 1978

67. The claimant here Sulakhan Singh aged 40 years sought compensation for the injuries suffered by him in this accident. The evidence with regard to his injuries is that of PW 2, Dr. Ashutosh Kumar of the C.M.C. Hospital, Ludhiana who deposed that an operation had to be performed upon the claimant and his spleen had to be removed. His condition was described as serious then. Another operation was performed upon him on November 30, 1976 when his condition took an even more serious turn. He had to be kept in the intensive care unit on artificial respiration for nine days. Blood transfusion had to be given to him. Tracheotomy had also to be done for artificial respiration. He further deposed that there was a bilateral fracture of the ribs. Sulakhan Singh was eventually

discharged from the hospital on August 12, 1976 and it was only in February 1977 that he could pursue his ordinary pursuits of life.

68. As regards the amount spent by the claimant as hospital charges there is the statement of Mr. D.A. Longfellow of the C.M.C. Hospital who deposed that the total amount paid by the claimant for his treatment as indoor patient was Rs. 4,112.95.

69. Sulakhan Singh in his testimony as PW 2 deposed that he was an iron smith and his earnings were Rs. 500/- per month. Counsel for the claimant also claimed compensation under this head. The Tribunal awarded to the claimant a sum of Rs. 3,700/- on account of the expenses incurred by him for his treatment and Rs. 8,300/- for his pain and suffering and for expenses of the hospitality extended by him to the persons who used to visit him. The award of compensation to the claimant for hospitality is indeed an extra-ordinary feature of this case. No compensation is payable merely for hospitality extended to persons who may come to visit and enquire about the injured. At any rate, be that it may, the total amount awarded to the claimant cannot but be described wholly inadequate. There is clear evidence that the hospital expenses were over Rs. 4,112/-. Further no amount has been awarded to the claimant for the loss of income. There is no doubt, no corroborative evidence to substantiate the claim of the claimant that his income was Rs. 500/-. But even if some allowance is made for exaggeration it is reasonable to assume that he was earning Rs. 300/- per month. The doctor's evidence is that it was in February, 1977 that he could pursue his ordinary pursuits of life, which means for a period of almost 8 months, he was denied his earning capacity. In other words he deserves to be awarded a sum of Rs. 2,400/- as compensation under this head.

70. Finally taking into account the nature of the injuries suffered by him and the pain and agony involved thereby the amount awarded cannot be justified or upheld.

71. For the foregoing reasons the appeal filed by the P.R.T.C. is dismissed. The cross objections filed by the claimants are accepted to the extent that the claimant is entitled to and is hereby awarded a sum of Rs. 4,200/- as hospital expenses, Rs. 2,400/- as loss of income and a sum of Rs. 13,400/- as compensation for pain and agony suffered by him, the total amount payable to him as compensation in this case, would thus be Rs. 20,000/-. He shall in addition be entitled to interest at the rate of 10 per cent per annum from the date of the application to the date of payment thereof. The cross objections accepted to this extent. The claimants shall also be entitled to costs. Counsel's fee Rs. 500/-.

F.A.O. No. 324 of 1978

72. The claimant here is Hari Gopal aged 9 years who too was injured in this accident. PW 1 Dr. Yogesh Markan of the C.M.C. Hospital, Ludhiana, who deposed to his treatment stated that the injuries on the person of the claimant are as

under:

- (1) A lacerated wound on the right lower limb over lower one third of the right leg 1 1/2" x 1" long. The bones were fractured and exposed.
- (2) Tenderness and swelling of the right shoulder over the lateral aspect covering around the upper part of the right arm with closed fracture greater tuberosity of the humerus.
- (3) Multiple small cuts over the face, more on the left side.
- (4) Few cuts over the dorsum of the right foot.

Injuries 1 and 2 were grievous while the others were simple. During his admission in the Hospital an operation was performed upon him for open reduction of the tibia and fibula. The plaster on his legs was removed on September 7, 1976. He developed an infection in the heel part of the plaster and he had to be again admitted for surgery on this account and was then discharged on September 30, 1976. On October 7, 1976 he had to be admitted for skin grafting of the heel wound and was discharged on October 14, 1976. As regards the hospital expenses incurred by this claimant there is the statement of D.A. Longfellow, the Accountant of the C. M. C. Hospital, Ludhiana that these charges were to the tune of Rs. 1,220/-.

73. The Tribunal awarded a total sum of Rs. 6,220/- as compensation to the claimant inclusive of the said amount of Rs. 1,220/- as hospital charges.

74. There is clearly no warrant for reduction of the amount awarded as compensation in this case keeping in view the nature and extent of the injuries and the suffering involved thereby. This appeal is thus consequently dismissed with costs. Counsel's fee Rs. 500/-.

75. All the appeals and the cross objections are disposed of in the manner indicated above.