IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO No. 2434 of 1997 (O&M)
Date of decision: December 9, 2015

Surinder Mangla
...Appellant
Versus

Oriental Insurance Co. and others
...Respondents

(2) FAO No. 2435 of 1997 (O&M)

Tara Chand Mangla
...Appellant
Versus

Oriental Insurance Co. and others
...Respondents

(3) FAO No. 2436 of 1997 (O&M)

Chander Parkash Tayal
...Appellant
Versus

Oriental Insurance Co. and others
...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Adarsh Jain, Advocate, for
for the appellants.

Mr. Harsh Aggarwal Advocate,
for the insurance company.

K. KANNAN, J. (Oral)

1. This order shall dispose of the above titled appeals as they arise out of the similar set of facts and involving the similar question of law.

2. All these appeals are at the instance of the claimants seeking for enhancement of compensation for the injuries suffered by the respective claimants. All of them were sitting at the rear side of the car which dashed against a stationary vehicle insured with the Oriental Insurance Company. Two persons who were sitting on the front side of the car including the driver died in the accident. There were six claims emanating from the accident, namely, claim at the instance of the injured persons, who are the appellants in these appeals, claim by the representatives of the two deceased and the claim by the owner of the vehicle which was involved in the accident. All the cases were taken together and disposed of by a common judgment. The representatives of the deceased persons do not appear to have filed appeals. The owner of the car has also not filed appeal. The claimants have preferred their respective appeals and impleaded the insurer of the truck as well as the owner and the driver of the truck, which was stationary.

3. The Tribunal assessed the claimants for various injuries and made partial abatement of the claim to the extent of 40% on the ground that the driver of the car who dashed against the stationary vehicle must take the responsibility, for, he had literally contributed to the accident. On such a line of reasoning, he apportioned the guilt of the driver of the truck who had stationed the vehicle inappropriately inviting danger for the users on the public road by casting a higher percentage of responsibility at 60% and

apportioned lower percentage of responsibility at 40% for the driver of the car in which the claimants were traveling.

4. At the outset, I must observe that a contributory negligence could be attributed only to the driver of the car who had contributed the accident in some measure. The persons traveling on the back side of the vehicle cannot be said to have contributed to the accident. Only the driver of the car could, therefore, suffer an abatement for his negligent act and in these cases since the driver has expired, the claim by the representative of the driver could suffer a disadvantage but the claimants themselves cannot suffer any cut in the assessment of damages made by the Tribunal. As far as they were concerned, it was a case of composite negligence of both the vehicles and the law allows for a claim to be pursued against any one of the tort-feasors. If the owner and the insurer of the truck had been found to be responsible for 60%, then the claimants would be entitled to recover the whole of the amount as assessed and leaving it to the insurer to proceed independently against the owner and the estate of the driver of the car for the additional liability that is imposed on them. I, therefore, set aside the finding regarding the abatement to the extent of 40% of the claim and making provision only for 60% of the amount assessed to be given to the claimants.

5. In each one of the claim, the Tribunal has assessed the losses incurred by making a reference to the actual medical expenses and the tribunal has also added all other relevant heads of claims to aggregate sums which in the Tribunal's view were appropriate. In FAO No. 2434 of 1997, the claimant had fairly a long span of treatment for six months. He was said

to be earning ₹2250/- He had a fracture at backbone and a fracture of the ribs. Even at the time of the trial, the claimant had difficulty in walking and after providing for 42,000/- borne through the bills, the Tribunal provided for ₹2,58,000/- as going towards loss of income, taken @ ₹2250/- for six months, special diet, transportation, pain and suffering, disability and future treatment. It has not come on record about the exact nature of disability except that the patient was found to have difficulty in walking and talking. The doctor's evidence of whether the disability was permanent or temporary was also not brought out on record. The tribunal has not made the assessment of each head of the claim but lumped them together at ₹2,58,000/-. The manner of assessment is unsatisfactory, but I am at least convinced that the Tribunal, if at all, has erred on the higher side and it cannot be treated to be a niggardly assessment.

6. In FAO No. 2435 of 1997, the assessment was relatively better. It was a case of claimant having a fracture of the mandible suffering a facial disfigurement. At the trial, the claimant had slurring in his speech and the Tribunal assessed loss of income at ₹15000/-, medical expenses at ₹50,000/-, future medical expenses at ₹30,000/-, attendant charges and transport at ₹20,000/- pain and suffering for ₹60,000/- and disability at ₹60,000/-. He had assessed literally every head of claim and again assessment cannot be faulted as low. The total amount assessed was ₹2,60,000/-.

7. In FAO 2436 of 1997, the claimant had injuries requiring hospitalization for two months. The Tribunal awarded medical bills brought

on record, aggregating to ₹9100/- and the Tribunal also added additional amount of ₹54,900/- without addressing each of the head separately. Again I must observe that manner of lumping all the heads of claims was not proper, but I have no materials before me to improve the situation, for, the appellant, for, the nature of disabilities that have arisen out of the accident are not clearly spelt out. The total compensation was assessed at ₹65,000/-. After making independent assessment in the cases, as we have discussed already, the Tribunal has awarded only 60% of the amount to be recovered and caused abatement of 40%, which I have already observed as not correct. The claimants ought to have been given the benefit of enforcement of the whole amount as assessed against the insurer. The awards would require to be modified to provide for balance of 40% that was declined wrongly to be possible of being provided to the claimants. The Tribunal has awarded the interest conditionally to be provided if the amount was not paid before a particular date. Interest is statutorily provided and it could not have been made conditional in the manner it has been done. At the time the awards were passed, the interest payable was normally provided at the rate of 12% and I would, therefore, allow the benefit of 12% on the whole amount from the date of the claim petition till 60% payment was made and at the rate of 9% only for the 40% of the amount from the date of payment already made till the date of payment <u>(S. Kaushnuma and others Versus New India Assurance 2001 (2) SCC 9)</u>

8. The right of recovery shall be against the insurer. The insurer, in turn, will exercise the right of contribution by proceeding against the owner of the vehicle who has accepted the judgment apportioning the

responsibility for the accident at 40% of his workman, namely the driver. Since the owner is not a party in these appeals, it shall not be possible for me to provide for recovery in any of these cases, but the insurer will exercise the right taking this decision as a starting point for computation of limitation for recovery.

9. The awards stand modified and the appeals are allowed to the above extent.

December 8, 2015 **(K.KANNAN)**
prem **JUDGE**