

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. FAO No.889 of 2000

Sonu

... Appellant

Versus

Israr Ahmad and others

... Respondents

2. FAO No.1384 of 2000

Israr Ahmad

... Appellant

Versus

Sonu and others

... Respondents

Date of decision: 5th February, 2015

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashish Gupta, Advocate
 for the claimant/appellant in FAO No.889 of 2000;
 respondent No.1 in FAO No.1384 of 2000.

 Mr. Paul S. Saini, Advocate – Standing Counsel
 for the insurer/respondent No.3 in FAO No.889 of 2000;
 respondent No.2 in FAO No.1384 of 2000.

 None for the remaining respondents.

FATEH DEEP SINGH, J.

These two appeals, one by the claimant Sonu and the other by the owner of the offending vehicle Israr having arisen out of the common Award dated 29.10.1999 passed by learned Motor Accident Claims Tribunal, Gurgaon are being disposed off together by this common judgment.

Since record stood destroyed in the fire that engulfed the record room not much is there before the Court for better appreciation.

After hearing arguments of Mr. Ashish Gupta, Advocate for the claimant and Mr. Paul S. Saini, Advocate for the insurer.

The averments on which the claim is based are that on 30.09.1998 appellant/claimant Sonu, a girl, had boarded jeep bearing registration No.HR-28-4049 along with others which was being driven by respondent Khushi Khan and owned by Israr Ahmad. It is alleged by the claimant that due to rash and negligent driving of the driver around 2.45 p.m. the jeep met with an accident leading to injuries to the claimant regarding which accident an FIR was also registered.

The learned Tribunal while returning findings on issue No.1 has held that the accident was on account of rash and negligent driving of the jeep by its driver.

After hearing arguments at length, it is admitted that the FIR has been registered against the driver of the offending vehicle and therefore, in view of the ratio laid down in '**Keshub Mahindra v. State of Madhya Pradesh**' II (1996) ACC 292 (SC) is prima facie culpability of commission of offence. More so, the driver and the owner are contesting the litigation but have not bothered to rebut the case of the claimant by testifying and therefore, an adverse inference needs to be drawn against the driver in terms of Section 114 of the Evidence Act and the eye-witness account has remained uncontroverted and therefore, findings of the learned Tribunal on issue No.1 need not be disturbed.

The learned Tribunal while adjudicating has awarded compensation to the tune of ₹35,000 to the claimant for her injuries and disablement. The onus lay heavily upon the claimant to establish it so. The claimant has testified as PW2 and claims that after the accident she was rushed to CHC, Ferozepur Jhirka and thereafter was referred to Civil Hospital, Gurgaon where she remained admitted from 30.09.1998 to 29.10.1998 for almost a period of one month and claims that she spent ₹20,000 on her treatment and though has examined PW1 Dr. Akhlaq Ahmad to prove her disability. The disability certificate Ex.P1 has been issued regarding 15% disability of the left knee and there is apparent evidence which has remained unrebutted that there was a fracture of the left leg and therefore keeping in view the normal period of healing of fracture which is around six months and she must have laid-back from her avocation for this period and though claims that she was a labourer earning ₹2,000 per month needs to be taken into account. However, it has been rightly contended by the respondent insurer that the disability is not qua the whole body and it is in respect of that very portion certainly keeping in view the fact that being a labourer this disability would certainly come in the way of her day-to-day activities and thus, would come in the way of her earnings. The claimant is a young unmarried girl and this disability would also come in the way of her matrimonial prospects and thus, applying the multiplier method to assess this disability, in view of the law laid down in '**R.D.Hattangadi v. Pest Control (India) Private Limited**' 1995 (2) PLR 298 SC, she shall be entitled to compensation under the following heads which has escaped the sight of learned Tribunal:

(A) Pecuniary Compensation

(i)	Compensation assessed on account of expenses incurred on treatment	₹15,000/-
(ii)	Compensation assessed on account of expenses incurred on special diet, services of attendant and conveyance etc.	₹7,000/-
(iii)	Compensation assessed on account of loss of earnings during hospitalization/ rest	₹12,000/-
(iv)	Compensation assessed on account of loss of earnings due to permanent disablement	₹65,000/-

(B) Non-Pecuniary Compensation

(i)	Compensation assessed on account of physical pain, mental agony and sense of wrong	₹15,000/-
(ii)	Compensation assessed on account of loss of beauty/enjoyment of life, matrimonial prospects etc.	₹50,000/-

Total	₹1,64,000/-
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Thus, the claimant shall be entitled to a total compensation of ₹1,64,000 (rupees one lac sixty four thousand only). Besides this, the claimant shall also be entitled to interest @7.5% p.a. on the enhanced amount from the date of filing of the appeal till realization. Interim compensation paid, if any, shall be adjusted.

The averments of learned counsel for the insurer that it was a third party insurance as per the policy Ex.R1 and more so, his arguments could not be controverted on behalf of the owner by virtue of which it is sought to be assailed that there was misuse of the provisions of law as the vehicle in question was being plied as a taxi and which has very well come in the cross-examination of the claimant that her uncle had paid for expenses of the journey and they were 20-

25 persons travelling in the vehicle, are matters which have an adverse bearing on the case of the owner. It is a matter of common knowledge that people tend to misuse laxity of application of law and use such vehicles unauthorizedly to earn livelihood and which needs to be seriously denounced and though Ex.R1 shows that the policy was valid from 17.08.1998 to 16.08.1999 when the accident took place on 30.09.1998 and therefore, the insurer cannot wriggle out of its commitment towards the third party claim as the claim is certainly third party qua owner, driver and the insurer. However, in view of this serious violation, the insurer reserves the right to recover this amount jointly and severally from the owner and driver.

Rest of the stipulations laid down by the Tribunal need not be disturbed. Thus, the appeal of the claimant needs to be allowed as learned Tribunal has failed to award just and reasonable compensation.

The owner's plea as to the award of compensation qua him in spite of the insurance certainly fails and that the insurer cannot be bound to indemnify the owner qua such a conduct of illegally plying of a private vehicle in the capacity of a commercial one and therefore, the appeal of the owner stands dismissed holding that the insurer reserves the right to recovery the amount from owner and driver jointly and severally.

(FATEH DEEP SINGH)
JUDGE

February 5, 2015
rps