309 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision-21.10.2015

1. **FAO No.3943 of 2010**

United India Insurance Co. Ltd. ...Appellant
Vs.
Binder Kaur & others ...Petitioners

2. **FAO No.3944 of 2010**

United India Insurance Co. Ltd. ...Appellant
Vs.
Balwinder Kaur & others ...Petitioners

3. **FAO No.3945 of 2010**

United India Insurance Co. Ltd. ...Appellant
Vs.
Mukhdev Singh & others ...Petitioners

4. **FAO No.3946 of 2010**

United India Insurance Co. Ltd. ...Appellant
Vs.
Swarno & others ...Petitioners

5. **FAO No.3947 of 2010**

United India Insurance Co. Ltd. ...Appellant
Vs.
Mukha Ram & others ...Petitioners

6. **FAO No.304 of 2011**

Balwinder Kaur & others ...Appellant
Vs.
Sukhvir Singh & others ...Petitioners

7. **FAO No.6446 of 2010**

Mukhdev Singh ...Appellant
Vs.
Sukhvir Singh & others ...Petitioners

8. **FAO No.6616 of 2010**

Swarno ...Appellant
Vs.
Rupinderjit Kaur & others ...Petitioners

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

Present: Mr. Gopal Mittal, Advocate
for the appellants in
FAO Nos. 3943 to 3947 of 2010 and
for respondent No.4 in FAO No.304 of 2011.

None for the Driver and Owner.

Mr. A.S. Syan, Advocate &
Mr. R.K. Shukla, Advocate
for the claimants.

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K.KANNAN, J. (Oral)

[1] All the appeals are connected as they arise out of the same accident. The appeals in FAO Nos.3943 to 3947 of 2010 are at the instance of the Insurance Company seeking for reduction of the awards in some cases and denying liability in some cases and the appeals in FAO Nos.304 of 2011 and 6446 of 2010 are by the claimants seeking for enhancement of compensation.

[2] It is a case of motor accident that had taken place when passengers in goods vehicle were either injured or succumbed to injuries by death. The plea in defence by the insurer was that the vehicles had been insured as a commercial goods vehicle (pick-up van) but at the relevant point of time when the accident took place, the persons, who suffered grievous or fatal injuries, which were made the basis for claims, were actually travelling in the vehicle and did not qualify for persons travelling in the vehicle along with the goods.

[3] The law laid down through the decision of the Supreme Court in ***New India Assurance Company Limited Versus Asha Rani-(2003) 2 SCC 223*** that held that the statutory amendment brought by Act 54 of 1994 to Section 147 allowed for a compulsory insurance cover only for owners of goods travelling along with goods vehicles and there is no requirement of a policy of insurance to cover the risk of passengers in goods vehicle. There would be no authorization for them to travel in a goods vehicle, in any other circumstances other than as driver, cleaner or owners of goods. In terms of the judgment, there is no liability of the Insurance Company so far as the claims are at the instance of persons who were injured or representatives of deceased persons who were actually travelling in the insured's goods vehicle. The liability cast on the insurer was erroneous to that extent. The appeals by the Insurance Company are allowed and the right of enforcement for the claims of passengers of the vehicles or representatives will proceed only against the owner and driver. If any portion of the awards have been recovered already from the insurer, the insurer will make the recovery not against the claimants but against the owner and driver only. The appeals by the insurer in FAO Nos.3943, 3946, 3947 of 2010 are allowed.

[4] The appeals in FAO Nos.304 of 2011 and 6446 of 2010 are at the instance of persons who represented the deceased and the injured person both of whom were travelling in a scooter and came by injuries on account of the negligent driving of the truck driver. FAO Nos. 3944 of 2010 and 3945 of 2010 are respectively by the insurer in the same award. So far as the claims at their instance are concerned, they were third parties to the truck and the claims would require to be satisfied wholly by the insurer without in any way being governed by the exclusion provided in the reasoning contend in the earlier paragraphs. The appeals by the insurer in FAO Nos. 3944 of 2010 and 3945 of 2010 denying liability cannot be sustained. They are accordingly dismissed. The claimants' cases as regards the adequacy of compensation would alone be required to be considered.

[5] The claimants in FAO No.304 of 2011 are widow, son and mother of an agriculturist, aged 45 years. The deceased had serious injuries requiring hospitalization and treatment. However, he had succumbed to the injuries. The Tribunal provided for Rs.4, 000/- as the average income, applied a multiplier of 14 and provided modest sums as conventional heads of claim for compensation and awarded Rs. 7,87,739/- is compensation. I will re-work the scales that have now become the norm providing for loss of consortium and loss of love and affection at higher scales. He was said to be an agriculturist, whose income was taken as Rs. 4, 000/- and given the prospect of increase that is being provided. I will take an average income of the deceased at Rs. 5,000/- and re-work the compensation and tabulate the various heads as follows:-

Accident		***17.04.2007***	
Age		***45***	
Occupation	***Agriculturist***		
Claimants	***Widow, son, mother***		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount (Rs)	Amount (Rs)
1.	Income	4,000	
2.	Add,% of increase 30%/50%		5,000
3.	Deduction 1/3		3333.33
4.	Multiplicand		39,999.99
5.	Multiplier	14	14
6.	Loss of dependence		5,60,000
7.	Medical expenses	3,30,139	3,30,139
8.	Loss of consortium		1,00,000
9.	Loss of love and affection		50,000
10.	Loss to estate		5,000
11.	Funeral expenses	4,000	25,000
	Total	7,87,739	10,70,139 Rounded off- 10,70,150.

[6] There shall be an award of Rs.10,70,150/-. The additional amount of compensation shall attract interest at 7.5% per annum from the date of petition till date of payment. The liability shall be on the insurer. The award stands modified and the appeal in FAO No.304 of 2011 is allowed to the above extent. Consequently, FAO No. 3944 of 2010 filed by the insurer is dismissed.

[7] The claimant in FAO No. 6446 of 2010 is Binder Kaur who was passenger in the goods vehicle. It was stated that she had suffered injuries resulting in hospitalization. The Court observed that there was nothing to show that she had permanent disability and provided only for loss of earning assessed at Rs. 15,000/- and provided Rs. 1,03,389/- towards the medical expenses. There is no penal assessment for paying suffering and I will make an additional amount of Rs.15,000/- for the fractures she had suffered and the prolonged period of hospitalization. There was consequently an additional award of Rs.10,000/- which shall also be paid by the owner and driver and the appeal is allowed to the said extent. Consequently, FAO No.3945 of 2010 is dismissed.

[8] The FAO No.6616 of 2010 is enhancement of compensation for injuries suffered in a motor accident that took place on 17.04.2007. By virtue of accident, the claimant had suffered an amputation below her knee and the doctor who examined her gave evidence to the effect that her disability was 60%. She had been in the hospital taking treatment from 17.04.2007 to 03.07.2007. The medical bills proved on record aggregated to an amount of Rs 22,953/-. The claimant contended that she used to do agricultural work and she was earning Rs. 5,000/-. The Tribunal took the income at Rs. 3,000/-, allowed for 60% disability to result in 60% loss in earning capacity and assessed Rs. 3,29,000/- as the amount of monetary loss due to her loss of earning capacity. It allowed for Rs. 22,953/- being the medical expenses and granted compensation at Rs.3,51,953/-.

[9] I will find the assessment regarding loss of earning capacity to be correct and I will make no intervention as regards the same. However, I will make modification with reference to the medical expenses moderately to increase it to Rs. 25,000/- and also provide for attendant charges, special diet and transportation at nominal amounts. I will provide for Rs. 75,000/- as the loss on account of pain and suffering and will also provide for another Rs. 75,000/- for loss of amenities in her life by virtue of amputation. I will also provide for loss of income during the time when she had been in hospital undergoing treatment. The various heads of claims are tabulated as under:-

INJURY CASES			
Age	38 years		
Period of Hospitalization 17.4.2007 to 3.7.2007			
Occupation	Labour Work		
	Heads of claim	**Tribunal**	**High Court**
Sl. No.		Amount (Rs)	Amount (Rs.)
1	Loss of income		12,000
2	Medical expenses		
(i)	Medicines	22,953	25,000
(ii)	Hospital Charges		
(iii)	Attendant Charges		5000
(iv)	Special Diet		2500
(v)	Transport		2500
3	Pain & Suffering-per fracture/per surgery		75,000
4	Disability	60%	60%
5	Loss of earning capacity		
	income		3000
	Multiplier	15	15
	% of loss of earning capacity	3,29,000	3,29,000
6.	Loss of amenities		75,000
7	Reduction in life expectancy		
8	Loss of prospect of marriage		
	Total	**3,51,953**	**5,26,000**

[10] There shall be a compensation of Rs. 5,26,000/-. The additional compensation will attract interest @ 9% from the date of petition till the date of payment. Consistent with the finding that the insurer will not be liable to the order passed in FAO No.3946 of 2010 exonerating the Insurance Company, the right of enforcement of the amount determined shall be against the owner and driver only.

The award is modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

October 21, 2015
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