

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

FAO No.4647 of 2011 (O&M)

Reliance General Insurance Company Ltd.

...Appellant

Versus

Smt.Khatuni and others

...Respondents

(2)

FAO No.30 of 2012 (O&M)

Khatuni

...Appellant

Versus

Priya and others

...Respondents

Date of Decision: July 17, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arun Sharma, Advocate for
Mr.Tejnder K. Joshi, Advocate
for the appellant (in FAO No.4647 of 2011) and
for respondent No.3 (in FAO No.30 of 2012).

Mr.Sandeep Jasuja, Advocate
for the appellant (in FAO No.30 of 2012) and
for respondent No.1 (in FAO No.4647 of 2011).

Mr.Vishal Mittal, Advocate
for respondents No.2 and 3 (in FAO No.4647 of 2011) and
for respondents No.1 and 2 (in FAO No.30 of 2012).

INDERJIT SINGH, J.

Both the above-mentioned FAOs are taken up together for
disposal being arisen from same Award.

FAO No.4647 of 2011 has been filed by the Reliance General Insurance Company Ltd. against claimant-respondent Khatuni and respondents Priya, owner and Shamsheer, driver of Santro car No.HR-51Y-1091 (offending vehicle), challenging the impugned Award dated 09.04.2011 passed by learned Motor Accident Claims Tribunal, Nuh, Mewat (hereinafter referred to as 'Tribunal') on the ground that the compensation awarded by the Tribunal is on higher side.

FAO No.30 of 2012 has been filed by claimant Khatuni against Priya, owner, Shamsheer, driver and Reliance General Insurance Company Limited, Insurer of offending vehicle, challenging the above-said impugned Award, for enhancement of the compensation.

The brief facts of the case are that Smt.Khatuni filed claim petition against Priya, owner, Shamsheer, driver and Reliance General Insurance Company Limited, Insurer of offending vehicle, under Section 166 of the Motor Vehicles Act. It is stated in the claim petition that on 02.10.2008, the claimant was going on a motorcycle with her nephew Yunus. When the claimant got down from the motorcycle and her nephew went to fill up petrol, in the meantime, a Santro car bearing No.HR-51Y-1091 (offending vehicle) being driven by its driver rashly and negligently came from front side and hit the claimant, as a result of which, she sustained injuries.

Upon notice, respondents-driver and owner took the plea that no such accident was caused with the offending vehicle.

Respondent-Insurance Company took the plea that the driver of the offending vehicle was not holding a valid and effective driving licence and it is stated that amount claimed is highly exaggerated.

The Tribunal after framing the issues, gave opportunity to the parties to lead evidence. Learned Tribunal assessed the income of the claimant as ₹2800/- per month and by taking the age of the injured on the day of Award, multiplier of 15 was applied. The doctor proved the disability certificate Ex.P2 stating permanent disability on account of head injury as 50% and stated that there are no chances of reduction of permanent disability by way of physiotherapy and proper treatment and the doctor deposed that there is 50% permanent disability on account of head injury with contusion with SAH with right side hemipareses. It is also deposed by the doctor that due to disability, the patient's normal routine life activities are hampered. Therefore, the Tribunal after applying the multiplier of 15 on the income of ₹2800/- per month, awarded compensation of ₹5,04,000/- and ₹4000/- has been granted on account of medical expenses.

Learned counsel for the appellant Insurance Company failed to show as to how this compensation given by the Tribunal is on higher side. As per the evidence on record, there was 50% permanent disability. Even the Tribunal has taken the age of the claimant on the date of Award instead the date of the accident. The accident took place in the year 2008 and Award has been passed in the year 2011. Only ₹4000/- has been awarded on account of medical expenses. No amount has been awarded by the Tribunal on the

ground of pain and sufferings, transportation charges, attendant charges, special diet, medical expenses in future also.

In view of the above, I do not find any merit in the appeal filed by the Insurance Company i.e. FAO No.4647 of 2011 and the same is dismissed.

As regarding the appeal filed by the claimant for enhancement of the compensation, I find that claimant is entitled for compensation on the ground of special diet, attendant charges especially in view of the fact that there is 50% permanent disability due to head injury and she could not walk properly and also could not give her routine services to the family. No transportation charges have been given. Only ₹4000/- has been granted on the ground of medical expenses and future medical expenses. Keeping in view the age of the claimant at the time of accident i.e. 35 years, multiplier of 16 will apply as per ***Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77.*** Further, the loss of services of the claimant to the family has been assessed on lower side.

In view of the evidence on record, I assess the notional income of the claimant on the basis of loss of services to the family as ₹3000/- per month. As the claimant, due to head injury and permanent disability, as argued, could not do any work, so her disability is taken as 100% and by applying the multiplier of 16, the compensation would come to ₹3000/- x 12 x 16 = ₹ 5,76,000/-. On the ground of special diet, ₹10,000/- and for transportation charges also

₹10,000/- is awarded. ₹25,000/- is awarded for pain and sufferings; ₹25,000/- is awarded for the medical expenses and future medical expenses. As the claimant is unable to do any work and there is difficulty in walking, therefore, ₹50,000/- is awarded for attendant charges.

In view of the above, the claimant is entitled to total compensation of ₹6,96,000/- along with the same interest, on the enhanced amount, as awarded by the Tribunal from the date of filing of the claim petition till realization.

Resultantly, FAO No.30 of 2012 is allowed accordingly.

July 17, 2015
Vgulati

(INDERJIT SINGH)
JUDGE