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

Date of Decision: January 30, 2015

1. FAO No. 4948 of 2012 (O&M)

Parmod ....Appellant.

Versus

Paramjeet and others
....Respondents.

2. FAO No. 2230 of 2013 (O&M)

Chhaju Ram
....Appellant.

Versus

Parmod and others
....Respondents.

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Kuldeep Khandelwal, Advocate,
for the appellant (in FAO No. 4948 of 2012) and
for respondent No.1 (in FAO No. 2230 of 2013).

Mr. Vikram Sheoran, Advocate
for respondent No. 1(in FAO No.4948 of 2012) and
for respondent No. 2 (in FAO No. 2230 of 2013).

Mr. Sandeep Singh, Advocate,
for respondent No.2 (in FAO No. 4948 of 2012) and
for the appellant (in FAO No. 2230 of 2013).

Mr. Vishal Aggarwal, Advocate,
for respondent No.3.

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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?

<u>JASPAL SINGH</u>, J.

By this common judgment, this Court intends to dispose of FAO No. 4948 of 2012, captioned as ***"Parmod v. Paramjeet and others"*** as well as FAO No. 2230 of 2013, captioned as ***"Chhaju Ram v. Parmod and others"*** as both these appeals are outcome of the one and the same award dated February 24, 2012, passed by the Motor Accident Claims Tribunal, Hisar (for short, "the Tribunal") whereby on account of sustaining of injuries by Parmod in a vehicular accident occurred on October 08, 2010, due to rash and negligent driving of Tata Canter/LPT bearing registration No.HR-61-A-2896 being driven by respondent No.1, was partly allowed in favour of the claimant and against respondents No. 1 and 2 i.e. driver and owner. However, insurance company-respondent No.3 was directed to first make the payment of compensation awarded to the claimant but liberty was granted to insurance company to recover the amount of compensation, so paid, from the owner/insured of the offending vehicle.

2. FAO No. 4948 of 2012, has been filed by Parmod being dissatisfied with regard to quantum of compensation for its enhancement whereas FAO No. 2230 of 2013, has been preferred by Chhaju Ram-owner/insured of the offending vehicle with the prayer to set aside/struck down the relief granted to the insurance company to recover the amount of compensation, so paid by it to the claimant.

3. Notices of the appeals were given to each other.

4. While assailing the quantum of compensation awarded to appellant, it has been argued with vehemence by Mr. Kuldeep Khandelwal, learned counsel for appellant that respondent No.1 has been rightly held by ld. Tribunal to have caused the accident due to rash and negligent driving of HR-61-A-2896, in which Parmod sustained grievous injuries but while awarding compensation, ld. Tribunal has failed to appreciate the fact that leg of appellant/claimant was amputated due to crush injury and he became permanent disabled to the extent of 80%. Only a sum of ₹1,80,000/- has been awarded by ld. Tribunal on this ground. Ld. Tribunal has further committed an error while ignoring and disbelieving the evidence with regard to the fact that on October 08, 2010, appellant-claimant was admitted in AMC Hospital, Hisar but when his condition became precarious, he was to be operated on October 11, 2010 again and was admitted in Anant Ram Janta Hospital, Pvt. Ltd., Barwala and discharged on October 20, 2010 from there. Claimant incurred a sum of ₹3,50,000/- on his treatment, medicines, special diet, operations and various tests but only a meagre amount of ₹1,72,032/- was awarded. Claimant is only aged about 20 years and due to amputation of his leg, he has suffered a lot and there is a loss of future prospects. So, the amount of compensation, so awarded, deserves to be enhanced.

5. Learned counsel for owner/insured-Chhaju Ram has assailed the impugned award dated February 24, 2012 by submitting that giving of recovery rights to the insurance company to recover the amount of compensation, so paid by it to the claimant from the insured/owner, is absolutely against the legal proposition of law. In fact, insurance company could not point out any breach of the terms and conditions of the insurance policy. Respondent No.1/driver was holding a valid and effective driving license at the time of alleged accident and this fact stands proved from (Ex.R-1). As per (Ex.R-2), the vehicle in question was proved to be owned by Chhaju Ram being its registered owner. Since, there is no violation of any of the terms and conditions of the insurance policy, impugned award, so far as, it provides recovery rights to the insurance company, deserves to be set aside by way of acceptance of this appeal.

6. On the other hand, Mr. Vishal Aggarwal, Advocate representing the insurance company has supported the impugned award dated February 24, 2012, submitting that the same is absolutely in consonance with the evidence available and settled canons of law. Each and every aspect has been elaborately considered by ld. Tribunal before passing impugned award. Neither, claimant-Parmod deserves any enhancement of compensation nor Chhaju Ram owner/insured is entitled to any relief especially in view of the fact that vehicle in question was insured as “Goods Carrying-Public Carrier' and Parmod-claimant while appearing in the witness-

box as PW-7 has admitted that he travelled in the vehicle as a gratuitous passenger and as such, insurance company cannot be fastened with any liability to pay compensation. Rather, owner alone is liable to indemnify the victim.

7. To fortify the above said observation, we can have the reference of the law contained in cases ***"National Insurance Company Ltd. v. Prema Devi and others" 2008(5) SCC 403***, ***"United India Insurance Co. Ltd. v. Suresh K.K. and another", 2008(4) RCR (Civil) 907*** and ***"M/s National Insurance Co. Ltd. v. Baljit Kaur and others", 2004(1) RCR (Civil) 722.***

8. Adverting to the facts of the case in hand, undeniably offending vehicle is registered as "Goods Carrying-Public Carrier" and PW-7 i.e. appellant has categorically admitted that he was travelling as a "gratuitous passenger" in the said goods vehicle. In such a situation, it can be safely concluded that vehicle was being used in violation of the terms and conditions of the insurance policy (Ex.R3), which clearly reflects that the vehicle in question was insured for carrying goods.

9. As far as quantum of compensation awarded by ld. Tribunal to claimant-Parmod is concerned, this Court is of the considered view that same is adequate, just and sufficient and calls for no interference by this Court. A glance at impugned award reveals that claimant placed and proved on record various bills Ex. P-3 to P-18 and Ex.P-21 to P-37 and amount of these bills on calculation

comes out to ₹1,72,032/- whereas considering the fact that claimant has suffered 80% disability (Ex.P20), claimant has been awarded a sum of ₹1,60,000/- whereas a sum of ₹1,00,000/- has been awarded on account of pain and suffering, hospitalization, attendant charges, special diet etc. Total amount of compensation awarded by ld. Tribunal comes out to ₹4,32,032/- which can be said to be absolutely in consonance with evidence available on file and legal proposition of law. This Court does not find any illegality, infirmity or impropriety in the findings recorded by ld. Tribunal as well as in impugned award dated February 24, 2012, rather, same are absolutely in accordance with evidence available on file. Ld. Tribunal has rightly concluded that insurance company is entitled to recover the amount from insured.

10. In the light of what has been discussed above, both appeals being devoid of merits are dismissed whereby impugned award dated February 24, 2012, is upheld.

11. No order as to costs.

(JASPAL SINGH)
JUDGE

January 30, 2015
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