

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5867 of 2014 (O&M)
Date of decision 12.08. 2015.

National Insurance Company Ltd.

..... Appellant.

versus

Ram Kumar Mittal and others

..... Respondents.

FAO No. 9056 of 2014

Tirloki Nath Mittal and others

..... Appellants.

versus

Krishan Lal and others

..... Respondents.

FAO No. 9059 of 2014

Harinder Kumar

..... Appellant.

versus

Krishan Lal and others

..... Respondents.

FAO No. 9057 of 2014

Ram Kumar Mittal

..... Appellants.

versus

Krishan Lal and others

..... Respondents.

FAO No. 9058 of 2014

Madhu Mittal

..... Appellant.

versus

Krishan Lal and others

..... Respondents.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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. G.D.Gupta, Advocate for the appellant, Insurance Company.
Mr. Vineet Soni, Advocate for the claimants.

K.C.PURI, J.

Vide this common judgment, I intend to dispose of five appeals bearing FAO No. 5867 of 2014 titled as National Insurance Company Limited versus Ram Kumar Mittal ; Nisha Devi and others ; FAO No.9056 of 2014 titled as Tirloki Nath Mittal and others vs. Krishan Lal and others ; FAO No.9057 of 2014 titled as Ram Kumar Mittal and others vs. Krishan Lal and others ; FAO No.9058 of 2014 titled as Madhu Mittal vs. Krishan Lal and others and FAO No.9059 of 2014 titled as Harinder Kumar

vs. Krishan Lal and others, as all these appeals have arisen out of the common Award dated 28.04.2014 passed by Shri Jagjit Singh, Motor Accident Claims Tribunal, Ambala.

2. Briefly stated Tirloki Nath Mittal, Krishan Kumar Gupta and Ram Kumar Mittal filed MACT Case No.79 of 2011 claiming compensation on account of death of their father Kedar Nath Mittal whereas Ram Kumar Mittal filed MACT Case No.100 of 2011 claiming compensation on account of injuries sustained by him whereas Harinder Kumar filed MACT Case No.101 of 2011 claiming compensation on account of injuries sustained by him in Motor Vehicle accident whereas Mrs. Madhu Mittal filed MACT Case No.45 of 2012 claiming compensation in respect of damage to Maruti Car bearing registration No. HR-4A-6644. All these claim petitions have arisen out of the accident which has taken place on 28.06.2011. The facts of the case have been gathered from FAO bearing No. 5876 of 2004 titled as National Insurance Company Limited versus Ram Kumar Mittal others.

3. The case of claimant is that on 28.06.2011 Kedar Nath Mittal along with his two sons namely Ram Kumar Mittal and Tirloki Nath Mittal and one Harinder Kumar was going from Ambala City to Naraingarh in Mauti Car bearing registration No.HR-04A-6644 on Naraingarh Road and Ram Kumar was driving the said car. When they crossed Hanuman Mandir, in the meantime a dumper bearing registration No.HR-37C-2718 came from the opposite side in a rash and negligent manner at a very high speed and without blowing any horn and when the respondent No.1 was overtaking another car, he turned his dumper towards their Maruti Car and the rear

wheel of the dumper hit the Maruti Car, as a result of which, the Maruti Car was badly damaged and all the occupants of the car sustained injuries and they were taken to Civil Hospital, Ambala City, where Kedarnath was declared dead whereas Ram Kumar and Harinder Kumar were referred to GMCH Sector 32, Chandigarh. The accident has taken place due to rash and negligent driving of dumper bearing registration No.HR-37C-2718 by Karishan Lal respondent. FIR was lodged by Tirloki Nath Mittal. A sum of Rs.10,00,000/- has been claimed on account of death of Kedar Nath Mittal and Ram Kumar Mittal and Harinder Kumar each have claimed Rs.15,00,000/- on account of injuries sustained by them whereas Rs.2,00,000/- were claimed by Madhu mittal as compensation on account of damages caused to the maruti car.

4. Respondent Nos. 1 and 2 filed their written statement denying the factum of accident but have pleaded that vehicle was fully insured with respondent No.3.

5. Respondent No.3 Insurance Company filed separate written statement pleading that driver of offending vehicle was not having valid driving licence and that terms and conditions of the policy have been violated. The factum of accident has been denied and it is pleaded that false FIR has been registered against respondent in collusion with the police.

6. Replication was not filed. From the pleadings of the parties following issues were framed :-

1. Whether accident took place on 28.06.2011 due to rash and negligent driving of respondent No.1 while driving dumper No.HR-37C-2718. If so, its effect ? OPP

2. Whether death of Kedar Nath and injuriers of Harinder Kumar and Ram Kumar Mittal and damage to Maruti Car No.HR-04A-6644 occurred because of this accident and if so its effect ?OPP
3. If both the issues are proved in affirmative, whether claimants in each claim petition are entitled to receive compensation, if so, how much from whom ?OPP
4. Whether the offending vehicle was being driven in contravention of the conditions of insurance policy. If so to what effect ?OPR-3
5. Relief.

7. The Tribunal, after adjudicating the evidence, returned findings on issue No.1 in favour of claimants whereas issue Nos.2 & 3 were also decided in favour of claimants. Issue No.4 was decided against the Insurance Company. Consequently, the claim petitions were partly accepted

8. The Insurance Company has directed the appeal No.5867 of 2014 against R.K.Mittal whereas award in respect of remaining claimants was not challenged by the Insurance Company. However, claimants Triloki Nath Mittal, Krishan Kumar Gupta and Ram Kumar Mittal sons of Kedar Nath Mittal have directed FAO No.9056 of 2014 for enhancement of compensation. Ram Kumar Mittal claimant has also filed FAO No.9057 of 2014 for enhancement of compensation in respect of injuries sustained by him and Harinder Kumar filed FAO No.9059 of 2014 for enhancement of compensation in respect of injuries sustained by him whereas Madhu Mittal claimant has filed FAO No.9058 of 2014 for enhancement of compensation in respect of damages to her Maruti car. Since all these claim petitions have arisen out of the same Award and as such are being disposed of with the common judgment.

9. Counsel for Insurance Company has raised only one grievance during the course of arguments that bills of Rs.2,23,595/- produced by the claimant-Ram Kumar Mittal, after two months of the road accident of Alchemist Hospital, Panchkula for his heart ailment has no nexus with the accident. Hence the said amount is not payable by the Insurance Company.

10. On the other hand, counsel for Ram Kumar has submitted that as per the Medical Record, Ram Kumar had been admitted in IVY hospital in the first instance and thereafter he was taken to NINS Brain and Spine Hospital, Sector 34 Chandigarh where he remained admitted from 29.06.2011 to 05.07.2011. Ram Kumar suffered acute AAMI CAG single vessel disease face right side hemiparesis as per history given by hospital. Bill Ex.P8 amounting to Rs.69,326/- has been proved on the file from NINS Brain and Spine Hospital, Sector 34 Chandigarh whereas bill Ex.P-9 of IVY Hospital valuing Rs.22063/- has been produced on the file. The MIR bill Ex.,P-75 valuing Rs.2500/- and another bill of Rs.4000/- has been produced besides the bill of Alchemist Hospital. The history given by Alchemist Hospital also shows that the head injury was suffered by Ram Kumar Mittal and the heart disease has also occurred on that account. It is further contended that amount granted by the Tribunal is on lower side as only Rs.50,000/- has been allowed regarding head injury. It is further contended that claimant is a disabled person and his amount of compensation requires to be enhanced. Previously he was working as teacher and after retirement he was working in the private school and record of that school has been produced and as such amount of compensation

should have been enhanced. So, prayer has been made for further enhancing the amount.

11. I have heard the learned counsel for the parties and have gone through the records of the case with their able assistance.

12. The first point, which requires consideration of this Court is whether amount of Rs.4,20,000/- requires any interference. The amount of medical bills valuing Rs.3,70,000/- has been allowed by the Tribunal and the remaining amount of Rs.50,000/- has been allowed on account of injuries sustained by Ram Kumar Mittal.

13. The Insurance Company has not challenged the bills except that of Alchemist Hospital. In the discharge summary, it has been mentioned that Ram Kumar Mittal suffered head injury, although it is mentioned that he has been recovered but keeping in view the nature of injury further complications are bound to arise. So, the argument advanced by the counsel for the insurance company that there is no nexus in the treatment of Alchemist Hospital regarding injuries cannot be accepted. Moreover, the appellant suffered hemiparesis. As per discharge summary hemorrhage was seen in right parietal scalp haematoma right frontal region. So, the amount of Rs.4,20,000/- keeping in view the such type of injury cannot be said to be on higher side.

14. So far as FAO No. 9057 of 2014 preferred by Ram Kumar Mittal for enhancement of compensation is concerned, no case for enhancement is also made about on re-appraisal of the evidence. So, the appeal preferred by Insurance Company and that of preferred by Ram

Kumar Mittal are without any merit and the same stand dismissed.

FAO No. 9056 of 2014

15. This appeal relates to enhancement of compensation in respect of death of Kedar Nath Mittal in motor vehicular accident. The Tribunal has taken the age of deceased as 75 years keeping in view the authority **P.Jonson vs. K.Presiasamy and others reported in 2012 ACJ page 155,** an amount of Rs.50,000/- was allowed on account of death of Kedar Nath Mittal. Another sum of Rs.20,000/- was allowed on account of cremation and last rites. The insurance company has not challenged the Award and as such the only point for determination is regarding enhancement.

16. Counsel for the appellant has submitted that the Tribunal has not assessed the income of deceased and only amount under no fault liability has been allowed and no amount in respect of love and affection has been allowed.

17. On the other hand, counsel for the Insurance Company has submitted that even if calculations are made, the amount cannot be enhanced. Notional income has been taken as Rs.15,000/- per annum. So, even dependency is taken as Rs.10,000/- per annum. The multiplier of 5 has been rightly applied. In this manner, the amount comes to Rs.50,000/- as awarded by the Tribunal. Another sum of Rs.20,000/- was allowed on account of cremation and last rites. So, no case for enhancement is made out.

18. I have heard the learned counsel for the parties and have gone through the records of the appeal with their able assistance.

19. The accident has taken place on 28.06.2011 and as such the minimum Wages applicable in that year has to be taken into account for assessing amount of compensation. So, the income of Kedar Nath Mittal deceased can be taken as Rs.4500/- per month keeping in view the Minimum Wages Act. The dependency can be calculated by deducting 1/3rd in respect of personal expenses. So, the dependency comes to Rs.3000/- per month and yearly dependency comes to Rs.36,000/-. The age of deceased was 75 years and as such multiplier of 3 would be appropriate in calculating the amount of compensation. So, by applying the multiplier of 3, the amount of compensation comes to Rs.1,44,000/-. A sum of Rs.25,000/- stands allowed in respect of expenses on last rites, funeral expenses etc. and claimants are also held entitled to claim Rs.50,000/- on account of loss of love and affection. In this manner, the claimants are held entitled to claim Rs.1,80,000/-. The enhanced amount shall be shared equally between all the claimants. The liability to pay the enhanced amount shall remain the same as ordered by the Tribunal. However, the enhanced amount shall carry interest @ 7.5% per annum from the date of petition till payment.

20. In the manner, indicated above, FAO No. 9056 of 2014 stands partly accepted.

FAO No. 9058 of 2014

21. This appeal has been directed by Smt. Madhu Mittal for enhancement of compensation on account of damages to Maruti Car bearing registration No. HR-4A-6644. Counsel for the appellant is fair enough to concede that there is no other evidence except estimate for enhancement of the amount.

22. Consequently, the appeal preferred by Smt. Madhu Mittal is without any merit and the same stands dismissed.

FAO No. 9059 of 2014

23. The Tribunal has allowed a sum of Rs.2,90,000/- to Harinder Kumar claimant on account of injuries sustained by him in the accident in question. The Tribunal has assessed that Harinder Singh has suffered disability to the extent of 30%. He remained admitted in the hospital for 24 days and remained bed ridden for about 7-8 months and has incurred expenditure of Rs.1,80,000/-. Rs.50,000/- has been allowed on account of disability suffered by him. Rs.1,80,000/- has been allowed on account of medical expenses and Rs.60,000/- has been allowed on account of transportation, diet and attendant charges etc. In this manner, total amount was granted Rs.2,90,000/-. The Insurance Company has not challenged the Award qua Harinder Kumar.

24. To properly appreciate the facts of the case, the evidence produced by the claimant regarding injury to Harinder Kumar has to be re-appreciated.

25. Claimant Harinder Kumar was examined Dr. S.K.Dhawan, Orthopedic Hospital, Arya Nagar Ambala Cantt., who has stated that on 29.06.2011 Harinder Kumar was brought to the hospital. He was initially admitted at IVY hospital. He had sustained fracture shaft humerus right side and fracture acetabulum right side. He was operated with close interlocking nail humerus on 1.7.2011 and discharged on 5.7.2011. He was referred to PGI for surgery of fracture acetabulum right side. He incurred

expenditure of Rs.25,000/-. Harinder Kumar has also examined (PW-8) Dr. Vijay Kumar, Orthopaedic Surgeon, Civil Hospital, Ambala Cantt., who has stated that on 19.12.2012, he was member of the Medical Board, and examined Harinder Kumar and after examining the x-ray report fractures were found united with implants inside. Patient was having partial stiffness at right hip joint, at right shoulder joint with right foot drop. His disability was assessed as 30%. He has further stated that patient may require further operation for removal of implants. No doubt, this witness has stated that if disability is taken into account for whole body, the disability may come down upto 15%, but the fact remains that no amount in respect of future treatment has been allowed by the Tribunal. The implant ultimately has to be removed from the body. So, according to the testimony of this witness, even after one and half year of the occurrence, the implant was in the body of Harinder Kumar. However, the assertion made by the counsel for the claimant that he has become totally permanent disabled, cannot be accepted. In case future treatment is taken into account, in that case, at the time of hospitalization for removing implant, Harinder Kumar has to spend amount on transportation, special diets and medical expenses. So, considering all the circumstances, ends of justice would be met in case Rs.1,00,000/- more is allowed to the claimant Harinder Kumar in addition to the amount awarded by the Tribunal. And I order accordingly. The liability to pay the enhanced amount shall remain the same as ordered by the Tribunal. However, the enhanced amount shall carry interest @ 7.5% per annum from the date of petition till payment.

26. In the manner, indicated above, FAO No. 9059 of 2014 stands partly accepted.

27. A copy of this judgment be sent to the trial Court for strict compliance.

**(K.C.PURI)
JUDGE**

August 12, 2015

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