

**FAO No. 17 of 1994 (O&M) with
Cross-objection Nos. 156-CII-2015**

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

**FAO No. 17 of 1994 (O&M) with
Cross-objection Nos. 156-CII-2015
Date of decision: 02.02.2016**

The Oriental Insurance Co. Ltd. ... Appellant
versus

Gurmail Singh and others Respondents

2. FAO No. 18 of 1994 (O&M)

The Oriental Insurance Co. Ltd. ... Appellant
versus

Prem Wati and others Respondents

3. FAO No. 19 of 1994 (O&M)

The Oriental Insurance Co. Ltd. ... Appellant
versus

Har Parshad and others Respondents

4. FAO No. 490 of 1994 (O&M)

National Insurance Company Ltd. ... Appellant
versus

Parminder Kaur and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Neeraj Khanna, Advocate with
Mr. Ravinder Arora, Advocate for the appellant.

Mr. Ashwini Arora, Advocate
for the cross-objector/respondent No.1.

K.Kannan, J. (ORAL)

FAO Nos. 17 to 19 of 1994 would required to be disposed of on a singular consideration of issue of liability for the insurer to gratuitous passengers or owners of goods travelling with the goods prior to the Amendment Act 54 of 1994 that took effect from 14.11.1994. The said position had been addressed already in FAO Nos. 38 & 39 of 1992 by the decision dated 06.01.2016. In terms of the decision the Insurance Company would stand absolved of liability and only the owner and driver shall be liable for the compensation assessed. If any amount has been paid by the Insurance Company, the said amount shall not be recovered from any the claimants but the right of recovery will be exercised only against the owner and driver. FAO Nos. 17 to 19 are disposed of as above.

Cross-objection No. 156-CII-2015 is for enhancement of claim for the claimant in a case which is a subject of appeal in FAO No. 17 of 1994. In the cross objection for claim for enhancement, the claimants had a case to contend that the assessment of Rs. 70,000/- as compensation was grossly inadequate at the time when he was examined before the Tribunal. The evidence available on record was that he had fracture of the left arm and the collar bone and dislocation of the right shoulder and some injuries on the chest. He was said to have 55% temporary disability. During the pendency of the appeal, an application had been filed for assessment of the disability on a plea that

there had been a gradual onset of further debilitation and his disability had further degenerated. The appellant appears to have obtained a disability certificate and a doctor was examined to allow for additional evidence to be brought through him before the Tribunal.

The Doctor has stated that he had not been treating the claimant at any time and he was not particularly aware of whether the injuries were old or fresh. However, he had himself volunteered to state that they were traumatic injuries and he was giving a report on what he had seen. He admitted also that he had not checked the patient since the year 1991 and he was making his assessment from the information and document volunteered by the party himself about the injury as having been caused to him in the year 1990. He has stated that the patient would require help of the attendant to do his daily routine work and assessed the disability at 70%. He was a vegetable vendor and a serious functional impairment of his limb that has caused 70% disability, I would estimate the loss of earning capacity to be about 35% and make a reckoning for loss of earning capacity for the income that had been assessed already by the Tribunal. His loss of income was stated to be Rs. 10,000/- for 6 months and I have, therefore, take the average income approximately at Rs. 1,750/- and apply 35% loss of earning capacity and apply the multiplier of 16. Other heads of claim which were addressed were loss of amenities for dis assessed at Rs. 50,000/-, pain and suffering have taken at Rs. 5,000/-, medicines and transportation at Rs. 3,000/- and Rs. 2,000/- respectively. I will increase

the component of pain and suffering by Rs. 25,000/-. This would mean an entitlement to Rs. 2, 07, 600/-.

<u>Injury Case</u>	Date of accident	20.10.1991	
Age	35		
Period of hospitalization			
Occupation/ Income	Vegetable vendor		
SR. No.	Heads of claim	Tribunal Amount (Rs.)	High Court Amount (Rs.)
1	Loss of Income from: to: for six months	10,000/-	10,000/-
2.	Medical Expenses:		
	(i) Medicines	3,000/-	3,000/-
	(ii)Hospital charges		
	(iii)Attendant charges		
	(iv)Special diet		
	(v)Transportation	2,000/-	2,000/-
3	Pain and suffering	5,000/-	25,000/-
4	Disability (70%)	50,000/-	50,000/-
5	Loss of earning capacity		35%
	(i)Income		1,750/-
	(ii)Multiplier		16
	(iii)Loss of earning capacity		1,17,600/-
6.	Loss of amenities		
7.	Reduction in life expectancy		
8.	Loss of prospect of		

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	marriage		
9	Total	70,000/-	2,07,600/-

The additional amount will attract interest at 7.5% from the date of the petition till the date of the payment. The liability shall be on the owner and driver, consistent with the finding already recorded that the insurer would not be liable for passenger in a goods vehicle.

The award stands modified and the cross objection is allowed to the above extent.

02.02.2016
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(K.KANNAN)
JUDGE