

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1688 of 1997 (O&M)

Date of Decision.24.02.2016

Nand Lal

.....Appellant

Vs.

Gurnam Singh and others

.....Respondents

2. FAO No.1574 of 1997 (O&M)

Karta Ram

.....Appellant

Vs.

Gurnam Singh and others

.....Respondents

Present: Mr. Ashit Malik, Advocate
for the appellant.

Mr. R.C. Kapoor, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. These two appeals require an adjudication in terms of the decision already rendered in FAO Nos.495 and 496 of 1998 that have allowed the claims of passengers in a three wheeler. It was a case of collision between three wheeler and the insured's truck. I have set aside the orders of dismissal and provided for compensation to be claimed against the insurer of the truck by applying the principle that as far as the passengers of the three wheeler were concerned, it was a case of composite negligence and their claim could be pursued even against the insurer of the truck. Consistent with the reasoning, I modify the

order of dismissal in the above two cases as well.

2. FAO No.1574 of 1997 is claim for compensation for injuries suffered by a 75 years old person Karta Ram who had a hip bone fracture. He was said to be running a karyana shop making an earning of ₹2000/- to ₹2500/- per month. The accident was on 07.07.1994. The doctor's evidence had been placed on record to say that he had been operated upon and k-nailing done to reduce the fracture. Although the claimant contended that he has spent about ₹1,50,000/-, no document was placed for the expenses incurred. Since the treatment was at PGI, I would venture a guess that there were no charges collected from him but still I would provide for modest sum of ₹10,000/- towards medical expenses and hospitalization charges. I will make a provision for another ₹10,000/- for pain and suffering and assess yet another sum of ₹5,000/- towards loss of income. I will not assess any particular amount going towards disability since there was no evidence brought for such disability. The total compensation payable will be ₹25,000/- with interest @6% from the date of petition till the date of payment.

3. As regards the claim in FAO No.1688 of 1997, the facts are similar except that the claimant was 38 years of age and had a similar fracture of the hip and operation done as spoken to by the doctor. I would provide for ₹25,000/- with interest @6% from the date of petition till the date of payment. The liability shall be on the insurer of the truck.

4. The entitlement of the insurer to proceed for contribution against the owner and driver of the three wheeler as observed in the judgment in FAO No.495 of 1998 shall be available to the insurer by

means of an independent action, if so advised. The counsel for the insurer points out that Nand Lal who is the claimant in case which is the subject matter of appeal in FAO No.1688 of 1998 is himself the owner of the three wheeler. The counsel appearing on behalf of the appellant-claimant reads out to me the evidence of Nand Lal where he has spoken about his brother being the owner and the driver being one Ranjit Singh employed by his brother. It is not possible for me to conclude the issue of ownership in this case and the insurer's right will be protected in the manner which I have already provided above.

5. The awards passed by the Tribunal are set aside and both the appeals are allowed to the above extent.

(K. KANNAN)
JUDGE

February 24, 2016
Pankaj*