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**FAO-1476-2005 AND
FAO-634-2005**

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

**FAO-1476-2005
DATE OF DECISION:01.06.2016**

HARPAL Appellant

VS.

KRISHAN KUMAR AND OTHERS Respondents

FAO-634-2005

**UNITED INDIA INSURANCE COMPANY LIMITED
... Appellant**

VS.

**HARPAL AND OTHERS
... Respondents.**

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. Neeraj Khanna, Advocate
for the appellant in FAO-634-2005
respondent No.3 in FAO-1476-2005.

Mr. R.C. Kapoor, Advocate
for respondent No.4 in FAO-634-2005.

Mr. R.N. Singhal, Advocate

LISA GILL, J. (ORAL)

This order shall dispose of FAO No.1476 of 2005 as well as
FAO-634-2005.

FAO-1476 of 2005 has been filed by the appellant-Harpal claiming enhancement of compensation on account of injury suffered by him in the accident which occurred on 09.07.2000.

FAO No.634 of 2005 has been filed by the United India Assurance Company disputing the liability fastened upon it to the extent of 50%.

Brief facts are being taken from FAO-1476 of 2005 for convenience. As per the claim petition, injured-Harpal was travelling in a Maruti Car bearing registration No.DNB-5312 driven by the respondent-Tilak Raj. They were travelling from Bhuna to Surewala on 09.07.2000. When this car reached near Bus Stand Dhani Gopal road, a jeep No.RJ-31C/2031 driven by respondent-Pat Ram driven in a rash and negligent manner came from the opposite side. It is pleaded that both the car as well as jeep were being driven in a rash and negligent manner by their respective drivers and there was a head on collision between both the vehicles in the middle of the road. One of the occupants of the car died. Harpal received multiple injuries in this accident. FIR, Ex.P3 was registered against the driver of the Maruti car. The appellant-Harpal preferred a petition under Section 166 of Motor Vehicles Act, 1968 (hereinafter called as 'Act' for short) claiming compensation to the tune of Rs.5 lacs on account of injuries suffered by him. Respondents No.1 and 2 did not contest the claim while it was resisted by the other respondents and it was specifically pleaded that the accident in question took place due to the sole negligence of the car driver.

On the basis of the pleadings of the parties, learned Tribunal framed the following issues:-

1. “Whether the accident in question has taken place on account of rash and negligent drive of vehicle no.DNB-5312 and vehicle No.RJ-31C/2031 by respondent No.2 and respondent No.5 respectively? OPP.
2. Whether the petitioner is entitled to compensation? If so, to what extent and from whom? OPP.
3. Whether respondents No.2 and 5 were not holding effective and valid driving licenses at the time of accident? If so, to what effect? OPR 4 and 6.
4. Relief.”

The learned Tribunal on considering the facts and circumstances of the case concluded that the accident in question occurred due to the rash and negligent driving of both the car and jeep in question by their respective drivers and all the respondents were held liable jointly and severally, with the respondents No.1, 2 and 3 liable to the extent of 50% and respondents No.4, 5 and 6 liable for the rest of the 50%. Compensation to the tune of Rs.1,90,000/- was awarded to the claimant on account of injuries suffered by the appellants.

Learned counsel for the claimant-appellant-Harpal submits that in view of the nature of the injuries i.e. as many as four fractures, a head injury and permanent disability of 19% including shortening of the lower limb by one inch, the claimant is entitled to a much higher compensation.

This claim is refuted by learned counsel for the respondents who submit that sufficient and just compensation has been awarded and there is no justification for any enhancement.

I have heard learned counsel for the parties and have gone through the available record.

Injuries suffered by the claimant are described as under by PW-5, Dr. Suraj Kamboj:-

1. "There was deformed right hip in lower 1/3rd with lacerated wound movements were restricted, bleeding was present. X-ray was advised.
2. There was deformed left hip in middle part movements were restricted. Advise x-ray.
3. Upper lip was swollen and tender."

Copy of MLR, Ex.P1 was proved by PW-5, Dr. Suraj Kamboj. It was deposed by Dr. V.K. Gupta, PW4 that the claimant was admitted to the hospital on 10.7.2000 with a head and orthopaedic injury. He was treated conservatively for the head injury and he would have to remain under treatment by taking necessary drugs for a period of 3 years. The appellant was treated by Dr. Rajiv Aggarwal for the orthopaedic injury. PW-4 has deposed regarding the expenses which were incurred and has proved the various medical bills on record. The disability certificate Ex.P62 has been proved by PW-6, Dr. D.L. Bansal who has proved the disability of 19% on account of post traumatic weakness of the stiff left knee as well as shortening of the left lower limb by one inch. Dr. Rajiv Aggarwal, PW-7, while deposing that he

treated the appellant at V.K. Neuro Care Hospital stated that he operated upon the appellant for both the femur bones for internal fixation with rod and plates on 11.7.2000 and 12.7.2000. The certificate Ex.P63 and bills Ex.P64 and P65 were proved by him. Medical bills to the tune of Rs.1,00,610/- have been duly proved on record by the claimant.

There is no dispute regarding the injuries suffered by the claimant. The claimant-appellant has deposed that he was supplying milk to a dairy namely Gill Dairy Centre at village Dulat and was being paid a salary of Rs.2000/- per month. PW-8-Nachhattar Singh, owner of the Gill Dairy has cemented the claim of the appellant in this respect and affirmed that the appellant was supplying milk since the year 1991 and he was paid a salary of Rs.2000/- per month. Copies of diary Ex.P67 and Ex.P68 to reflect the same, were proved by PW-8-Nachhattar Singh. The respondents have not led any evidence to refute the above-said evidence. The appellant was admittedly 22 years old at the time of accident. The multiplier applicable to his age group is 18. In view of the judgment of the Hon'ble Supreme Court titled as **Sayed Sadiq etc. Vs. Divisional Manager, United India Insurance Co. 2014 (1) RCR (Civil) 765**, this Court has to be sensitive about the functional disability of the claimant. In the given circumstances, the functional disability of the claimant-appellant can be safely assessed as 10% keeping in view the nature of injuries/disability suffered by him. Therefore, keeping in view the guidelines laid down by Hon'ble Supreme Court in **Sayed Sadiq's case (supra)**, the appellant is entitled to compensation for loss of future income which includes an increment of future income at 50% keeping in view the claimant's age to be 22 at the time of accident. He is thus

entitled to a sum of Rs.1,18,800/- $\{(2000 \times 10/100) + (50/100 \times 35/100 \times 2000) \times 12 \times 18\}$. Claimant-appellant is also entitled to a sum of Rs.55,000/- on account of pain and suffering as well as a sum of Rs.50,000/- for loss of amenities. He is also entitled to loss of income for three months i.e. assessed as Rs.6,000/-. Claimant is entitled to a sum of Rs.1,10,000/- on account of medical expenses as it is not expected that all the bills would be meticulously suffered by the appellant. Bills to the tune of Rs.1,00,610/- have been proved on record. The appellant remained admitted in hospital from 10.07.2000 to 10.8.2000. He is thus entitled to a sum of Rs.20,000/- on account of attendant charges, special diet, transportation charges etc.

Therefore, the appellant-claimant in this appeal is entitled to a total amount of Rs.3,59,000/- detailed as under:-

Sr. No.	Heads	Compensation
1	Loss of future income	Rs.1,18,000/-
2	Pain and suffering	Rs.55,000/-
3	Loss of amenities	Rs.50,000/-
4	Loss of income for three months	Rs.6,000/-
5	Medical expenses	Rs.1,10,000/-
6	Attendant charges, special diet, transportation charges etc.	Rs.20,000/-
	Total	Rs.3,59,000/-

The appellant-claimant is also entitled to interest @ 6.5 % per annum on the enhanced amount from the filing of this petition till the realization of the enhanced compensation.

Insofar as FAO No.634 of 2005 preferred by the United India Assurance Company, there is no merit in the contention of the learned counsel for the appellant-insurance company that liability fastened upon it to the extent of 50% is unjustified. The sole contention raised by the learned counsel for the Insurance Company is that the FIR in question i.e. FIR Ex.P3 was registered solely against the driver of the car in which the appellant was travelling. Therefore, the learned Tribunal has erred in fastening liability to the extent of 50% upon the driver of the jeep which was insured with the appellant-insurance company. Learned counsel for the insurance company is unable to deny the specific statement of the appellant that both the drivers of the car as well as the jeep were rash and negligent in driving their vehicles. Both vehicles were being driven at a very high speed and a head on collision took place in the middle of the road. No evidence has been led by the respondents to rebut the said statement. It has been rightly held by the learned Tribunal that neither the driver of the car nor of the jeep has stepped into the witness box. Merely because the police has challaned only one of the drivers i.e. the driver of the car, cannot nullify the statement of the complainant made on oath. The learned Tribunal while deciding this issue has observed as under:-

“The said respondent No.6 has further relied upon the criminal proceedings against respondent No.2 in support of their arguments. There is a clear statement of the petitioner that both the car driver as well as the jeep driver were rash and they were driving the vehicles at a very high speed and in the middle of the

road and there was a head on collision. The respondents have not led any evidence to rebut the aforesaid statement made on oath. Neither the car driver nor the jeep driver have stepped into the witness box. Merely because the police has challaned one of the drivers would not nullify the statement of the complainant which has been made on oath. In order to rebut the said statement the respondents could have examined the car driver or the jeep driver and could also have examined the Investigating Officer of the criminal case and could have produced the photographs of the occurrence but none of these steps has been taken. So there is no reason why the aforesaid statement of the petitioner made on oath should not be believed. It is accordingly held that both the car driver as well as the jeep driver are equally negligent in causing the accident in question.”

Learned counsel for the insurance company is unable to point out any illegality or infirmity in the aforesaid finding to invite the interference by this Court. No other point has been raised.

Keeping in view the discussion as above, FAO No.634 of 2005 titled as ‘United India Insurance Company Ltd. Vs. Harpal Singh and others’ is dismissed and FAO No.1476 of 2005 is partly allowed.

01.06.2016
SwarnjitS

(LISA GILL)
JUDGE