688.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5115 of 2009 (O&M)
Date of decision:11.01.2016

National Insurance Company Limited ... Appellant

versus

Balraj @ Ballu and others .... Respondents

II. FAO No.5831 of 2010 (O&M)

Balraj alias Ballu ... Appellant

versus

Sahabudin and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.C. Kapoor, Advocate,
for the appellant in FAO No.5115 of 2009 and
for respondent No.3 in FAO No.5831 of 2010.

Mr. Susheel Gautam, Advocate,
for the appellant in FAO No.5831 of 2010 and
for respondent No.1 in FAO No.5115 of 2009.

K.Kannan, J. *(Oral)*

1. The appeal by the insurer is on an issue of liability in FAO No.5115 of 2009 and FAO No.5831 of 2010 is an appeal by the claimant for enhancement.

2. Since at the trial, the Insurance Company did not have the benefit of full opportunity to prove the alleged fake character of driving licence by examining the official from DTO office at Moradabad, issuing office of driving licence, I had allowed for such opportunity and had summoned the witness. The witness had

brought original register and spoke with reference to details as contained in the copy of the licence produced before the court to say that in the register containing the licensees issued on 25.10.2004-the alleged date of issue, there was no issue in the name of Shahabudin, the name of the driver found in this case. The original register had been allowed to be taken back with due certification of the copy of the entry from the original register taken on record as RW2/A. There is no doubt in my mind that the driver did not have a valid driving licence and there was no opportunity availed by the owner about his own bona fides of whether he had any occasion to examine the driving licence and what was the basis for his entrustment of the vehicle as driver to him. I will take therefore the owner had been in breach and the Insurance Company will be entitled to recover the amount from the owner in the event of any award that may be passed.

3. That precisely is the issue which would require consideration in FAO No.5831 of 2010. The claimant was a male aged 23 years and said to have been working under one Jabber Sharma who gave evidence as PW6. He was a skilled worker and stated that he used to pay about ₹7,000/- as salary. There was also medical evidence given to say that the claimant had suffered a head injury and the Head of the Department Neuro Surgery, PGIMER, Rohtak was examined as PW9. He stated the disability to be 90%

and it was not likely to be reduced even in future over a passage of time. The said doctor had certified that the claimant had spastic quadriparesis with occasional incontinence of urine and stool with mental retardation. PW4-the doctor, who originally examined him immediately after the accident, stated that the claimant had bleeding through his left ear and CT scan had done that showed right frontal and temporal lobe haemotoma along with acute sub dural heamatoma in right front temporal region. He had also done a surgery and spoke about the same and the prognosis of the patient.

4. The Tribunal had found the medical expenses brought on record at ₹1.44 lakh and made a further provision of about ₹4,50,000/- for all other heads. I find the assessment to be grossly inadequate, considering the nature of injury in the head that has literally felled him to bed and has caused an irreversible damage to him to result in disability to the tune of 90%. The appellant has become bed borne and dependent permanently for the rest of his life to the attendant for all his daily needs. He was 23 years of age and his means of livelihood has surely been fully affected. He would require an attendant for the rest of his life and even if a modest sum of ₹2,000/- were to be taken as attendant charges and a multiplier of 18 is adopted, the liability will be ₹4,32,000/-. I will increase the component of special diet at ₹25,000/- and also assess a sum of ₹10,000/- as going towards transportation. For the pain and

suffering and for the frustration that he would go through, I will assess an amount of ₹1 lakh as payable and I will also provide for ₹50,000/- as reduction in life expectancy for a head injury and another ₹50,000/- as loss of prospect of marriage. 90% disability must be taken as resulting in loss of amenities for the rest of his life, he will have at ₹1 lakh and also reckon the loss of earning capacity taking the 90% disability as constituting 90% loss of earning capacity, I will work this amount of ₹7,000/- which he was said to be running and tabulate the various heads of claims as under:-

Date of accident: 18.05.2007			
Age: 23			
Period of hospitalization: 18.05.2007 to 10.06.2007			
Occupation & income : ₹8,000/- per month			
	Heads of Claim	Tribunal	High Court
Sr. No.		Amount ₹	Amount ₹
1.	Loss of income from to		
2.	Medical expenses:	1,44,000	
i)	Medicines		
ii)	Hospital charges		
iii)	Attendant charges		4,32,000
iv	Special diet		25,000
v	Transportation		10,000
3.	Pain & suffering		1,00,000
4.	Disability (90%) & compensation	4,50,0000	1,00,000
5.	Income as assessed by the Tribunal (a)		7,000x12
6.	90% loss of earning capacity (b)		6,300
7.	Multiplier (c)		18
8.	loss of earning capacity (a x b x c)		13,60,800
9.	Reduction in life expectancy		50,000
10.	Loss of prospect of marriage		50,000
	Total	5,94,000	21,27,800

5. The appeal by the claimant for enhancement in FAO

No.5831 of 2010 is allowed and the appeal by the Insurance Company in FAO No.5115 of 2009 is also allowed to the extent of making possible a right of recovery against the owner of the vehicle.

(K.KANNAN)
JUDGE

11.01.2016
sanjeev