

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

(1) **FAO No.5423 of 2012 (O&M)**
Date of decision :19.01.2016

Reliance General Insurance Company Ltd.

.....Appellant

Versus

Vijay and others

...Respondents

(2) **FAO No.1811 of 2012**
Date of decision :19.01.2016

Vijay

.....Appellant

Versus

Harender Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Ms. Kaavya Jariyal, Advocate for
Mr. T.K. Joshi, Advocate for appellant
in FAO No.5423 of 2012 and for respondent No.3 in FAO
No.1811 of 2012.

Mr. Gaurav Tangri, Advocate for
Mr. Gunjan Rishi, Advocate for appellant
in FAO No.1811 of 2012 and for respondent No.1 in FAO
No.5423 of 2012.

Respondent No.1-driver Harender Kumar ex parte in FAO No.1811 of 2012.

Mr. Manoj Chahal, Advocate for respondent No.2-owner of offending vehicle.

DARSHAN SINGH, J.

CM-24496-CII-2012 in
FAO-5423-2012

There is delay of 149 days in re-filing the present appeal. The appellant has filed an application under Section 151 CPC for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed.

CM-24497-CII-2012 in
FAO-5423-2012

There is delay of 11 days in filing the present appeal. The appellant has filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed.

FAO No.5423 of 2012 and FAO No.1811 of 2012

This judgment of mine shall dispose of both the appeals mentioned above which have arisen out of the same award dated 29.11.2011 passed by learned Motor Accidents Claims Tribunal, Hisar

(hereinafter called the 'Tribunal').

2. Vijay appellant of FAO No.1811 of 2012 has filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') for grant of compensation on account of injuries suffered by him in the motor vehicular accident which took place on 05.04.2009 as a result of rash and negligent driving of tempo bearing registration No.HR-61-9043 by respondent No.1 Harender Kumar, its driver.

3. Respondents No.1 & 2 were proceeded against *ex parte*. However, the claim petition was contested by respondent No.3 Reliance General Insurance Company Ltd. appellant of FAO No.5423 of 2012. The learned Tribunal has awarded the compensation to the tune of Rs.1,60,000/- along with pendente lite and future interest @ 6% per annum. All the respondents were held jointly and severally liable to pay the compensation amount. However the first liability was imposed to pay the awarded amount by respondent No.3-Insurance Company.

4. FAO No.1811 of 2012 has been filed by claimant Vijay for enhancement of amount of compensation. FAO No.5423 of 2012 has been filed by respondent No.3 - Insurance Company disputing its liability to pay the amount of compensation. It was also pleaded that the compensation awarded was on the higher side.

5. I have heard Ms. Kaavya Jariyal, Advocate for Mr. T.K. Joshi, Advocate, learned counsel for appellant in FAO No.5423 of 2012 and for respondent No.3 in FAO No.1811 of 2012; Mr. Gaurav Tangri,

Advocate for Mr. Gunjan Rishi, Advocate, learned counsel for appellant in FAO No.1811 of 2012 and for respondent No.1 in FAO No.5423 of 2012; Mr. Manoj Chahal, Advocate, learned counsel for respondent No.2- owner of offending vehicle and have gone through the paper-books carefully.

6. Initiating the arguments, learned counsel for the appellant Vijay in FAO No.1811 of 2012 contended that the learned Tribunal has not properly computed the amount of compensation. The claimant was not awarded any compensation on account of loss of income. The claimant was a graduate engineer. He was to join the service on 06.04.2009 with Tech. Mahindra, Noida (UP) as Senior Associate Quality, Grade BGI carrying the salary of Rs.26,042/- per month. He further contended that no amount has been awarded for pain and sufferings. Thus, he pleaded that the compensation awarded by the learned Tribunal is inadequate.

7. Learned counsel for the respondents pleaded that the claimant was yet to join the services with Tech. Mahindra Noida, so his monthly income cannot be considered to Rs.26,042/- per month. Thus, they contended that the amount of compensation awarded by the learned Tribunal is just and appropriate.

8. Ms. Kaavya Jariyal, Advocate for Mr. T.K. Joshi, Advocate, learned counsel for appellant in FAO No.5423 of 2012 and for respondent No.3 in FAO No.1811 of 2012 contended that the liability to pay the amount of compensation has been wrongly fastened on the

appellant-Insurance Company. She contended that as per the report Ex.R2 the driving licence of respondent No.1 was fake. The learned Tribunal has wrongly discarded the report Ex.R2, which was obtained by the appellant-Insurance Company under the provisions of RTI Act.

9. I have duly considered the aforesaid contentions.

10. From the perusal of the impugned award it comes out that the learned Tribunal has not awarded any compensation to the claimant on account of loss of income and pain and sufferings. This fact is not disputed that the claimant had completed his Bachelor in Engineering so he was a graduate engineer. It is not expected that a person having such a technical education will remain idle. So, the income of the claimant can be safely taken to be Rs.15,000/- per month. The claimant has deposed that he remained confined to the bed almost for a period of two months due to the injuries received in the accident. He also remained hospitalized in Sanjay Gandhi Memorial Hospital, Bhagwati Hospital, Aggresain Hospital and other hospitals. So, the claimant may not be able to carry on his profession for a period of two months and he will be entitled to a sum of Rs.30,000/- on account of loss of income.

11. The claimant has deposed that he received multiple injuries. He remained admitted in the hospital with effect from 05.04.2009 to 30.04.2009 i.e. for a period of about 25 days. He has also suffered multiple injuries, so he must have suffered lot of pain and suffering on account of injuries. Thus, he will be entitled to a sum of

Rs.10,000/- as compensation on account of pain and sufferings.

12. Thus, the compensation awarded by the learned Tribunal deserves to be enhanced by Rs.40,000/-.

13. I do not find any substance in the contentions raised by learned counsel for the appellant-Insurance Company in FAO No.5423 of 2012 that the liability has been wrongly fastened on the Insurance Company. The Insurance Company has simply produced the report Ex.R2 to show that the driving licence of respondent No.1 was fake. The respondent Insurance Company has not produced any official of the office of the concerned Licencing Authority along with the relevant record to prove the report Ex.R2. Said report is not *per se* admissible. A Division Bench of this Court in case ***National Insurance Company Ltd. Vs. Santosh and others 1999 ACJ 1262*** has laid down that the report to establish that the driver was having no valid licence cannot be read in evidence when no witness from the Office of the Licencing Authority was examined to prove that report. The same legal position has been reiterated by the Division Bench of Hon'ble Jharkhand High Court in case ***New India Assurance Company Ltd. Vs. Jyoti Lal Mahato and another 2004 ACJ 1935***. Reference also be made to case ***Bajaj General Insurance Company Ltd. Vs. Mahesh Kumar 2010(2) RCR (Civil) 785***. No judicial precedent to the contrary could be produced by learned counsel for the appellant. Thus, the appellant-Insurance Company has not been able to establish that respondent No.1 was having the fake driving licence. Hence, it cannot escape the liability.

14. Thus, keeping in view my aforesaid discussion, FAO No.1811 of 2012 is hereby partly allowed. The amount of compensation awarded to claimant Vijay on account of the injuries suffered by him in this motor vehicular accident is enhanced by Rs.40,000/- raising the total awarded amount to Rs.2,00,000/- instead of Rs.1,60,000/- as awarded by the Tribunal. The appellant shall also be entitled to interest on the enhanced amount at the rate as awarded by the learned Tribunal. The FAO No.5423 of 2012 filed by the Insurance Company is devoid of merits and the same is hereby dismissed.

15. Photocopy of this judgment be placed in the connected case file.

19.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**