IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 509 of 2013 (O&M)
and FAO No. 2713 of 2013(O&M)
Date of decision: February 10,2016.

United India Insurance Company Limited
........Appellant

VS.

Kulwinder Singh and others
.........Respondents

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr.Vikas Mohan Gupta, Advocate
for the appellant in FAO 509 of 2013 and
for respondent No. 4 in FAO 2713 of 2013.

Mr.Ashish Gupta, Advocate for
respondent No. 1 in FAO 509 of 2013 and for
the appellant in FAO 2713 of 2013.

Mr. Aakash Singla, Advocate
for the respondent No.2 to 4 in FAO 509 of 2013 and
for the respondent No. 1 to 3 in FAO 2713 of 2013.

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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?

<u>K.KANNAN,J</u> (Oral)

1. Both the appeals are connected and they address the claim for compensation for the injuries suffered by the driver against his own employer owner and the insurer. It was a case of collision with yet another vehicle and the owner and the insurer of the other vehicle was not impleaded.

2. Admittedly, there had been no additional premium paid for the driver,

apart from the basic premium paid as an Act Policy. The requirement to cover the risk in an Act Policy is only to provide for compensation as would be required to be covered under the Employees Compensation Act of 1923. The driver had extensive injuries of resulting in comminuted fracture of femur and trochanter and the doctor, who gave evidence as PW-3, stated that he had 40% permanent disability, own case of fracture of both bones of his right leg with stiffness of the right knee. The doctor has assessed that there was a shortening of the limb by 2 inches and he would have difficulty to sit and squat cross legged. The doctor has also stated that he could not drive the vehicle as a normal person and would be unable to earn his livelihood by driving. The fracture with the shortening cannot, render a person 100% disabled. It might not be possible for him, to drive in the light of the doctor's evidence, to carry on his avocation as a driver and he has to settle for the rest of his life to lesser skilled jobs. I would take the 40% disability as assessed to constitute a relatively higher percentage of loss of earning capacity at 50% and make available to the claimant a compensation as provided in the Workmen Compensation Act. The salary was taken to be ₹ 3,300/- and as per Section 4 of the Employees Compensation Act, 50% of the salary shall be taken which is ₹ 1,650/- this shall be multiplied by the factor applicable to the age of the employee as 31 years. The factor is 205.95. On this shall be applied the percentage of loss of earning capacity which have assessed at 50%. Consequently the amount shall be ₹ 1,650/- × 205.95 × 50% = ₹ 1,69,908.75/-. This amount shall also attract interest at 12% in the manner contemplated under Section 4 of the Employees Compensation Act from the date of the accident to the date of payment. The amount shall be reworked and this shall be the entitlement of the driver against the insurer. Any amount, if paid in excess by the insurer, could be sought for recovery by way of restitution and if there is any shortfall, the employee is entitled to recover the same with interest as provided already.

3. Both the appeals are disposed of.

4. The order already passed is modified and both appeals are disposed of in the light of the above.

FEBRUARY 10, 2016 **(K.KANNAN)**
Rajeev **JUDGE**