

207.

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

FAO No.6164 of 2013 (O&M)

Date of decision:13.05.2016

United India Insurance Company Limited ... Appellant

versus

Hari Shankar and another Respondents

II. FAO No.104 of 2014 (O&M)

Hari Shankar ... Appellant

versus

Sukhdev Singh and another Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. V. Ramswaroop, Advocate,
for the appellant in FAO No.6164 of 2013 and
for respondent No.2 in FAO No.104 of 2014.

Mr. Harish Sharma, Advocate,
for respondent No.1 in FAO No.6164 of 2013 and
for the appellant in FAO No.104 of 2014.

Mr. R.N. Maurya, Advocate,
for respondent No.2 in FAO No.6164 of 2013 and
for respondent No.1 in FAO No.104 of 2014.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. Both the appeals are connected. The appeal by the

Insurance Company in FAO No.6164 of 2013 is on an issue of

liability and quantum, while the appeal by the claimant in FAO No.104 of 2014 is for enhancement of claim for compensation.

2. It was a case of a paid driver of a vehicle who in the course of employment came by grievous injuries when he was said to have been hit by an unknown vehicle. The claim was, therefore, made against the employer's own insurer. If the employer's insurer were to be made liable, it can be only on the basis of compulsory nature of insurance possible for coverage of risk under the Workmen Compensation Act. I have seen through the policy and the premium paid is for personal accident of owner-cum-driver. This is not a case of personal accident for an owner-cum-driver but it is a case of claim by a paid driver. An additional premium has been paid for own damage but there is no additional premium paid for the driver to cover the risk in the scales of Motor Vehicles Act. On the other hand, the third party basic premium of ₹ 300/- has been paid. I have also seen the terms of the policy. IMT 15 endorsement is stated to be applicable which is for a personal accident cover to the insured (owner-cum-driver) or any person other than the paid driver. Consequently, the premium paid for the personal accident cannot be applied to a paid driver. The compensation will have to be therefore restricted only to a claim which is possible under the Employees Compensation Act.

3. The deceased was said to be earning ₹3,300/-. The compensation payable under the Workmen Compensation Act for a premium paid for third party liability with no extra premium for driver would mean the restriction of claim to what is permissible under Section 4 of the Workmen Compensation Act. The compensation payable will be ₹2,74,378/- (50% of ₹3,300/- x factor applicable under Schedule IV). The amount awarded in excess is not tenable in law and the appeal by the insurer ought to be allowed. The amount determined will carry interest at 12% in the manner provided under the Workmen Compensation Act instead of interest as awarded by the Tribunal. The appeal in FAO No.6164 of 2013 is allowed.

4. In the appeal in FAO No.104 of 2014 filed for enhancement of compensation by the claimant, the counsel argues that the case is filed under Section 163-A of the Motor Vehicles Act and, therefore, compensation under Section 163-A will be provided. If the claim under Section 163-A were to be taken, the principle applicable will be that it would cover the risk of what is permissible under Section 147 for compulsory nature of coverage for workmen. The compulsory coverage for a workman will enable him to make a claim of what that the Workmen Compensation Act makes possible. Consequently, there is no escape from the situation that the limitations of claim under the relevant Act will alone apply. (see:

National Insurance Company Limited Versus Prembai Patel-

(2005) 6 SCC 172). The appeal by the claimant for enhancement is not tenable and the amount already awarded is erroneous. The appeal in FAO No.104 of 2014 is dismissed.

**(K.KANNAN)
JUDGE**

13.05.2016
sanjeev