

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

FAO No. 7862 of 2015 (O&M)

Date of decision: 21.01.2016

L & T General Insurance Company Ltd. ... Appellant
versus
Rishi Pal @ Rishi Lal and others Respondents

2. FAO No. 7967 of 2015 (O&M)

Jasvir ... Appellant
versus
Rati Ram Rawat and others Respondents

3. FAO No. 7859 of 2015 (O&M)

L & T General Insurance Company Ltd. ... Appellant
versus
Jasvir and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pankaj Mehta, Advocate for the appellant.

K.Kannan, J. (ORAL)

CM No. 24766-CII-2015

For the reasons mentioned in the application, duly supported by an affidavit, delay of 80 days in filing the appeal is condoned.

CM is disposed of.

These are three connected appeals and are disposed of through common order. The appeal by the insurer is on the issue of quantum and in respect of the very same claim there is an appeal by the claimant for enhancement.

The claimant has stated that he was was a driver by profession and had given evidence that he was working as a driver on a Jeep of Maharishi Bal Vikas School, Village Rajpura at a salary of Rs. 7,500/-. The contention in defence was that he was not a driver and has failed to establish that he was a driver. The claimant has also relied on his status as a driver and produced an interview card received from the Haryana Staff Selection Commission for the post of a Driver at transport vehicle for the Haryana Roadways. The Court while determining the compensation allowed for Rs. 8,82,400/- that included Rs. 7,00,000/- towards disability considering that he was 100% disabled. The evidence was that he had been confined to bed and he cannot walk or engage himself in any physical duty. The contention of the insurer is that the disability assessed @ Rs. 7,00,000/- is on the higher side and is fair in access of what has been admitted by Division Bench as possible.

I notice that there is a certain error in characterizing the amount of Rs. 7,00,000/- assessed towards disability. A major head of claim which had not been answered is a loss of earning capacity for a person who was able bodied and who was claiming himself to be a driver of a private school bus. Though it is suggested that he is not a

driver, his driving propensities were surely capable of being corroborated by reference to an interview card sent from the Haryana Staff Selection Commission for the post of transport driver in Haryana Roadways. A person who was skilled to drive was surely capable of earning Rs. 7,000/- and if his earning capacity was lost completely to 100%, the compensation payable for the loss of earning capacity could be a little over Rs. 10,00,000/- by the calculation arrived by $7000 \times 12 \times 14$. Considering the same, the total compensation of Rs. 8,00,000 was grossly inadequate, there is no scope for reduction and if at all the case would require a consideration on enhancement only. Consequently, the appeal filed by the insurer in FAO No. 7862 of 2015 is dismissed.

As regard the appeal by the Insurance Company in 7859 of 2015, it is with reference to claim to compensation for a person who was 42 years of age and had a fracture of his left limb. The Tribunal had determined the compensation at Rs. 1, 25,100/- and against the very same judgment the appeal filed by the claimant is FAO No. 7967 of 2015. I have examined the assessment made. The Tribunal has provided for Rs. 56,000/- for disability. If on account of a fracture with lower limb there has been any pain or malunion, the provision for loss of amenities act around Rs. 20,000/- would have been appropriate. If there was an addition of Rs. 36,000/-, I will take that to be a loss of earning capacity which if it is assessed @ 5% loss on an average income of about Rs. 3,000/-, the amount will be Rs. 25,200/-. The amount assessed which was in addition by about Rs. 30,000/- more

than compensates what would have been loss to future. Overall compensation would therefore, be adequate and would not required to be modified. The appeals by the Insurance Company as well as by the claimant are dismissed.

All the three appeals are dismissed.

(K.KANNAN)
JUDGE

21.01.2016

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