IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2698 of 2002 (O&M)

Date of Decision: 11.12.2017

Sardul Singh ...Appellant

Versus

Hakam Singh and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Binderjit Singh, Advocate for the appellant
Mr.Suvir Dewan, Advocate for respondent no.4
None for respondents no.1 to 3

<u>RAJIV NARAIN RAINA, J.</u> (Oral)

1. Orders passed in FAO No.1662 of 1999 have been perused. The matter has been decided afresh by the Motor Accident Claims Tribunal, Mansa. The earlier finding has been re-affirmed on remand that the driving licence of the driver of the offending vehicle was fake. In this appeal the question is as to whether the Insurance Company is liable to indemnify the insured and pay the compensation awarded or enhanced. If the driving licence is fake; then it is for the owner of the offending vehicle to explain as to whether it had taken reasonable care at the time of engaging the driver of the offending vehicle with respect to the driving licence. The other fall out is that the Insurance Company would pay in the first instance and recover compensation from the owner. In the present case, respondents no.1 to 3, the owners and driver of the offending vehicle were represented by Mr. S.S.Grewal, Advocate who appeared on 16th May, 2014, but has failed to appear thereafter. Even today, none is present on

behalf of respondents no.1 to 3. I would take it that the owners and the driver of the offending vehicle are served and the proceedings are to their knowledge. The Court will not await the appearance of Mr.Grewal in order to delay the proceedings and delivery of judgment, especially in a fifteen year old appeal. There has been hardly any fundamental breach of the insurance policy, when preeminently recovery rights can be given to the Insurance Company against the owners of the offending vehicle which was insured at the time of accident. Therefore, the findings of the Tribunal re-affirming that the driving licence is fake will have no ill-effect on the appellant-claimant as he would still be entitled to compensation as assessed by the Tribunal or as enhanced by this Court with recovery rights given to the insurer against the driver/owner.

2. I have heard learned counsel for the parties on the plea of the appellant for enhancement of compensation and if there is scope for increase in the claimant's appeal.

3. This is an injury case. Disability suffered by the appellant is permanent in nature which is assessed at 70% as a result of amputation of the claimant's left leg above the knee. The Civil Surgeon, Mansa has issued a medical certificate recording 70% disability describing his condition as a case of “amputated left leg high and stump to about 10”. This means that the appellant has lost his knee joint and that is what makes the permanent disability worse still.

4. The claim petition was filed under Section 166 read with Section 140 of the Motor Vehicles Act, 1988. The accident happened on 29th May, 1994. The Tribunal has recorded a finding of rash and negligent driving on the part of the driver of the offending vehicle and I find no

reason to upset that finding. The Tribunal found on evidence that the appellant was an agriculturist and carried on work of selling milk and out of this, the Tribunal has assessed his income at ₹ 1000/- per month. The Tribunal applied the multiplier of 10. The injured was 50 years old at the time of accident. The multiplier of 13 should have been applied, and therefore, an increase in multiplier to 13 is justified. ₹ 10,000/- was awarded for medical expenses and ₹ 20,000/- on account of pain and suffering and ₹ 10,000/- for loss of enjoyment of life. As far as the income of the injured is concerned, the finding is not required to be disturbed looking to the year of the accident and lack of evidence to prove the income.

5. However, under the other heads, there appears to me sufficient justification for an increase in compensation. Medical treatment for a person who is left with 10" stump of what remained of the poor fellow's left leg, a sum of ₹ 10,000/- is wholly inadequate. He produced bills worth ₹ 8200/- on account of purchase of medicines. However, the appellant has apparently not been able to lead a normal life on crutches and would have to spend his life depending or craving for a prosthetic limb and other helping motorised aids modern science provides. Although nothing is on record to show the expenses have been incurred on account of prosthetic limb and other modern artificial aids, I would tend to increase the amount under these heads being in continuance of suffering and hardship to be equivalent to the cost of prosthetic limb for which at least a sum of ₹ 3.00 lakhs ought to be awarded. Since the appellant has lost his left leg above knee, he would always require assistance of an attendant in performing his day to day chores. The Tribunal has not awarded any amount on account of

attendant to the appellant and as such an amount of ₹ 2.00 lakhs is awarded on this account to cover the period of time. A sum of ₹ 20,000/- awarded by the Tribunal on account of pain and suffering is also on the terribly lower side and the same deserves to be enhanced to ₹ 2.00 lakhs and an equal amount for loss of enjoyment of life as he would not be able to carry on the avocation of agriculture. The Tribunal awarded a total compensation at ₹ 1,60,000/-. The Tribunal has rightly awarded interest at the rate of 12% per annum which need not be disturbed.

6. Accordingly, the break-up of the compensation enhanced by this Court under the conventional heads is as under:-

Sr. No.	Heads	Calculations
1.	Income	₹ 1000/- per month
2.	Multiplier @ 13	₹ 1,56,000/- per annum
3.	Provision for Medical treatment equivalent to Prosthetic Limb	₹ 3,00000/-
4.	Providing attendant divided by number of years from permanent injury	₹ 2,00000/-
5.	Pain and suffering	₹ 2,00000/-
6.	Enjoyment of Life	₹ 2,00000/-
	Total compensation	₹ 10,56,000/-
	Enhanced compensation	₹ 10,56,000/- ₹ 1,60,000= ₹ 8,96,000/-

7. Accordingly, this appeal is partially allowed and the award is modified to the extent indicated above. The respondent-Insurance Company will deposit the enhanced compensation before the MACT,

Mansa/Executing Court within six weeks from the date of receipt of a copy of this order and the enhanced amount of compensation shall be disbursed to the claimant as per law. If the amount awarded by the Tribunal has not been disbursed to the appellant, the same be also disbursed alongwith the increased amount of compensation awarded by this Court. The rate of interest awarded by the Tribunal is maintained since it has been applied at the appropriate time in the discretion of the Tribunal which is not to be disturbed. The amount of compensation would also carry interest at the rate awarded by the Tribunal from the date of claim petition till actual payment and the same be disbursed to the claimant after due verification of the appellant. The Tribunal has awarded counsel's fees at ₹ 2500/- which is increased to ₹ 10,000/- to make assessment current with this appeal. The Tribunal will not embark upon investing the money awarded to the appellant as he is rightful owner and has liberty to deal with the money the way he wishes. The respondent-Insurance Company is granted recovery rights against respondents no.1 to 3, namely, the owners and the driver of the offending vehicle.

(RAJIV NARAIN RAINA)
JUDGE

11.12.2017
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *No*