

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: November 17, 2017

1. F.A.O.No.1190 of 1997

Bimla Devi

...Appellant

Versus

Ram Phal & others

...Respondents

2. F.A.O.No.1359 of 1997

National Insurance Company Limited Branch Office at Hissar

...Appellant

Versus

Rajan Garg & others

...Respondents

3. C.R.No.3421 of 1997

National Insurance Company Limited Branch Office at Hissar

...Petitioner

Versus

Bimla Devi & others

...Respondents

4. F.A.O.No.1188 of 1997

Rajan Garg

...Appellant

Versus

Ram Phal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.C.B.Goel, Advocate,
for the appellant (in FAO No.1190 of 1997) &
for respondent No.1 in CR No.3421 of 1997.

Mr.Mukesh Verma, Advocate for
Mr.Ashish Gupta, Advocate,
for respondent No.2 (in FAO No.1190 of 1997).

Mr.R.C.Kapoor, Advocate,
for National Insurance Company.

AMIT RAWAL, J. (Oral)

CM No.10826-CII of 2016 in FAO No.1188 of 1997

Prayer in the application is for fixing the case for actual date of hearing. The application is supported by an affidavit.

For the reasons mentioned in the application, the hearing of the case is preponed to today.

Application stands disposed of.

FAO No.1190 of 1997 & connected matters

This order of mine shall dispose of four matters, i.e., FAO Nos.1190, 1359 and 1188 of 1997 and Civil Revision No.3421 of 1997 as the common questions of law and facts are involved.

FAO Nos.1190 of 1997 and 1188 of 1997 have been filed by the claimants for seeking enhancement of compensation, whereas FAO No.1359 of 1997 and Civil Revision No.3421 of 1997 are at the instance of the National Insurance Company Limited challenging the compensation awarded to the claimants vis-a-vis the injuries and damage to the Scooter.

I would be taking the appeal preferred by the Insurance Company, whereby award of the Motor Accident Claims Tribunal (for short “Tribunal”) has been challenged on the ground that the driver of the truck did not have the effective and valid licence on the date of the accident, which had taken place on 4.6.1994.

Mr.R.C.Kapoor, learned counsel representing the National Insurance Company submits that the Insurance Company are not liable to indemnify for want of breach of terms and conditions of the policy as the driving licence (Ex.R1) was fake. In this regard, a Surveyor was appointed, who verified the genuinity of the licence and found the same to be a fake

one. A report was also obtained from the concerned Licensing Authority, but the same cannot be placed on record and in this regard an application was moved, but the same was rejected and, hence, the appeal and the revision.

On the contrary, Mr.C.B.Goel, learned counsel representing Rajan Garg (injured) and Bimla Devi (owner of the Scooter) submits that the Insurance Company had failed to discharge the onus with regard to the authenticity and genuinity of the driving licence by not examining the official from the concerned department with regard to the same, therefore, they have been deprive of their right to cross-examine the witness with regard to the aforementioned allegations. Thus, the findings of the Tribunal cannot be rendered faulty.

As regards the enhancement of compensation, Mr.Goel submits that the claimant in FAO No.1190 of 1997 is entitled for enhancement of compensation on account of the damage to the Scooter and the claimant in FAO No.1188 of 1997 is also entitled for enhancement of compensation on account of the injuries suffered by him as the amount of compensation awarded, i.e., ₹90,000/- is too meager. Rajan Garg remained under treatment w.e.f. 4.6.1994 to 13.6.1994, which is evident from the discharge certificate Ex.P18. The nature of the injury has also been proved through the testimony of PW-2 Dr.Kamal Gupta. All these expenses, if read in conformity, the compensation is liable to be enhanced.

Mr.Goel has referred to the medical certificate (Ex.P-20), whereby permanent disability had been held to be 40%. He submits that even in 1994, the income of claimant Rajan Garg, who was a student, was to be taken as ₹2000/-, even then the compensation is liable to be increased.

As regards the damage to the Scooter, claimant Bimla Devi has purchased the scooter for ₹20,000/- and also spent ₹2,000/- on accessories and, therefore, the amount of compensation is liable to be enhanced vis-a-vis the damage caused to the Scooter.

Mr.Goel also submits that though the medical bills proved are of the same amount as the compensation awarded, but certain other expenses, which the claimant has spent, have not been proved on record, but the compensation under those expenses should have also been granted.

I have heard the learned counsel for the parties and appraised the paper book.

As regards the plea of enhancement of compensation with regard to the damage to the Scooter, i.e., in view of the provisions of Section 147 of the Motor Vehicles Act (for short “the Act”), in the absence of any clause in the insurance policy at the relevant point of time, claimant Bimla Devi is not entitled to compensation more than ₹6,000/- as awarded, therefore, the awarded compensation vis-a-vis the same is perfectly justified and reasonable.

As regards the enhancement of compensation qua claimant Rajan Garg, he was a student and 19 years old. By taking his income as ₹2000/- per month, disability 40% and by applying multiplier of 18 on account of permanent disability and future loss of income, the compensation comes to be ₹1,72,800/- (2000x40x18x12÷100). Thus, the amount of compensation aforementioned has been increased on account of future loss of earnings and permanent disability.

As regards the medical expenses, the medical bills are to the tune of ₹53,384/- and, therefore, in the absence of any evidence, I do not

increase the amount of medical expenses from ₹55,000/-. Rest of the compensation on account of the transport charges, mental shock, pain and suffering are upheld. Thus, the compensation would be ₹1,72,800/-, ₹10,000/- on account of mental shock, pain and suffering, ₹55,000/- as medical expenses and ₹5,000/- transport charges (total ₹2,42,800/-).

As regard the plea of the Insurance Company that the driver was not holding the valid driving licence at the relevant point of time, the contention of Mr.R.C.Kapoor falls flat as the Insurance Company has not been able to discharge the onus vis-a-vis the fakeness of the driving licence by leading direct/cogent evidence as no official from the licensing authority has been examined to prove the same. Even the dismissal of the application moved for proving on record the report of the driving licence would be of no consequence in the absence of examining of the official from the Licensing Authority as per the provisions of the Act. Resultantly, the findings on issue No.3 against the Insurance Company are upheld.

For the reasons stated above, FAO No.1188 of 1997 is partly allowed and FAO Nos.1190 and 1359 of 1997 and Civil Revision No.3421 of 1997 are dismissed.

November 17, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No