IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1001 of 2016 (O&M)
Date of Decision: 17.07.2017

Om Parkash ..Appellant(s)

Versus

Baldev Singh and another ..Respondent(s)

with

FAO No. 1694 of 2016 (O&M)

Baldev Singh ..Appellant(s)

Versus

United India Insurance Company and another
..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Shekhar Gupta, Advocate
for the appellant in FAO-1001-2016 and
for respondent no.2 in FAO-1694-2016.

Mr. Nitin Jain, Advocate for
for the appellant in FAO-1694-2016 and
for respondent no.1 in FAO-1001-2016.

Mr. Gopal Mittal, Advocate
for the Insurance Company.

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ANITA CHAUDHRY, J.

These are two appeals arising out of the award dated 03.11.2015, passed by the Motor Accident Claims Tribunal, Ambala. One appeal is by the claimant Om Parkash seeking enhancement while the second appeal is by the owner-driver seeking his exoneration.

Om Parkash met with an accident on 23.05.2014. He used to drive a pick-up vehicle. He suffered injuries on the left lower limb and on the right ankle. He remained admitted in the hospital for 4 days and had spent Rs.33,000/- on his treatment. He suffered disability to the extent of 10%. He had pleaded that he was earning Rs.10,000/- per month and was a regular driver with a brick kiln at Panchkula. He was returning from duty and was on his cycle when he met with the accident.

The Tribunal found that the bills produced on the record were to the tune of Rs.33,394/- and recorded the fact that the admission in the hospital was for 4 days. It rejected the plea that the disability had left with him in a condition that he was unable to resume his work as that of a driver and awarded the following compensation:-

Sr. No.	**Head of Compensation**	**Amount**
1.	Medical Expenses	Rs.35,000/-
2.	Pain and sufferings/disability	Rs.25,000/-
3.	Nutritious diet	Rs.6,000/-
4.	Attendant charges	Rs.6,000/-
5.	Transportation charges	Rs.10,000/-
	TOTAL	**Rs.82,000/-**

The Tribunal also found that the driver did not have a valid and effective licence at the time of accident and it had not been renewed and therefore, the insurance company was given the recovery rights.

The counsel for the claimant urges that the claimant had suffered injuries and he was unable to drive and lost his job and therefore, there was loss of earning. The counsel further contends that no amount had been awarded for the disability and the compensation should be reasonably sufficient, which was lacking in this case. Reliance was placed upon ***Kumari Kiran Thr. Her Father Harinarayan Vs. Sajjan Singh & Ors. 2015(1) LAR, S. Manickam Vs. Metropolitan Transport Corp. Ltd. 2013(3) RCR (Civil 696 and Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Ltd. and another AIR 2014 SCC 736***.

The counsel appearing for the owner-driver urges that the liability should have been placed on the insurance company and the Tribunal had mis-read the evidence. It was urged that when the Tribunal had found that the initials below the stamp of the DTO on the driving licence were that of one of the officials serving with the Licensing Authority, Mansa, it becomes clear that and the renewal was granted and the insurance company should not have been absolved. It was urged that Parminder Singh did not hand over the record to the higher authorities and they could not be faulted for that.

The counsel appearing for the insurance company urges that the admission was only for a period of 4 days and there was no evidence that the claimant was unable to drive the vehicle or that he had been removed from the job. It was urged that there was no evidence either that he was working as a driver. The counsel further contends that the Tribunal had awarded a lump sum amount even for the disability and the amount allowed for the transportation charges is on the higher side. With respect to the submissions made on behalf of the owner-driver, the counsel contends that the licence had not been renewed and no record pertaining to the renewal of driving licence was available and no extension had been granted. The counsel further urges that the earlier renewals were for a period of three years and there is no renewal for 2 years after December, 2012 and the owner-driver did not step into the witness box and avoided it. It was urged that licence was not renewed nor the licence bear the signatures of any officer.

Coming to the appeal filed by the owner-driver first, the Tribunal has elaborately dealt with the issue and has referred to the statement made by Sampuran Singh PW-4, Junior Officer from the office of the Transport Authority, District Patiala. The driver-owner failed to step into the witness box and an adverse inference should be drawn against them. According to the owner the licence had been renewed but the endorsement is not signed by any officer. There is no explanation why the licence was not taken back to the authorities for their signatures. To me it appears that the owner-driver had managed a retired person working in that office he managed to get a stamp of the DTO affixed on the back of the licence. The official who had come from the Licensing Authority had stated that there was no record of renewal pertaining to this licence. There is a categoric finding and is not contrary to the evidence led by the insurance company. The finding recorded on issue no.3 is affirmed. The appeal filed by the owner-driver (FAO-1694-2016) is dismissed.

The claimant had suffered disability of 10%. The functional disability would be less. But to calculate the quantum, it is necessary to first find out the income of the injured. The claimant had stated that he was getting salary of Rs.10,000/- and he was working in that brick-kiln and he had also given the name of that concern but he failed to summon the record from the concern nor produced his appointment letter to prove his salary. He led no evidence to show that he had been removed from service. In the absence of any evidence, the income of the injured can be taken to be as that of a labourer. The minimum wages in Haryana in the year 2014 were Rs.7,400/- per month. Taking the functional disability to be 5%, the loss per month would be Rs.370/- and the amount towards the disability would come to Rs.370 x 12 x 14 = Rs.62,160/-.

The claimant had suffered a fracture which led to the disability and he would have not been able to resume work for at least four months, therefore, an addition of 4 months' salary will have to be made, which comes to Rs.7,400/- X 4 = Rs.29,600/-.

The claimant had been allowed the actual medical expenses, attendant charges, diet, transportation i.e. all other heads. The amount allowed on the head of pain and suffering and disability can be taken as Rs. 25,000/-. The amount for disability has separately been assessed. The additional amount now payable would be Rs.62,150 + 29,600 = Rs.91,750/-. The amount would be first paid by the insurance company and it can be recovered by them from the owner-driver. The appeal (FAO-1001-2016) filed by the claimant is partly allowed.

The appeal (FAO-1694-2016) filed by the owner-driver is dismissed.

July 17, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No