

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

**Date of Decision : 08.11.2017
FAO No.432 of 2013 (O&M)**

Sanjay Kumar

..... Appellant

Versus

National Insurance Company Ltd. and another

..... Respondents

FAO No.2978 of 2013 (O&M)

Mohinder Singh

..... Appellant

Versus

Dharmender Singh and others

..... Respondents

CORAM : HON'BLE MRS.JUSTICE REKHA MITTAL

Present : Mr. J.S.Chahal, Advocate
for the appellant in FAO No.432 of 2013 and
for respondent No.2 in FAO No.2978 of 2013.

Mr. R.S.Mamli, Advocate
for the appellant in FAO No.2978 of 2013 and
for respondent No.2 in FAO No.432 of 2013.

Mr. Pradeep Sharma, Advocate for
Mr. Suresh Goel, Advocate
for the respondent-Insurance Company.

REKHA MITTAL, J. (Oral)

CM No.13365-CII of 2013 in FAO No.2978 of 2013

Heard.

For the reasons stated in the application supported by affidavit of Mohinder Singh S/o Sh. Som Nath, same is allowed. Delay of 17 days in filing the appeal is condoned.

Main Cases

This order will dispose of FAO Nos.432 and 2978 of 2013 as these have emerged out of the same award dated 24.12.2012 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri whereby compensation has been assessed on account of injuries sustained by Mohinder Singh (appellant in FAO No.2978 of 2013) in a motor vehicular accident that took place on 21.01.2011.

FAO No.432 of 2013

The owner of truck No.HR-69-A-4187, alleged offending vehicle has preferred the appeal to assail findings of the Tribunal on issue No.3 while deciding issue Nos.3 and 4 jointly.

Counsel for the appellant would contend that the Tribunal has seriously erred by relying upon testimony of Dharampal, Assistant in the office at RTA, Rohtak to record a finding that driver of the offending vehicle namely Dharmender Singh was not possessing a valid driving licence at the time of occurrence, therefore, the insurance company is not liable to indemnify the insured i.e. respondent No.2 therein. It is argued with vehemence that Dharampal official from the office of RTA, Rohtak brought record pertaining to driving licence No.249/0/RTK/06 dated 05.12.2006 but driving licence possessed by Dharmender bearing

No.2249/RTK/06 dated 11.06.2004 is Ex.R3. It is further argued that the insurance company did not adduce any evidence with regard to driving licence possessed by Dharmender on the day of occurrence.

Counsel representing the insurance company is not in a position to defend the findings recorded by the Tribunal based upon testimony of Dharampal, Assistant in the office of RTA, Rohtak. He has fairly informed that during pendency of appeal, verification has been made in respect of the licence possessed by driver of the offending vehicle and it was found valid and genuine.

In view of the above, findings recorded by the Tribunal on issue No.3 are grossly perverse being the result of non-application of mind and liable to be set aside. Resultantly, the insurance company is jointly and severally liable to pay compensation to the claimant.

The appeal is partly allowed in the aforesaid terms.

FAO No.2978 of 2013

The injured victim has filed the appeal seeking enhancement of compensation on account of injuries sustained by him in the accident. The Tribunal has awarded an amount of Rs.1,06,000/-, detailed hereunder:-

1.	Pain and sufferings	Rs.30,000
2.	Loss of income	Rs.3,000/-
3.	Special Diet and attendant	Rs.10,000/-
4.	Transportation	Rs.5,000/-
5.	Medical bills	Rs.44,000/-

6. Disability Rs.14,000/-

Counsel for the appellant has submitted that compensation awarded by the Tribunal under various heads except expenses on medical treatment are liable to be enhanced. To bring home his contention, it is argued that besides testimony of victim, he examined Dr. Dinesh Kaushik, Medical Officer, Kohli Hospital, Jagadhri PW3, Dr. Rajesh Saini, Orthopedic Surgeon, Saini Hospital, Jagadhri PW6 and Dr. Depender Singh Sindhu, Civil Hospital, Yamuna Nagar at Jagadhri PW9. It is further submitted that statements of Dr. Dinesh Kaushik and Dr. Rajesh Saini establish that the injured suffered fracture of both bones of right leg. The injured was initially admitted in Kohli Hospital, Jagadhri and thereafter he remained admitted in Saini Hospital from 22.01.2011 to 26.01.2011. Dr. Rajesh Saini has deposed that when the injured was given treatment in OPD he was brought in the vehicle at least for first three months.

Another submission made by counsel is that the injured suffered permanent disability to the extent of 7% on account of restricted ankle movement caused due to fracture of both bones of right leg. It is argued with vehemence that taking into consideration nature of avocation of the victim being an agriculturalist coupled with nature and extent of disability suffered by him, compensation awarded by the Tribunal in respect of disability to the tune of Rs.14,000/- is inadequate and liable to be enhanced. It has been urged that compensation for future loss of income may be assessed by adopting multiplier method.

Counsel representing the insurance company, on the contrary, has supported the award with the submission that adequate compensation has been assessed by the Tribunal.

I have heard counsel for the parties, perused the paper book and the records.

There is no dispute that medical expenses based upon bills/vouchers have been reimbursed to the injured victim, therefore, compensation for medical expenses awarded by the Tribunal is affirmed.

The accident took place on 21.01.2011 resulting in fracture of both bones of right leg as deposed by Dr. Dinesh Kaushik and Dr. Rajesh Saini. The injured remained hospitalized upto 26.01.2011. POP split was applied on 26.01.2011 and the patient was discharged. Dr. Rajesh Saini has deposed that the patient was brought to OPD in vehicle at least for first three months, meaning thereby that the injured got treatment at least for a period of three months. Taking into consideration the period of treatment coupled with the nature of injury leaving disability to the extent of 7%, injured is entitled to loss of earning for five months qua period of treatment and recovery. The minimum monthly wage of an unskilled labour at the relevant time was Rs.4800/-. The claimant is allowed an amount of Rs.24,000/- for loss of earning in this regard.

The Tribunal has awarded an amount of Rs.30,000/- for pain and sufferings. In the light of nature of injury coupled with the treatment given to the injured, there is no justification for enhancement of

compensation under this head.

The injured has been allowed compensation to the tune of Rs.15,000/- (10,000 + 5,000) for special diet, attendant and transportation. Taking a clue from the medical evidence on record, claimant is awarded an amount of Rs.30,000/- for special diet, attendant and transportation.

The injured victim has suffered permanent disability to the extent of 7% because of restricted movement of right ankle. Dr. Depender Singh Sindhu in cross-examination has candidly admitted that the board did not assess his functional disability. Meaning thereby that disability suffered by the injured victim is not qua the whole body. In this view of the matter, compensation awarded by the Tribunal qua disability @ Rs.2,000/- per percent does not warrant intervention.

In view of the above, additional amount of Rs.36,000/- (Loss of income Rs.21,000 + Special diet, attendant, transportation Rs.15,000) is payable to the injured along with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

08.11.2017
ashok

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No