

In the High Court of Punjab and Haryana at Chandigarh

1. F.A.O No. 715 of 2014 (O&M)
Date of Decision: 25.7.2017

Reliance General Insurance Company Ltd.Appellant

Versus

Asha Rani and othersRespondents

2. F.A.O No. 1090 of 2014

Asha RaniAppellant

Versus

Subhash Chand and othersRespondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Subhash Goyal, Advocate
for the insurance company.

Mr. R.S.Rana, Advocate
for the claimant.

None for respondents No. 2 and 3
(in FAO-715-2014)

ANITA CHAUDHRY, J

These are two appeals against the award dated 26.8.2013
passed by the Motor Accidents Claims Tribunal, Patiala.

In an accident which occurred on 9.10.2011, Asha Rani
suffered injuries and a claim of Rs. 20,00,000/- was filed. It was claimed
that she had suffered fracture of the lateral wall of the left orbit and fracture
of the left zygomatic arch and plastic surgery had to be carried out. The
bills to the tune of Rs. 21,447/- Ex. C1 to Ex. C6 were placed on record.

The Tribunal allowed the actual bills, Rs. 5,000/- for pain and suffering,

transportation, attendant charges and future treatment and Rs. 3,000/- as transportation charges and an award of Rs. 29,450/- was passed.

Two appeals have been filed, one by the insurance company pleading that it was a case of contributory negligence of the deceased and they could not be made liable to pay the entire amount. The second appeal is by the claimants seeking enhancement.

Initiating the arguments, counsel for the insurance company had urged that Mohit husband of the insurance company had struck his motor cycle behind the truck parked at night and as they say he was blinded by the lights of a car which was coming from the opposite side and it was squarely his fault and the Tribunal has erred by not placing the liability also on the driver of the motor cycle.

The submission on behalf of the claimants is that there was no evidence of negligence and the truck driver was challaned and he had parked the truck on the road without any indicator at night. Counsel also submits that the injuries were on the face and a fracture of the lateral wall of the left orbit for which plastic surgery was advised and was carried out and the Tribunal had only allowed the bills which were placed on record and Rs. 5,000/- for pain and suffering, attendant charges and future treatment and Rs. 3,000/- as transportation charges which are on the lower side. Counsel submits that the treatment was taken at Chandigarh and the claimant is a resident of Patiala.

Responding to the submission, counsel for the insurance company urges that had there been a case of any plastic surgery the claimant would have produced those bills on record and there is no evidence that the face was disfigured and the admission in the hospital is only for four days.

The record shows that initially the claimant was taken to Rajindra Hospital in Patiala where tests were carried out and three days later the injured was brought to PGI, Chandigarh and she remained in the hospital for four days. There was bleeding from the nose. The doctors had advised plastic surgery opinion but there is no further record to show if that opinion was taken. There is no evidence either to show that any procedure was carried out or any expenses were made. There is evidence on the record that there was fracture of the left orbit. The award needs to be modified and the compensation payable would be the actual amount spent on purchase of medicines i.e. Rs. 21450/- and Rs. 15,000/- for pain and suffering, Rs. 5,000/- for transportation, Rs. 10,000/- for attendant charges, Rs. 10,000/- for future treatment and Rs. 5,000/- for special diet raising the total to Rs. 66,450/-. The Tribunal had awarded Rs. 29,450/- which would be deducted and the remaining amount i.e. 37,000/- would be payable with interest @ 6% from the date of filing of the appeal till the amount is actually paid.

In view of the above discussion, the award is modified. The appeal filed by the claimant is partly allowed and the appeal filed by the insurance company is dismissed.

(ANITA CHAUDHRY)
JUDGE

July 25, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No