

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

(1)

**FAO No.2886 of 1996 (O&M)
Date of Decision: February 27, 2018.**

Rakesh Kumar

.....APPELLANT(s).

VERSUS

Kirpal Singh and others

.....RESPONDENT(s).

(2)

FAO No.3238 of 1996 (O&M)

The New India Assurance Co. Ltd.

.....APPELLANT(s).

VERSUS

Rakesh Kumar and others

.....RESPONDENT(s).

(3)

FAO No.12 of 1997 (O&M)

The New India Assurance Co. Ltd.

.....APPELLANT(s).

VERSUS

Rakesh Kumar and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Rana, Advocate
for the appellant in FAO-2886-1996 and for
respondent No.1 in FAO-3238-1996 & FAO-12-1997.

Mr. Deepak Suri, Advocate
for respondent No.3 in FAO-2886-1996 and for
appellants in FAO-3238-1996 & FAO-12-1997.

SURINDER GUPTA, J.

All the three appeals captioned above, have been taken up together for disposal being interconnected. Motor Accident Claims Tribunal, Kurukshetra (later referred to as 'the Tribunal') vide award dated 03.06.1996 allowed compensation of ₹30,000/- for the injuries suffered by claimant Rakesh Kumar and ₹2 lakh for damage to his car, in a motor vehicle accident, which took place on 21.12.1994 due to rash and negligent driving of four wheeler bearing registration No.HNE-5756 (later referred to as 'the offending vehicle') by its driver Kirpal Singh.

Insurer of the offending vehicle i.e. the New India Assurance Company has filed two appeals i.e. FAO-3238-1996 and FAO-12-1997 challenging the impugned award, whereas claimant Rakesh Kumar has filed appeal FAO-2886-1996 seeking enhancement of compensation as awarded by the tribunal for the injuries suffered by him in the accident.

The claimant has described the manner of accident in para 25 of the claim petition as follows:-

“That on 21.12.1994, the claimant at about 4 PM, was going from Pipli to Ladwa in his car bearing registration No.HR-07A/7241 Fiat Car and was driving his car on the moderate speed and due cautious and on the due left side i.e. correct side of the road. When the claimant reached near Chatha Poultry Farm on Pipli-Ladwa Road, a four wheeler being driven by respondent no.1 in a rash and negligent manner, came from Ladwa side bearing registration No.HNE-5756 and the driver of the four wheeler i.e. respondent no.1 was driving the four wheeler on very high speed and brought the same on wrong side and dashed the same in car. Due to this mishap, the car

totally damaged and the claimant received many fractures and other injuries.

This accident has taken place due to the rash and negligent act of driving of respondent no.1, the driver of Four wheeler.”

FAO Nos.3238 of 1996 and 12 of 1997

Learned counsel for insurer has confined his submission only with regard to the validity of the driving licence of driver of offending vehicle. He has argued that the insurance company has examined RW1 A.P. Chawla, Investigator, who deposed that as per information taken by him from Licensing Authority, licence of driver of offending vehicle was renewed upto 01.12.1992. The tribunal has not taken note of this fact while recording the finding that the licence of driver of offending vehicle was valid at the time of accident.

Learned counsel for claimant has argued that the testimony of A.P. Chawla RW1 is not admissible in evidence. The insurer has not examined the concerned official of the Licensing Authority to prove that the driving licence of the driver of the offending vehicle was not valid on the date of accident. As per the endorsement on the driving licence, it was valid from 02.11.1992 to 01.11.1995. No evidence has been produced to prove that this endorsement was fake. In case, official of the Licensing Authority had appeared, this fact could be got verified from him.

Joginder Pal, owner of the offending vehicle while appearing as RW2, has stated that Kirpal Singh-respondent was engaged as driver by him on the offending vehicle about 5/6 years back. Before employing him, he had verified his driving licence and also checked his expertise in driving.

The statement of this witness is unrebutted in cross-examination as no question was put to him by learned counsel for the insurer. In view of this, even if the plea of insurer be believed that renewal of driving licence of Kirpal Singh from 02.11.1992 to 01.11.1995 was not valid, still the insurance company has failed to prove that there was any intentional breach of term of the policy by owner of the vehicle, who had taken all the precautions at the time of engaging driver for his vehicle. Even otherwise, it is not proved on record that licence of Kirpal Singh, driver of offending vehicle, was not valid at the time of accident. So far as the statement of Investigator is concerned, it carries no value in the eyes of law. He has verified certain facts from the office of Licensing Authority, Dehradun. In the report of Licensing Authority produced on file, this fact is mentioned that the licence of Kirpal Singh was renewed from 25.05.1988 to 21.01.1992. However, there is nothing in the report that endorsement on the driving licence from 02.11.1992 to 01.11.1995 is fake or is not as per record. In case, the concerned official of the Licensing Authority had deposed in the Court along with the relevant record, the owner of the offending vehicle could prove by cross-examining him that the entry of renewal of driving licence from 02.11.1992 to 01.11.1995 is valid and as per the record. There is no reason as to why the insurer has not examined concerned clerk of the office of Licensing Authority in support of its plea that driving licence of driver of the offending vehicle was not valid on the date of accident.

From the evidence on record, I find that insurer has utterly failed to prove; firstly that the driving licence of driver of offending vehicle

was not valid on the date of accident and secondly that there is any intentional lapse on the part of owner of the offending vehicle resulting in breach of terms of the insurance policy.

No other arguments have been advanced by learned counsel for insurer in FAO Nos.3238 of 2016 and 12 of 2017.

As a sequel of my above discussion, both the aforesaid appeals have no merits, as such, are dismissed.

FAO-2886-1996

Learned counsel for claimant has argued that the claimant has suffered injuries in the eye and teeth, which resulted in disability in the movement of jaw and eye of the claimant. The tribunal without looking at this fact has awarded a meagre compensation of ₹30,000/- in lump sum, which is unreasonable and inadequate.

Dr. Gurdev Ram, Dental Officer, LNJP Hospital, Kurukshetra while appearing as PW1, has stated that claimant has suffered 2% temporary disability of mandible due to injury to the head of the condyle. He has placed on file his report to this effect as Ex.PA. He further submitted that this disability can increase or decrease with the passage of time. The claimant has also examined Dr. R.C. Manoj, a Private Medical Practitioner and Dental Surgeon, Karnal as PW5, who has stated that claimant has suffered problem of opening his jaw and from his clinical observation, he found the disability to the extent of 25%. He has issued disability certificate Ex.PW5/A. In cross-examination, he admitted that he did not follow the criteria in fixing the disability qua the jaw and has given the opinion only on clinical observation. He has also admitted that disability certificate is

usually issued in every Government Hospital by Board of Doctors.

The claimant has also examined Dr.O.P. Arya, Eye-Specialist as PW2, who has stated that he has noticed disability from 15 to 20% in the eyes of the claimant and has given his report as Ex.PB. He was, however, not sure that if the claimant was having disability prior to the injury.

While appearing as PW4, claimant has stated that in the accident, he had suffered injuries on mouth, eye, forehead, face, chest and other parts of the body. He is unable to chew food properly and suffered visual disfiguration. However, his testimony that he has suffered visual disfiguration, is not supported by any medical evidence on record. He has not placed on record any document as to what injuries were found on his person immediately after the accident. Though the doctors who have been examined, speak of some disability in the jaw and eyes of claimant but they have nowhere stated that disability suffered by the claimant was permanent disability. Even otherwise, 2% temporary disability of mendable was a minor disability which could cure with the passage of time. There is no certificate issued by doctors from the Government Hospital regarding disability in the eyes of claimant and it is also not proved that this disability was suffered due to the injuries suffered by him in the accident.

Admittedly, claimant has not produced any bills of his medical treatment. There is sole statement of PW5 Dr. R.C. Manoja that he has charged ₹1000/- from the claimant.

The tribunal on looking into the entire evidence, has awarded a lump sum compensation of ₹30,000/- which in the facts and circumstances of the case, appears to be a reasonable amount of compensation and I find

no reason to enhance the same.

As a sequel of my above discussion, this appeal has also no merits and the same is dismissed.

February 27, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>