IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 2572 of 2000 (O&M)
Date of decision: 18.01.2018

Sher Singh and another .... *Appellants*

Versus

Chhinder Singh and others ....*Respondent(s)*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Vikas Mohan Gupta, Advocate
for the appellants

Mr. Akash Sridhar, Advocate
for respondent No.3.

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Rekha Mittal, J. (Oral)

The appellants are in appeal seeking enhancement of compensation on account of damage to Tractor bearing No. PB 11-C-3296 in a motor vehicular accident that took place on 24.11.1996 because of rash and negligent driving of Bus bearing No. PB 31 2909 by Chhinder Singh, its driver.

The claimants placed on record receipts mark A1 to A16 for Rs.39,544.00. The Tribunal has noticed that out of these receipts, mark A3 and A4 are only the estimate and not the bills but in mark A5 to A7 and A12 to A14, no particulars of any sort are mentioned. So, these cannot be linked with repair of tractor in question. After excluding value of receipts Mark A5 to A7 and A12 to A14, the remaining amount is stated to be Rs.24,673.00. However, after deducting depreciation to the extent of 40%

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i.e. Rs.9,869.00, an amount of Rs.14,804.00 was held payable to the claimants. In addition, an amount of Rs.2,000.00 as labour charges was also ordered to be reimbursed.

Counsel for the appellants has submitted that deduction of Rs.9,869.00 towards depreciation made by the Tribunal is incorrect as the claimants are third party who were entitled to get compensation on the basis of actual loss incurred by them. According to counsel, question of any deduction qua depreciation would have arisen, had the claim for damage been made from insurer of the vehicle that has suffered damage.

Counsel representing the insurance company has submitted that the documents brought on record by the claimants have not been proved in accordance with law, therefore, cannot form the basis for enhancement of compensation.

Counsel for the claimants, in reply, would argue that the insurance company has not challenged the award on any count whatever. The amount assessed by the Tribunal has already been paid to the claimants, therefore, the insurance company cannot raise an issue with regard to documents relied upon by the Tribunal for holding that the claimants spent Rs.24,673.00.

I have heard counsel for the parties and perused the paper book particularly the award impugned.

Records have destroyed in a fire incident. Counsel for the parties have expressed their inability to make available copies of documents Mark A1 to A16, relied upon by the Tribunal. Under the circumstances, this Court cannot appreciate correctness and evidential value of documents on the basis whereof the Tribunal has held that the amount comes to

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Rs.24,673.00. However, counsel for the insurance company has not disputed that the insurance company has already paid an amount of Rs.14,804.00 assessed by the Tribunal towards damage to the vehicle on the basis of documents. That being so, the only question that survives for consideration is whether the Tribunal has rightly deducted depreciation at the rate of 40%. Indisputably, the claim with regard to damage to vehicle has been made by owner of the Tractor against the insurer of the offending vehicle - Bus. Under the circumstances, insurance company cannot take advantage of any clause in the insurance policy with regard to depreciation as that would be applicable in case the insured under policy is to be paid compensation for damage to the insured vehicle. In this view of the matter, amount of Rs.9,869.00 deducted by the Tribunal towards depreciation is liable to be paid to the claimants.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed. The claimants are entitled to Rs.9,869.00 along with interest at the rate of 7.5% per annum from the date of petition till realization.

(Rekha Mittal)
Judge

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

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