IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 5020 of 2009 (O&M)
Date of decision : May 4, 2018

Oriental Insurance Co. Ltd.

.... Appellant

Versus

Gian Kaur and others

.... Respondents

FAO No. 5021 of 2009 (O&M)

Oriental Insurance Co. Ltd.

.... Appellant

Versus

Sunil Kumar and another

.... Respondents

FAO No. 5371 of 2009 (O&M)

Gian Kaur and others

.... Appellants

Versus

Dalip Raj and another

.... Respondents

FAO No. 5372 of 2009 (O&M)

Sunil Kumar

.... Appellant

Versus

Dalip Raj and another

.... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Ms. Ekta Thakur, Advocate
for the appellant in FAO-5371 and 5372 of 2009 and
for respondent Nos. 1 to 4 in FAO No. 5020 of 2009
for respondent No.1 in FAO-5021 of 2009.

Mr. Ashwani Talwar, Advocate
for the appellant in FAO-5020 and 5021 of 2009 and
for respondent No.2 in FAO No. 5371 and 5372 of 2009.

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REKHA MITTAL J (Oral).

This order will dispose of FAO Nos.5020, 5021, 5371 and 5372 of 2009 as these have emerged out of the same award dated 8.6.2009 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been awarded on account of death of Ashwani Kumar and injuries sustained by Sunil Kumar while travelling on motorcycle bearing No. CH-03-U-7430 driven by Ashwani Kumar on which Sunil Kumar was travelling as a pillion rider.

FAO No. 5371 of 2009 has been filed by Gian Kaur and others for enhancement of compensation qua death of Ashwani Kumar awarded under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act'). FAO No. 5372 of 2009 has been filed by injured Sunil Kumar for enhancement of compensation. FAO No. 5020 of 2009 has been filed by the Oriental Insurance Company (hereinafter to be referred as 'Insurance Company') to assail compensation allowed qua death of Ashwani Kumar and FAO No. 5021 of 2009 in regard to compensation allowed to Sunil Kumar.

FAO Nos.5371 and 5020 of 2009
CM No. 24325-CII of 2009 in FAO No. 5020 of 2009

Heard.

Allowed as prayed for. Delay of 4 days in filing the appeal stands condoned.

FAO Nos.5371 and 5020 of 2009

The tribunal has awarded compensation to the tune of

Rs.1,97,000/-, detailed hereunder:-

S.No.	Heads of claim	Amount (Rs.)
1.	Monthly income of the deceased	2400/-
2.	Multiplier	10
3.	Deduction for personal expenses	1/3rd
4.	Loss of dependency	1,92,000/-
5.	Loss to estate	2500/-
6.	Funeral expenses	2500/-
	Total	1,97,000/-

Counsel for the claimants would urge that as the deceased was 20 years old at the time of occurrence, admissible multiplier is 16 as per the Second Schedule appended to Section 163-A of the Act.

Counsel representing the Insurance Company has assailed liability of the Insurance Company to pay compensation. It is argued that the motor cycle No. CH-03-U-7430 was owned by Dalip Raj and the same was driven by Ashwani Kumar at the time of occurrence. There is nothing on record suggestive of the fact that Ashwani Kumar was engaged as a driver on the motorcycle. Ashwani Kumar would step into the shoes of insured and cannot be treated as third party, therefore, the Insurance Company is not liable to pay compensation. In support of his contention, he has relied upon judgment of this Court **Reliance General Insurance Company Ltd. Vs. Jaswinder Pal Kaur and others, FAO No.1840 of 2015, decided on 22.08.2017.**

The plea of the claimants seeking enhancement of compensation by applying multiplier of 16 is meritorious when examined in the light of structured formula laid down in the Second Schedule appended to Section 163-A of the Act. However, income of the deceased and deduction for personal expenses allowed by the tribunal are affirmed. In this manner, loss of dependency comes to Rs. 2400 x 12 x 16(4,60,800)-(1/3rd) (1,53,600) =3,07,200/-.

Compensation awarded by the tribunal with regard to loss of estate and funeral expenses is affirmed. Total compensation payable to the claimants comes to Rs.3,12,200/- (3,07,200 +2500 +2500) and the additional amount is Rs.1,15,200/- (Rs. 3,12,200/- - 1,97,000/-) payable with interest @ 7.5% per annum from the date of petition till realization.

Coming to the question qua liability of the Insurance Company to pay compensation, the controversy is squarely covered by the judgment of this Court in **Reliance General Insurance Company Ltd.'s case (supra),** therefore, the Insurance Company cannot be fastened with liability to pay entire compensation assessed by the tribunal or this Court. However, the Insurance Company is liable to pay compensation to the extent of Rs. 50,000/- under 'no fault liability'. In this context reference can be made to judgment of this Court **National Insurance Company Ltd. Vs. Harjit Singh and another, 2016(1) PLR 735** wherein this Court has held in paras 3 and 4 quoted thus:-

> *"3. In a situation where the Insurance Company cannot be made liable under the terms of the policy, there is a minimum liability which the Motor Vehicles Act constitutes under Section 140 where all that has been seen is whether the vehicle that was involved in the accident had been insured with the particular Insurance Company. If it was in a case of injury resulting in permanent disability, the maximum compensation will be*

₹25,000/- and in case of death, the maximum compensation of ₹50,000/- would require to be paid in terms of the judgment of the Supreme Court in ***Eshwarappa @ Maheshwarappa and another Vs. C. S. Gurushanthappa and another-2010 (8) Scale 263.***

4. The awards of the court below are modified in FAO No. 1245 of 2003, the Insurance Company's liability will be restricted to ₹25,000/- with interest as granted already and in FAO No.5016 of 2003, it is restricted to ₹50,000/- with interest as granted already. The awards passed against the Insurance Company over the above amounts stipulated under Section 140 in petition filed under Section 163-A of Motor Vehicles Act are not tenable and set aside."

In view of what has been discussed hereinbefore, the appeals are disposed of in the terms indicated hereinabove.

No order as to costs.

FAO Nos.5372 and 5021 of 2009

With regard to injuries sustained by Sunil Kumar, the tribunal has awarded compensation of Rs. 26,710/-, detailed hereinunder:-

S.No.	Heads of claim	Amount (Rs.)
1.	Compensation of pain and sufferings	20,000/-
2.	Reimbursement of medical bills	3,210/-
3.	Compensation for special diet	1,500/-
4.	Compensation for transportation charges	1,000/-
5.	Compensation for expenses on attendants	1,000/-
6.	Total	26,710/-

Counsel for the claimant would urge that Sunil Kumar aged 18 years sustained fracture of right thigh and remained hospitalized for a period of 13 days. During treatment as an indoor patient, he had undergone operation. It is argued that compensation allowed by the tribunal under various heads is on lower side and needs enhancement.

Counsel representing the Insurance Company has supported assessment made by the tribunal.

Compensation awarded by the tribunal for pain and suffering and reimbursement of medical expenses based upon bills is ordered to be affirmed. Tribunal has awarded an amount of Rs.3500/- for special diet, transportation and attendant charges. Taking into consideration the nature of injuries sustained coupled with period of treatment as an indoor patient, interest of justice would be served if the claimant is awarded an amount of Rs.12,500/- under the aforesaid heads(additional amount of Rs.9,000/-). The additional amount shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization in terms of award passed by the tribunal. The appeal filed by the claimant is partly allowed. As a natural corollary, the appeal filed by Insurance Company fails and is accordingly dismissed.

No order as to costs.

(REKHA MITTAL)
JUDGE

May 4, 2018
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Whether speaking/reasoned **Yes/No**
Whether Reportable **Yes/No**