

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:25.5.2018

FAO No. 4706 of 2011(O&M)

The National Insurance Company Limited

---Appellant

vs.

Captain Anil Kundu and others

---Respondents

FAO No. 4347 of 2011(O&M)

Captain Anil Kumar

---Appellant

vs.

Dharam Pal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.C.Kapoor, Advocate
for the appellant-insurance company
Mr. Harsh Aggarwal, Advocate
for the appellant in FAO No. 4347 of 2011
for respondent No. 1 in FAO- 4706 of 2011

Rekha Mittal, J.

CM No. 16379-CII of 2016

Prayer in this application is for vacation of ex parte stay.

On joint request made by counsel for the parties, FAO Nos.
4347 and 4706 of 2011 are taken on Board.

FAO Nos. 4347 and 4706 of 2011

This order will dispose of FAO Nos. 4347 and 4706 of 2011
as these have emerged out of the same award dated 5.3.2011 passed by the
Motor Accidents Claims Tribunal, Hoshiarpur (in short “the Tribunal”)
whereby compensation has been awarded on account of injuries sustained

by Captain Anil Kundu in a motor vehicular accident that took place on 30.6.2006.

FAO No. 4347 of 2011 has been filed by the claimant seeking enhancement of compensation whereas FAO No. 4706 of 2011 has been filed by the insurance company to assail the award.

CM No. 17761-CII of 2011 in FAO-4706 of 2011

Prayer in this application is for condoning delay of 29 days in filing the appeal.

In view of averments made in the application and arguments advanced, application is allowed and delay of 29 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 4706 of 2011

As per the case set up by the claimant, on 30.6.2006, he was driving Santro Car bearing No. HR-05-P-8000 and was coming from the side of Paonta Sahib towards Khizrabad at about 11.30 a.m. When he reached near area of Kalosar Laldhang and was going at a slow speed, truck bearing No. HR-56-3150 driven by Dharam Pal rashly and negligently came from opposite direction and struck against the car after coming on the wrong side. As a result, claimant received serious multiple injuries. He was given first aid in Government Hospital, Jagadhari and referred to PGI, Chandigarh. The accident was witnessed by Darshan Singh, Ram Lal, Sohan Singh, Sukhwinder and others. FIR was lodged in Police Station, Khizrabad. An amount of Rs. 80 Lakhs has been claimed towards compensation with costs and interest.

The driver and owner of the offending vehicle filed joint

written statement and denied the accident. However, it was admitted that a criminal case was registered against respondent No. 1 therein. They raised preliminary objections inter alia that the claim petition is not maintainable; bad for non-joinder of parties and the claimant is estopped to file this petition by his act and conduct.

The insurance company filed separate reply and, in turn, raised preliminary objections that the truck driver did not possess a valid and effective driving licence; the truck did not have route permit and fitness certificate; the truck was being used for a purpose other than specified in the route permit and the claim petition is not maintainable. It has denied its liability to pay compensation with the plea that if the claimant is able to prove the alleged accident, then it was due to rash and negligent driving of the car by the claimant himself.

The Tribunal framed the following issues for determination:-

1. Whether claimant has suffered injuries in a road side accident alleged to be caused by respondent No. 1 while driving Truck HR-56-3150 in a rash and negligent manner?
OPA
2. Whether the claimant is entitled to compensation as prayed for?OPA
3. Whether the alleged driver/respondent No. 1 was not having a valid and effective driving licence at the time of alleged accident?OPR
4. Whether the claim petition is bad for non-joinder of necessary parties?OPR

5. Relief.

The parties were permitted to adduce evidence. Having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No. 1 in favour of the claimant and compensation to the tune of Rs. 68,41,308/- has been assessed, detailed hereunder:-

Compensation qua disability to the tune of 100%	Rs. 2,00,000/-
Loss on account of earned, extraordinary leave minus income tax	Rs. 16,31,200/-
Loss of salary	Rs. 48,79,073/-
Attendant charges	Rs. 1,14,000/-
Pain and suffering	Rs. 20,000/-
Loss of amenities of life	Rs. 1,00,000/-
Transportation	Rs. 3,000/-

Counsel for the claimant would argue that the claimant is entitled to loss of income @ Rs. 32, 269/- per month, benefit of addition in income for future prospects @ 50% and an appropriate multiplier of 16 as the victim was 32 years old at the time of accident. It is further argued that the claimant remained on earned leave for 20 days and then extraordinary leave without pay upto 20.5.2011 and thereafter, his services have been terminated on account of his failure to resume duty after extraordinary leave.

The Tribunal has not allowed any compensation qua medical expenses by taking into consideration that he received Rs. 2,20,127/- from the university for indoor treatment from 1.7.2006 to 27.9.2006 as stated by AW4. It is argued that claimant produced documents with regard to medical expenses incurred subsequent to his discharge from PGI, Chandigarh on

27.9.2006 and he is entitled for reimbursement of those expenses. The Tribunal has awarded compensation of Rs. 1,14,000/- towards services of an attendant @ Rs. 3000/- per month for a period of 38 months but the claimant shall be requiring services of an attendant round the clock for the rest of his life as he is 100% disable and bed ridden. The claimant is entitled to adequate compensation for pain and suffering, loss of amenities of life, special diet, transportation and future medical treatment.

Counsel representing the insurance company would urge that as per statement of R.K.Verma AW4, in June 2006, claimant was drawing salary of Rs. 17,013/- and future loss of earning is required to be assessed on the basis of salary drawn at the time of accident. In the alternative, it is argued that if the claimant is to be extended benefit of revision of pay, he is not entitled to benefit of future prospects @ 50%. It is further argued that adequate compensation has been allowed by the Tribunal under various heads. Compensation awarded qua disability and loss of salary for the leave period is liable to be adjusted out of compensation assessed qua loss of future income from the date of accident.

Indisputably, the victim was working as Lecturer in Management in Kurukshetra University, Kurukshetra. He joined service on 9.10.2003. Ex. A8 is the copy of his service book. The accident took place on 30.6.2006 and at that time, victim was drawing salary of Rs. 32,269/-. Mr. R.K.Verma AW4 has proved that salary of the victim was revised from 1.1.2006 and revised salary certificate is Ex. A22. The victim was 32 years old at the time of accident. He was a regular employee of Kurukshetra University, Kurukshetra. He would be entitled to benefit of future prospects

@ 50%. The annual income is Rs. 32,269 x 12 = 3,87,228/-. After deducting liability to pay income tax of Rs. 66,168/-, loss of income per annum is Rs. 3,21,060/-. By extending benefit of future prospects @ 50% and applying multiplier of 16, loss of future income comes to Rs. 3,21,060 x 16 = 51,36,960 + 25,68,480 (50%) = **Rs. 77,05,440/-**. Compensation awarded by the Tribunal to the tune of Rs. 2,00,000/- towards disability and Rs.16,31,200/- towards leave period shall be liable to be adjusted out of loss of future income.

The injured remained hospitalized from 1.7.2006 to 27.9.2006, approximately for a period of 3 months. The Tribunal has awarded an amount of Rs. 20,000/- qua pain and suffering. Taking into consideration nature of injuries sustained that rendered him totally disable coupled with period of treatment as an indoor patient, claimant shall be entitled to compensation for pain and suffering to the tune of Rs. **50,000/-** (additional amount of Rs. 30,000/-). The Tribunal has awarded a sum of Rs. 1,00,000/- for loss of amenities of life. In view of the above, the claimant shall be entitled to loss of amenities of life to the tune of **Rs. 1,50,000/-** (additional amount of Rs. 50,000/-).

The Tribunal has awarded a sum of Rs. 1,14,000/- towards services of an attendant. The victim would be requiring services of an attendant throughout his life. By assessing value of services of an attendant @ Rs. 2000/- and applying multiplier 16, claimant shall be entitled to Rs. 2000 x 12 x 16 = **Rs. 3,84,000/-** for services of an attendant (additional amount of Rs.2,70,000/-).

The Tribunal has not allowed compensation qua medical

expenses. The claimant has proved that he remained admitted in PGI Chandigarh upto 27.9.2006. Thereafter, he was admitted in Silver Oak Hospital, Mohali on 3.1.2007 and discharged on 5.1.2007, Indraprashta Appollo Hospital, New Delhi from 6.2.2007 to 14.2.2007, Indian Spine Injuries Centre, New Delhi from 26.11.2007 to 27.11.2007 and Orthonova Hospital, New Delhi from 28.11.2007 to 14.12.2007. Ex. A14 to A-19 ad A21 are medical bills for Rs. 23,750.20 Paise. Ex. A2 and A4 are copies of bills issued by Silver Oak Hospital, Mohali for Rs. 16.377/-(Ex. A3 and A5 are included in Ex. A2). The claimant shall be entitled to reimbursement of aforesaid medical bills of Rs. 40,127.20 paise and accordingly, a sum of **Rs. 40000/-** is awarded towards medical expenses. As the claimant has been rendered 100% disable, he would be requiring medical treatment in future and is allowed a sum of **Rs. 30,000/-** towards future medical treatment.

The Tribunal has awarded a sum of Rs. 3,000/- towards transportation charges on the basis of receipt Ex. A20 issued by the Tempo Transport Service, Delhi. As has been noticed hereinbefore, the claimant remained admitted in various hospitals for his treatment on account of sustaining injuries in the occurrence. Though the claimant has not produced any document with regard to his having hired a vehicle for visiting Delhi on different occasions but even if the claimant had used his own vehicle, he would have spent money on transportation. He is awarded an amount of **Rs. 20,000/-** towards transportation charges. The Tribunal has not awarded any compensation for special diet. As the injured remained hospitalized in various hospitals at different intervals, he is awarded an amount of **Rs. 10,000/-** for special diet. The total compensation is **Rs. 83,89,440/-** and the

additional amount is **Rs.15,48,132/-**.

Counsel for the insurance company has raised an argument that the present is a case of contributory negligence on the part of victim and compensation to the extent of negligence attributable to him cannot be liability of the driver, owner and insurer of the alleged offending vehicle. To bring home his contention, it is argued that in the FIR got registered by Darshan Singh AW5, he has recorded that car driven by the victim had over taken him and in the meanwhile, a truck came from the opposite direction and there was a turn at that point. When he appeared in the witness box, he has deposed that the car was going ahead of his motor cycle and was driven slowly, carefully and on correct side of the road and the truck came from opposite side. It is argued that Darshan Singh changed his version in his affidavit Ex. AW5/A tendered by way of examination-in-chief viz-a-viz his first version recorded in the FIR, therefore, his testimony cannot be taken as a gospel truth. It is further argued that as the two vehicles involved in the occurrence were coming from opposite direction and there was a turn at the place of occurrence, it can be safely inferred that the victim did not take proper and reasonable care to avoid the occurrence, therefore, negligence to some extent is liable to be attributed to the victim.

Counsel representing the claimant has supported findings of the Tribunal on issue No. 1 with the submission that testimony of Darshan Singh is more than sufficient to establish plea of the claimant and discharge onus of issue No. 1 that accident was the result of exclusive rash and negligent driving of offending vehicle by Dharam Pal. In addition, it is argued that Dharam Pal did not appear in the witness box to counter

testimony of Darshan Singh and an adverse inference is liable to be drawn against him for his failure to counter case of the claimant and testimony of Darshan Singh.

On due consideration of first version recorded by Darshan Singh, his testimony in examination in chief by way of affidavit Ex. PW5/A, facts elicited in his cross examination coupled with that there is no counter to testimony of Darshan Singh by the respondents before the Tribunal, I find it difficult to differ with findings recorded by the Tribunal on issue No. 1 upholding plea of the claimant that accident was caused due to sole negligence of the truck driver. This apart, the driver and owner of the offending vehicle filed their written statement but they never raised any plea that offending vehicle was involved in the accident or the accident was the result of exclusive or contributory negligence of the victim. Analyzed from any angle, plea raised by the insurance company to assail findings of the Tribunal on issue No. 1 is not meritorious and accordingly rejected.

For the foregoing reasons, appeal filed by the claimant is partly allowed and claimant shall be entitled to additional amount of **Rs.15,48,132/-** with interest @ 7.5% per annum from the date of petition till realization. As a natural corollary, appeal filed by the insurance company fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

25.5.2018
paramjit

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