IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 16.03.2018

FAO-5890-2012 (O&M)

IFFCO Tokio General Insurance Co. Ltd. ... Appellant

Versus

Anil Kumar Yadav and others ... Respondents

FAO-6482-2012 (O&M)

Lal Chand ... Appellant

Versus

Anil Kumar Yadav and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Bhawna Grewal, Advocate for
Mr. S.K. Yadav, Advocate
for the appellant in FAO No.6482 of 2012 and
for respondent No.3/claimants in FAO No.5890 of 2012.

Mr. Yogesh Gupta, Advocate
for the appellant in FAO No.5890 of 2012 and
for respondent No.3 in FAO No.6482 of 2012.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5890 and 6482 of 2012 as these have emerged out of the same award dated 08.08.2012 passed by the Motor Accidents Claims Tribunal, Narnaul whereby compensation has been awarded on account of injuries sustained by Lal Chand in a motor vehicular accident that took place on 08.05.2010.

FAO No.5890 of 2012 has been filed by IFFCO Tokio General Insurance Co. Ltd. (in short 'the insurance company') whereas FAO No.6482 of 2012 has been filed for enhancement of compensation in regard to injuries sustained by Lal Chand.

FAO No.5890 of 2012

Counsel for the appellant-insurance company, at the outset, would inform that the appeal has been preferred to assail findings of the Tribunal denying recovery right to the insurer against the insured as driver of the offending vehicle was not possessing valid licence. To bring home his contention, it is argued that the insurance company had placed on record report issued by the licensing authority at Mathura certifying that licence possessed by Anil Kumar Yadav, driver of the offending vehicle was not issued by the said authority, therefore, the insured is guilty of violating the terms and conditions of the policy.

Counsel representing the claimants has supported findings of the Tribunal holding the insurance company jointly and severally liable to pay compensation. It is argued that the insurance company failed to examine a witness of the concerned licensing authority along with relevant record to prove the report in accordance with law and an opportunity to the contesting party to cross-examine the said witness.

Indisputably, the insurance company did not examine a witness of the concerned licensing authority to prove the factum that licence possessed by Anil Kumar Yadav was not issued by the said licensing authority. In the given circumstances, the insurance company has failed to discharge the onus that insured is guilty of violating the terms and conditions of the contract of insurance that constitutes a defence under Section 149(2) of the Motor Vehicles Act, 1988 in favour of the insurer. That being so, findings recorded by the Tribunal fastening liability upon the insurance company jointly with driver and owner of the offending vehicle cannot be faulted with.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

No order as to costs.

FAO No.6482 of 2012

The Tribunal has awarded compensation of Rs.10,02,200/-, detailed hereunder:-

1. Costs of treatment	Rs.2,30,000/-
2. Loss of income on account of disability	Rs.6,24,000/-
3. Expenses on transportation	Rs.28,200/-
4. Loss of conjugal enjoyment	Rs.1,00,000/-
5. Special diet and attendant charges	Rs.20,000/-

Counsel for the appellant would fairly inform that Lal Chand injured has passed away on 29.04.2017. In the given circumstances, claim for enhancement of compensation under non-pecuniary head cannot be considered much less accepted.

The Tribunal has reimbursed the medical expenses on the basis of documents on record. Counsel for the appellant has not advanced any argument justifying increase in compensation qua expenses on medical treatment. Similarly, the Tribunal has reimbursed expenses on transportation.

The Tribunal has awarded an amount of Rs.6,24,000/- on account of disability of 75% on account of intellectual impairment by assessing income of the victim at Rs.4000/- per month and applying a multiplier of 13. Counsel for the insurance company would urge that Dr. Vijay Rawat had not committed if impairment to the extent of 75% is permanent in nature. The disability certificate also does not contain opinion that 75% intellectual impairment is permanent in nature. The Tribunal has allowed compensation for loss of future earning by applying multiplier of 13. Unfortunately, the injured died less than seven years after sustaining injuries in the occurrence. In the given scenario, there is no justification for increase of compensation for loss of future earning.

The Tribunal has awarded an amount of Rs.1,20,000/- for loss of conjugal enjoyment, special diet and services of an attendant. As per the settled position in law, compensation should be just and reasonable which cannot be a source of profit or largesse. Taking a cumulative view of the facts and circumstances on record, I do not find any justification to enhance compensation on any score whatever.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

16.03.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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