IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 08.10.2018

FAO No.5828 of 2014 (O&M)

Dev Raj ... Appellant

Versus

Mantosh and ors. ... Respondents

FAO No.8989 of 2014 (O&M)

Mantosh ... Appellant

Versus

Jeevan Kumar and ors. ... Respondents

FAO No.10140 of 2014 (O&M)

Bharti Axa General Insurance Co. Ltd. ... Appellant

Versus

Mantosh and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vikram Singh Rao, Advocate
for the owner.

Mr. Atul Yadav, Advocate
for the claimant.

Mr. Subhash Goyal, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5828, 8989 and 10140 of

2014 as these have emerged out of the same award dated 15.05.2014 passed by the Motor Accidents Claims Tribunal, Gurgaon whereby compensation has been assessed on account of injuries sustained by Mantosh in a motor vehicular accident that took place on 16.11.2011.

FAO No.5828 of 2014 has been filed by Dev Raj, registered owner of offending truck No.HP-12D-5137, No.8989 of 2014 by the claimant seeking enhancement of compensation and No.10140 of 2014 by Bharti Axa General Insurance Company Ltd. to assail quantum of compensation.

FAO No.5828 of 2014

The sole submission made by counsel for the appellant is that as driving licence possessed by Jeevan Kumar, driver of offending truck has been sought to be produced by way of additional evidence and the same is found to be valid as per verification made by the insurance company, findings of the Tribunal on issue No.4 are liable to be set aside and the insurance company cannot press for right of recovery after payment of compensation to the claimant.

Counsel representing the insurance company has fairly conceded that on necessary verification, licence possessed by Jeevan Kumar has been found to be valid but would contend that the endorsement with regard to authorising him to drive a transport vehicle had already expired before the date of accident. He has further accepted that the vehicle had a valid permit.

Counsel for the insurance company has found the documents, sought to be produced by way of additional evidence, to be correct on necessary verification. Perusal of verification report dated 22.05.2018 in respect of driving licence No.92569/MKG/Prof/09 would reveal that renewal of MMV/HMV ended on 28.09.2010 as per column No.9. In column No.5, it says valid upto 27.09.2012 and column No.6 “authorised to drive” says MC, LMV, MMV, HMV. Taking into consideration the driving licence (Annexure A1) coupled with verification report, copy whereof is filed in the Court and taken on record, the driver was authorised to drive a transport vehicle, therefore, insured cannot be held guilty of violating the terms and conditions of policy. In this view of the matter, findings of the Tribunal on issue No.4 that the insured is guilty of violating the terms and conditions of policy cannot be allowed to sustain and accordingly set aside. The insurance company shall be jointly and severally liable to pay compensation without any right of recovery.

The appeal is partly allowed in the aforesaid terms. The application for additional evidence (CM No.16183-CII of 2014) also stands disposed of.

FAO Nos.8989 and 10140 of 2014

The Tribunal has awarded compensation of Rs.20,44,678/- in respect of injuries sustained by Mantosh, detailed hereunder:-

1. Expenses relating to treatment, hospitalization and medicines	Rs.11,49,678/-
2. Expenses on account of disability	Rs.2,00,000/-
3. Pain and sufferings	Rs.50,000/-

4. Loss of amenities and enjoyment of life	Rs.1,00,000/-
5. Expenses on special diet/transportation	Rs.50,000/-
6. Loss of future income	Rs.4,95,000/-

Counsel for the claimant would urge that the victim suffered 80% disability on account of amputation of left leg above knee but the Tribunal has assessed loss of future income to the tune of 50% qua income @ Rs.5500/- per month and the same needs enhancement. Compensation allowed by the Tribunal for loss of amenities and enjoyment of life to the tune of Rs.1 lakh also merits increase.

Counsel representing the insurance company, on the contrary, would urge that compensation allowed by the Tribunal is more than what is just and reasonable in the given circumstances.

Before adverting to the submissions made by counsel for the parties, it is pertinent to mention that the insurance company has filed the appeal with an application seeking condonation of delay of 119 days. Perusal of the application (CM-27975-CII of 2014 in FAO No.10140 of 2014) would reveal that no reason whatever is assigned justifying condonation of delay of 119 days in filing the appeal. Apart from the fact that application for condonation of delay does not merit acceptance, there is no force in arguments raised by counsel for the insurance company that compensation allowed by the Tribunal is excessive and needs reduction.

This brings the Court to plea of the claimant for enhancement of compensation. Indisputably, Mantosh has been rendered disable to the extent of 80% on account of amputation of left leg above knee. He was running a khoka of pan biddi and is still doing that business though with difficulty on account of amputation of one of the lower limbs. Taking into considerations the nature of business carried on by the victim coupled with nature and extent of disability suffered by him, interest of justice commands that future loss of income is assessed by treating functional disability to the tune of 60%. Accordingly, loss of future income is calculated at Rs.5,94,000/- (5500 x 12 x 15 x 60%). Claimant shall be entitle to a sum of Rs.2 lakh for loss of amenities and enjoyment of life (additional amount of Rs.1 lakh). In this context, reference can be made to judgment of this Court **Mahesh Kumar Vs. Satnam Singh and another, FAO No.1608 of 2013, decided on 20.05.2014**.

The injured remained hospitalised for a period of one month from 16.11.2011 to 13.12.2011 and 20.12.2011 to 22.12.2011. In view of nature of injuries sustained rendering the victim permanently disable on account of amputation of left leg, claimant shall be entitle to loss of income @ Rs.5500/- per month for three months in regard to period of treatment and recovery. Accordingly, he is entitle to Rs.16,500/- under this head. Compensation awarded by the Tribunal for expenses on medical treatment, on account of disability, pain and sufferings, special diet & transportation are ordered to be affirmed. In this manner, total compensation is Rs.22,60,178/- and the additional amount is Rs.2,15,500/- (22,60,178 - 20,44,678), payable with interest @ 7.5% per annum from the date of petition till realization.

For the foregoing reasons, the appeal filed by the claimant is partly allowed in the aforesaid terms. However, the appeal preferred by the insurance company is dismissed, leaving the parties to bear their own costs.

08.10.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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