IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 18.12.2018

FAO No. 4719 of 2015 (O&M)

Reliance General Insurance Company Limited ....Appellant

versus

Tej Singh and others ....Respondents

FAO No. 5541 of 2015

Tej Singh ....Appellant

versus

Avtar Singh and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Subhash Goyal, Advocate
for the insurance company

Mr. Pawan Attri, Advocate and
Ms Manpreet Kaur, Advocate
for the claimant

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 23.02.2015 passed by the Motor Accidents Claims Tribunal, Kaithal (in short, 'the Tribunal') whereby compensation has been assessed on account of injuries sustained by Tej Singh in a motor vehicular accident that took place on 24.03.2013.

FAO No. 4719 of 2015 has been filed by the Insurance company whereas other appeal has been preferred by the claimant seeking enhancement of compensation.

FAO No. 4719 of 2015

Counsel for the insurance company would fairly inform that the appeal has been preferred to assail findings of the Tribunal on issue No. 1 as well as quantum of compensation assessed by the Tribunal.

Plea of the insurance company with regard to assessment of compensation would be considered while deciding the appeal filed by claimant seeking enhancement of compensation.

Counsel for the insurance company would urge that as per case set up by the claimant, offending vehicle Maruti Swift Car bearing No. HR 41-D-0117 hit motorcycle No. HR 31F 6617 driven by Tej Singh from behind but as per report submitted qua mechanical examination of the aforesaid motorcycle, no damage was found on the back of motor cycle of Tej Singh. It is further argued that as a matter of fact, the present is a case of contributory negligence of both the vehicles and the insurance company is not liable to pay compensation to the extent of negligence attributable to the injured.

Counsel representing the claimant, on the contrary, has supported findings of the Tribunal on issue No. 1 that accident occurred due to rash and negligent driving of offending vehicle i.e. Maruti Swift Car.

The claim application has been filed by the injured through his mother Smt. Bohati Devi as he sustained serious injuries rendering him disable to the extent of 100%. Shri Shamsher Singh (PW5), an eye witness to the occurrence was examined and he supported cause of claimant that accident is the result of rash and negligent driving of offending vehicle by Avtar Singh, its driver. Counsel for the appellant has failed to point any material extracted in cross examination of Shamsher Singh to substantiate contention of the insurance company that the present is a case of contributory negligence of the victim. Even otherwise, there is nothing on record suggestive of fact that private respondents before the Tribunal has raised any such plea that the present is a case of contributory negligence of the vehicles. The mechanical examination of the vehicle was not conducted in presence of a representative of the claimant. In the given scenario, the insurance company cannot derive any advantage to its contention from mechanical report Ex.R6. In this view of the matter, findings of the Tribunal on issue No. 1 are liable to be affirmed and ordered accordingly.

For the foregoing reasons, the appeal filed by the insurance company to challenge findings of the Tribunal on issue No. 1 is dismissed, leaving the parties to bear their own costs.

FAO 5541 of 2015

With regard to injuries sustained by Tej Singh, the Tribunal has awarded compensation of Rs.24,37,210.00 (rounded off to Rs.24,38,000.00), detailed hereunder:-

Loss of future income	Rs.9,00,000/-
Hospital and medical expenses	Rs.7,77,210/-
Medical expenses for rest of life	Rs.2,00,000/-
Loss of amenities	Rs.1,00,000/-
Pain and agony	Rs.1,00,000/-
Expenses for attendant	Rs.3,60,000/-

Counsel for the claimant would argue that the Tribunal has assessed loss of future income by applying multiplier method but as claimant has been rendered 100% disable, loss under this head may be computed by extending benefit of addition in income for future prospects. In addition, it is argued that the claimant may be allowed compensation for expenses on special diet and transportation etc.

Counsel representing the insurance company, on the contrary, would urge that the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of amenities but Hon'ble the Supreme Court in para 10 of the judgment in **Raj Kumar Vs. Ajay Kumar and others, 2011(2) RCR (Civil) 101**, has held that when compensation is awarded by treating loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under head of loss of amenities or loss of expectation of life, as otherwise, there may be a duplication in the award of compensation.

The Tribunal has assessed income of the injured victim at Rs.5,000.00 per month. He was 38 years old at the time of occurrence. The injured has been rendered bed-ridden having suffered 100% disability. The claimant shall be entitle to addition in income for future prospects at the rate of 40%. In this manner, compensation for future loss of income is calculated at Rs.12,60,000.00 [Rs.9,00,000.00 (Rs.5000/- x 12 x 15) + Rs.3,60,000.00 (40% towards future prospects)]. The compensation of Rs.1,00,000.00 allowed by the Tribunal for loss of amenities would also cover expenses on special diet and transportation etc. In this manner, claimant shall be entitle to additional amount of Rs.3,60,000.00

(Rs.12,60,000.00 – Rs.9,00,000.00) payable with interest at the rate of 7.5% per annum from the date of petition till realization. The additional amount shall be invested in a Fixed Deposit in the name of claimant. He shall be entitle to withdraw Rs.1,00,000/- after every two years for meeting his expenses on day-to-day living and other needs.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

18.12.2018
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