

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

F.A.O. No.9017 of 2014(O&M)

Date of Decision: 27.11.2018

Deepak

.....Appellant.

Versus

Naveen and others

..... Respondents.

AND

F.A.O. No. 9246 of 2014(O&M)

Naveen

.....Appellant.

Versus

Deepak and others

..... Respondents.

AND

F.A.O. No. 3245 of 2015(O&M)

M/s See Hawk Tour and Travels Private Limited

.....Appellant.

Versus

Naveen and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Navneet Singh, Advocate
for the appellant (in FAO No. 9017 of 2014 and for
respondent no.1 in FAO No. 9246 of 2014).

Mr. Naveen Singh Panwar, Advocate
for the appellant (in FAO No. 9246 of 2014 and
for respondent no.1 in FAO No. 9017 of 2014.)

Mr. Ashish Pannu, Advocate
for the appellant in FAO No. 3245 and for respondent no.2 in
FAO Nos. 9014 and 9246 of 2014.

Mr. R.C.Kapoor, Advocate
for respondent no.3 (in all three appeals).

LISA GILL, J.

This order shall dispose of FAO No. 9017 of 2014 and FAO
No. 9246 of 2014 and FAO No. 3245 of 2015 as all the three (03) appeals

arise from a common award dated 29.08.2014, passed by the learned Motor Accident Claims Tribunal, Sonapat (for short 'Tribunal'). For the sake of convenience, facts are being extracted from FAO No. 9017 of 2017.

FAO Nos. 9017 of 2014 and FAO No. 3245 of 2015, have been filed by the driver and owner of the offending vehicle respectively, challenging the liability fixed upon them by the learned tribunal.

FAO No. 9246 of 2014 has been filed by the claimant-Naveen seeking enhancement of the compensation awarded to him by the learned tribunal on account of the injuries received by him in the accident in question.

As per the averments in the claim petition under Section 166 of the Motor Vehicle Act, 1988, preferred by the claimant-Naveen, it is stated that on 12.12.2011, at about 12.30.p.m., he along with his friends namely Ajit, Deepak, Ravi @ Deela were going to village Nahra, where Ravi @ Deela started having his hair cut. Deepak went for a ride of the offending vehicle while appellant and Ajit were sitting on the back seat of the said vehicle. Deepak drove the said vehicle rashly and negligently ignoring traffic rules. Injured Naveen and Ajit asked Deepak to drive the vehicle safely, but Deepak ignored them and struck the offending vehicle with Safeda tree. As a result thereof, Naveen suffered multiple injuries on various parts of his body. People gathered at the spot and injured Naveen was taken to Sarda Multi Specialty Hospital, Kundli, but due to his critical condition, Naveen was referred to Saroj Hospital, Sector 14, Rohini Delhi. Doctor conducted MLC no. 3282 on 12.12.2011. FIR No. 340 dated 13.12.2011, under Sections 279, 337 IPC, was registered at Police Station Police Station

Kundli, in this respect.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Deepak. The said finding of the learned tribunal has attained finality.

Learned tribunal on considering the facts and circumstances of the case awarded a total sum of ₹2,54,000/- as compensation on account of injuries received by Naveen.

Learned counsel for the owner and driver of the offending vehicle submit that the learned tribunal has wrongly decided issue no.4 in favour of the respondent-Insurance Company absolving it of its liability. It is contended that in the present case, there is nothing on record to show that there was any breach of the insurance policy Ex.R-1. The vehicle in question i.e. Maruti Esteem bearing registration no. HR-55-FT-5669, was admittedly insured with respondent no.3 and it was mentioned in the policy Ex.R-1 that insurance policy does not cover use of the vehicle for (1) organized racing (2) Pace making (3) reliability trial (speed testing) etc. Driver of the offending vehicle i.e. Deepak had a valid driving license at the time of the accident and it was so proved on record. There was no breach of the conditions of the insurance policy. Therefore, the insurance company is liable to pay the compensation in this case.

Learned counsel for the claimants seek enhancement of the compensation awarded to the claimants, the same being meagre and inadequate.

Learned counsel for the insurance company vehemently refutes

the argument raised by learned counsel for the claimant as well as the owner and driver of the offending vehicle. Reference is made to the statement of Ajit, on whose statement FIR in question was registered. It is submitted that the car in question had been taken by Deepak for trying it out, therefore, there is a specific breach of the insurance policy. Permanent disability was not suffered by the claimant. Just and reasonable compensation has been awarded by the learned tribunal. It is thus prayed that all the three appeals be dismissed.

I have heard learned counsel for the parties and have gone through the record.

It is not in dispute that claimant-Naveen was 19 years old at the time of accident. He is claimed to be engaged in agricultural work at the time of accident. Learned counsel for the appellant is unable to deny that there is nothing on record to indicate any permanent disability suffered by the claimant. At the same time, it cannot be ignored that the claimant was taken to Sarda Multi Specialty Hospital, Kundli and thereafter referred to Saroj Hospital, Sector 14, Rohini, Delhi on 12.12.2011 itself, as injuries suffered by the claimant were serious. The claimant, remained admitted in the said hospital till 20.12.2011 and was discharged on persistent request of the attendants. As per the discharge summary which is duly appended as Ex.PW4/1 and proved by PW-4-Anil Kumar Sharma, Medical Record Incharge, Saroj Hospital, Madhuban Chowk Rohini, Delhi. History of the patient is mentioned as under:-

“Patient admitted with alleged history of RTA, history of LOC +.

No H/O Vomiting, ENT Bleed.

NCCT head done shows- Large EDH in right parietal region with

mass effect and MLS with Cerebral oedema with undisplaced fractures, right posterior temporal, right parietal and right occipital region.

Patient seen by neurosurgeon urgent- right parieto temporal free bone flap, craniotomy done. Post op. patient put on ventilatory support, Ortho. Opinion taken, X ray shows fracture distal 3rd tibia right, CT Scan pelvis- Fracture right acetabulum involving its root and medial wall with small fracture fragment medial to femoral head in right hip joint space. Communicated fracture posterior right acetabulum seen with disruption of acetabular cup.”

It is further mentioned that the patient had no history of any chronic illness. details of the operations conducted are mentioned as under:-

- “1. Right parieto temporal free bone flap craniotomy and evacuation of hematoma done under GA on 12/12/11 by Dr. P.K. Bhardwaj, Dr. Rakesh Dua and Dr. Akash Jain.
2. Reduction of hip dislocation and application of traction done on 12/12/11 by Dr. Sanjeev Singhal, Dr. B.C.Jain and Dr. K.L.Sarawagi.
3. Application of B/K cast and lower femoral skeletal traction done on 15/12/11 by Dr. Sanjeev Singhal, Dr. B.C.Jain and Dr. K.L.Sarawagi.”

It is especially mentioned in the discharge summary that the patient was discharged on persistent request by the attendants as they wanted to take the patient to their choice hospital for further management and during his stay in the hospital, the claimant was treated by multiple team of doctors- surgeon, neurosurgeon, Orthopaedician, and chest physician, physiotherapist etc. A perusal of the record reveals that there is no evidence regarding any other treatment which must necessarily have been afforded to the claimant even after his discharge from Saroj Hospital.

Keeping in view the factual matrix of the case and the evidence

in the shape of testimony of PW-4-Anil Kumar Sharma, Medical Record Incharge, Saroj Hospital, Madhuba Chowk, Rohini, Delhi, it is evident that the compensation awarded to the claimant is liable to be enhanced. Even, if the claimant is taken to be a daily wager, he would be earning a sum of ₹4643/- per month at the time of accident, the same being the minimum wages in the State of Haryana, at the time of accident. The nature of injuries make it crystal clear that he would not have been able to carry on his vocation for at-least six months. Claimant is thus entitled to loss of income for a period of six months @ 4643/- p.m., i.e. ₹27,858/-. Condition of the appellant at the time of discharge reveals that he would necessarily have required further medical treatment. Therefore, in addition to a sum of ₹2,24,500/- awarded by the learned tribunal on account of medical bills, hospitalisation, another sum of ₹35,000/- is awarded to the claimant on account of future medical expenses. Claimant is entitled to a sum of ₹75,000/- on account of pain and suffering instead of ₹10,000/-, besides ₹10,000/- each on account of special diet and attendant charges and ₹8000/- for transportation charges. Thus, a total sum of ₹4,00,358/- is awarded to the claimant-Naveen instead of ₹2,54,500/- on account of injuries received by him in the accident in question.

Claimant-Naveen shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization. Needless to say the amount, if any, already disbursed to the claimants shall be deducted.

There is a merit in the argument raised by learned counsel for the owner and the driver. It is not justified to interpret the description of

events by Ajit to mean that the car in question was being used for organized racing or speed testing or a reliability trial, when he says that the car in question was taken by Deepak for trying it out. It is apparent that it is a case where the said Deepak only wished to take a ride in the said car belonging to respondent no.2-M/S See Hawk Tour and Travels Private Limited. Therefore, finding of the learned tribunal on issue no.4 is set aside and it is held that the insurance company in this case is liable to indemnify the insured and satisfy the claim.

Accordingly, appeals i.e. FAO No. 9017 of 2014 and FAO No. 3245 of 2015, filed by the driver and owner, are allowed. With the abovesaid modification in the amount of compensation, appeal filed by the claimant i.e. FAO No. 9246 of 2014, is disposed of.

27.11.2018
s.khan

[LISA GILL]
Judge

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