

FAO-3379-2005(O&M) &
FAO-3380-2005(O&M)

-1-

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

(1) FAO-3379-2005(O&M)

Kanta

...Appellant

Versus

Jai Bhagwan and others

...Respondents

(2) FAO-3380-2005(O&M)

Sompal

...Appellant

Versus

Jai Bhagwan and others

...Respondents

Date of Decision:-10.1.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajender Singh Rana, Advocate
for the appellants.

Mr.Ravinder Arora, Advocate
for the respondent No.3 – Insurance Company.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-3379-
2005 filed on behalf of appellant - Smt.Kanta and FAO-3380-2005 filed
on behalf of appellant – Sompal, which have arisen out of the same

accident.

Petitioner/claimant Kanta had filed a claim petition under Sections 166/140/141 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against Jai Bhagwan – driver, Ragbir Singh – owner and M/s National Insurance Company Ltd., Kaithal - insurer of TATA-407 having registration No.HR-56/0692 (hereinafter referred to as the offending vehicle). Her son Sompal had also filed a separate claim petition against all the three respondents.

As per the case of the claimants on 19.3.2003, both the claimants along with several other persons had gone to Mata Vaishno Devi Shrine to pay obeisance by hiring the offending vehicle; that when that vehicle reached near Mata Vaishno Devi Bhawan, one of the occupants namely Shamsheer died due to heart attack; that his dead body was being brought back to Kurukshetra; that on the way, Jai Bhagwan started driving the vehicle at a very high speed despite request by the occupants of the vehicle to him to drive it at a moderate speed. The tyre of the vehicle got heated resulting it in its bursting. Resultantly, the vehicle turned turtle and petitioner claimant Kanta in MACT case No.38 of 2003 along with her son Sompal petitioner claimant in MACT Case No.40 of 2003 suffered injuries; that since it was night time, the police could not be informed promptly; that the injured had been taken to a hospital at Phagwara for medical aid and from there, they directly went to Kurukshetra along with dead body of Shamsheer; that after reaching Kurukshetra, both the claimants got themselves admitted in Himanshu Anand Hospital and then police of Jalandhar was informed.

According to the claimants, the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1; that the claimant Kanta remained admitted in Himanshu Hospital, Kurukshetra from 22.3.2003 to 26.3.2003 and thereafter was treated by Dr.Malerkotla Wale, Thanesar; that she was aged about 49 years at the time of accident having good physique and was earning Rs.3,000/- per month by doing tailoring work and was also providing domestic services to her family; that after the accident, she was unable to do the daily work without help of others; that she had suffered great mental agony and spent a sum of Rs.30,000/- on her medical treatment; that she had to arrange a lady servant for house hold work and to attend her also; that some more money was required for her further treatment as she had to undergo surgery as advised by the doctor; that she had become permanently disabled since her leg would be shortened.

Whereas claimant Sompal was aged about 18 years at the time of accident and was a student; that a sum of Rs.10,000/- was spent on his treatment; that he could not devote his time towards studies and had suffered great mental pain and agony and he was still getting treatment at the time of filing of the claim petition.

Notice of the claim petitions was given to respondents, who put in appearance. Respondents No.1 and 2 filed a joint written reply in which they denied that the accident in question had taken place due to rash and negligent driving of the offending vehicle by respondent No.1. According to them, it was an act of God. The tyre had not burst due to heavy speed.

In the written statement submitted on behalf of respondent No.3, it denied the accident pleading that respondent No.1 was not having a valid and effective driving licence at the time of the accident and the vehicle in question was being driven in violation of terms and conditions of the insurance policy since unauthorized passengers were travelling in it being a commercial vehicle. As such, the insurance company is not liable to pay any compensation.

In the end, the respondents prayed for dismissal of the claim petitions.

The claimants filed rejoinder controverting the allegations in the written reply, whereas reiterating the averments in the claim petitions.

On the pleadings of the parties following issues were framed:

1. Whether the accident in question resulting in bodily injuries to the claimants Kanta and Sompal was caused by respondent No.1 while driving TATA 407 No.HR-56/0692 in rash and negligent manner? OPP.
2. If issue No.1 is proved whether the claimants are entitled to compensation, if so, to which amount and from whom? OPP.
3. Whether the driver of TATA 407 was not holding any valid and effective driving licence at the time of alleged accident? OPR-3.
4. Relief.

Both the parties led evidence in support of their respective claims.

During the course of evidence, the claimants examined themselves as PW1 and PW2, respectively, besides examining

Dr.Himanshu Anand as PW3, Dr.Harivansh Malhotra as PW4, Dr.CR Khatri as PW5, Parveen Kumar as PW6. They also tendered in evidence copy of admission slip Ex.P12 and medical bill Ex.P13.

On the other hand, the respondents tendered in evidence insurance policy as Ex.R1, copy of driving licence of Jai Bhagwan Ex.R2 and copy of registration certificate Ex.R3.

After hearing arguments, the Tribunal awarded a sum of Rs.19,000/- as compensation to claimant Kanta and Rs.1,500/- as compensation to claimant Sompal.

Both the claimants were dissatisfied with the compensation awarded to them and they have filed separate appeals before this Court seeking enhancement of compensation.

Notice of the appeals was issued to the respondents. However, only respondent No.3 insurance company has put in appearance through counsel to offer contest.

I have heard learned counsel for the parties besides going through the record.

As far as **FAO-3379-2005** is concerned, the Tribunal has awarded a sum of Rs.4,500/- to the petitioner/claimant Kanta towards medical expenses considering the bills Ex.P1 to Ex.P9 produced having total value of Rs.4,346/-. However, a sum of Rs.1,700/- paid to Dr.Himanshu Anand(PW3) has not been taken into consideration. PW3 Dr.Himanshu Anand had stated that Kanta was admitted in his hospital on 22.3.2003 with fracture upper end of right femur; that he applied to above knee posterior slab and the patient was advised to undergo surgery; that

she was discharged and at the time of discharge from hospital, a sum of Rs.1,700/- was charged from her on account of treatment excluding medicines, her discharge slip being Ex.P10. This amount needs to be added to the sum of Rs.4,500/- awarded by the Tribunal and the figure comes out to $\text{Rs.}4,500 + 1,700 = 6,200$.

In terms of certificate Ex.P11, claimant Kanta had suffered disability of 15%. The Tribunal has awarded a sum of Rs.7,500/- on that account. However, keeping in view the ratio of authority **Ram Kiran Goyal Versus Sub Divisional Engineer, Mechanical and others, 2008(2) RCR(Civil)103**, Rs.2,000/- should be awarded for 1% of permanent disability. As such, a sum of Rs. 30,000/- ought to have been awarded. Therefore, an additional compensation of Rs.22,500/- is awarded to the claimant Kanta in that regard.

Though the Tribunal has awarded a sum of Rs.5,000/- to claimant Kanta towards pain and agony but keeping in view the nature and type of injuries suffered by the claimant and the fact that she had to be hospitalized and had undergone surgery, this figure appears to be on lower side and the same is enhanced to Rs.10,800/-.

On account of charges of attendant, she had been awarded a sum of Rs.2,000/-, which I find to be on lower side and this amount is enhanced to Rs.7,000/-.

Claimant Kanta has not been granted any amount towards special diet and transportation expenses for going to hospital in connection with treatment. I grant an amount to the tune of Rs.8,000/- in that regard.

The aspect that claimant would not be able to live a normal life as she was living prior to the accident suffering injuries therein, has not been taken into consideration. Thus, a sum of Rs.8,000/- is awarded on account of loss of amenities.

In this way, the enhanced amount comes to Rs.51,000/-. The appellant/claimant Kanta shall be entitled to recover the enhanced amount from respondents in the same manner as in the original award. The liability of respondents shall also be exactly the same as given in the original award so would be the apportionment between them. The appellant/claimant would be entitled to interest at rate of 7.5% per annum from the date of filing appeal till actual payment.

As far as **FAO-3380-2005** is concerned, appellant – Sompal has been awarded Rs.1,500/- only. Though there is no evidence to show that he remained admitted in some hospital due to suffering injuries in the mishap but considering the fact that he had to go to hospital for treatment, in the process would have borne expenses for travelling requiring special diet also and would not have been able to perform his routine work for some time, I find that compensation awarded is somewhat on lower side. The same is enhanced to Rs.5,000/-.

In that way, the enhanced amount comes to Rs.3,500/-. The appellant/claimant Sompal shall be entitled to recover the enhanced amount from respondents in the same manner as in the original award. The liability of respondents shall also be exactly the same as given in the original award so would be the apportionment between them. The appellant/claimant Sompal would be entitled to interest at rate of 7.5% per

FAO-3379-2005(O&M) &
FAO-3380-2005(O&M)

-8-

annum from the date of filing appeal till actual payment.

With such modifications, both the appeals are allowed partly.

10.1.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No