

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 15.11.2019

FAO No. 5261 of 2019 (O&M)

The Oriental Insurance Company Limited

---Appellant

versus

Leelawati and others

---Respondents

FAO No. 5340 of 2019 (O&M)

The Oriental Insurance Company Limited

---Appellant

versus

Ganga Ram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Harsh Aggarwal, Advocate
for the appellant-insurance company**

Rekha Mittal, J.

This order will dispose of FAO Nos. 5261 and 5340 of 2019 as these have emerged out of the same award dated 9.4.2019 passed by the Motor Accidents Claims Tribunal, Palwal (in short “the Tribunal”) whereby compensation has been assessed on account of injuries sustained by Leelawati and Ganga Ram in a motor vehicular accident that took place on 27.9.2016 at about 4.30 p.m. in the area of Palwal. For facility of reference, facts are taken from FAO No. 5261 of 2019.

Counsel for the appellant would inform that appeal has been filed to assail findings of the Tribunal on issue No. 1 and quantum of

compensation. It is argued that in respect of occurrence dated 27.9.2016, FIR was registered on 6.10.2016 without any tangible explanation for delay. Ganga Ram, injured and author of FIR had admitted in his cross examination that he was not medico legally examined or attended by any doctor on 27.9.2016. Ganga Ram in his cross examination had stated that he knew number of the vehicle as 0501 disclosed to him by Mahender son of Dharam Singh but his examination in chief as well as FIR make reference to complete particulars of the offending vehicle. Mahender son of Dharam Singh was cited as a prosecution witness in the criminal case lodged against Hukam Singh but he failed to support cause of the prosecution and commit to his statement recorded under Section 161 Cr.P.C. Hukam Singh, driver of offending vehicle was examined and his testimony is sufficient to rebut/counter case of the claimants and testimonies of Leetawati and Ganga Ram.

With regard to quantum of compensation, it is argued that Tribunal has awarded Rs. 86,000/- in respect of disability to the extent of 43% to a particular limb. The doctor, examined to prove disability had stated in his cross examination that difficulty in squatting and sitting cross legs, mentioned in Ex. P6, could also be due to age factor of Leelawati being 77 years old.

I have heard counsel for the appellant, perused the paper book particularly copies of testimonies of material witnesses, made available during course of hearing and testimonies of Ganga Ram and Leelawati in the State case, received in pursuance of directions issued by this court vide order dated 3.10.2019.

There can not be denial that proceedings before the Tribunal

are summary in nature and not amenable to strict principles of law of evidence. Equally settled is that the case is required to be decided on the basis of balance of probabilities and not beyond shadow of reasonable doubt. Registration of FIR is not a sine qua non for maintaining claim before the Tribunal. The mere fact that FIR was lodged after delay of 10 days *ipso facto* is not a ground to reject case of the claimants or testimony of Ganga Ram. The offending vehicle is a bus that belongs to Haryana Roadways, Palwal Depot. Neither any plea has been raised by the appellant before the Tribunal nor any such fact has been elicited in cross examination of Ganga Ram that offending vehicle has been indicted in the proceedings as a result of collusion between claimants and owner of the offending vehicle.

Ganga Ram, in the opening line of his testimony, has stated that he is illiterate and can not read and write English. In the given scenario, he can not be expected to be very conscious to initiate criminal proceedings. Similarly, no adverse view can be taken merely because he could not disclose complete particulars of the offending vehicle while put to cross examination. Counsel has failed to point out any materials on record to create a slightest doubt that offending vehicle has been falsely implicated in the proceedings to extract compensation. The fact that Mahender son of Dharam Singh did not support cause of the prosecution in criminal proceedings can not be taken adversely against the claimants as they had no control over Mahender son of Dharam Singh nor are expected to ensure that he remains committed to his version given before the police. Conversely, Leetawati and Ganga Ram supported cause of the prosecution, in view of their testimonies recorded in criminal case. As an upshot of

discussion made hereinbefore, I do not find any reason to differ with findings of the Tribunal on issue No. 1 and the same are accordingly affirmed.

This brings the court to quantum of compensation allowed in favour of Smt. Leetawati. Dr. Ajay Mann PW4 was examined to prove disability suffered by the victim. The Medical Board has opined that injured suffered disability to the extent of 43% qua limb. Dr. Ajay Mann admitted that disability is only qua a limb and not whole body. He has further opined that difficulty in squatting and sitting cross legs can also be due to old age of Leelawati. The Tribunal has awarded Rs. 86,000/- @ Rs. 2000/- per percent in place of computing loss of future income by applying multiplier method. Taking into consideration the extent of disability caused to the victim, I find myself unable to be persuaded with submissions made by counsel that the amount of Rs. 86,000/- awarded towards disability can be termed as more or merits rejection.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to the claimants in case they file an appeal for enhancement of compensation. As the appeals have been decided on merit, applications for condonation of delay are of academic relevance.

(Rekha Mittal)
Judge

15.11.2019

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