IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

211 **Date of decision: 22.10.2019**

FAO No.3558 of 2012 (O&M)

Sukhdeep Singh ... Appellant

Versus

Subhash Singh and ors. ... Respondents

FAO No.3559 of 2012 (O&M)

Gurcharan Singh ... Appellant

Versus

Subhash Singh and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Akashdeep Singh, Advocate for the appellant.
Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3558 and 3559 of 2012 as these have emerged out of the same award dated 29.02.2012 passed by the Motor Accidents Claims Tribunal, Ambala whereby compensation has been assessed on account of injuries sustained by Sukhdeep Singh and damage to Tata car.

FAO No.3558 of 2012 has been filed by Sukhdeep Singh injured for enhancement of compensation whereas the other appeal has been filed by Gurcharan Singh in respect of damage to Tata car.

FAO No.3558 of 2012

The Tribunal awarded Rs.93,750/-, detailed hereunder:-

Compensation qua disability	Rs.3750/-
Pain and sufferings	Rs.20,000/-
Medical expenses	Rs.50,000/-
Special diet, attendant and transportation etc.	Rs.20,000/-

Counsel for the appellant would fairly concede that in respect of medical expenses of Rs.3.80 lakhs approximately, the appellant was reimbursed by his insurer under a policy of medi-claim to the extent of Rs.3,30,000/- approximately but he was not given benefit of premium paid for getting medi-claim policy and the amount is Rs.7500/-. It is argued that appellant has suffered disability to the extent of 15% but he has been paid paltry sum of Rs.3750/- under head No.1 in para 33 of the award. It is further argued that compensation towards pain and sufferings, special diet, attendant charges, transportation etc. merits enhancement in view of nature of injuries suffered by the victim. He also prays for grant of compensation with regard to future medical treatment i.e. physiotherapy as had been stated by Dr. Ravi Kant Sharma PW3.

Counsel representing the insurance company, on the contrary, would submit that there is no justification for allowing additional compensation.

The injured is doing business. There is nothing on record suggestive of the fact that due to sustaining of injuries rendering him disable to the extent of 15%, he has suffered any loss of business income. In the given circumstances, appellant cannot press his claim for grant of loss of income during the period of treatment and recovery or on account of physical disability suffered by him. However, claimant is awarded Rs.20,000/- for loss of amenities of life on account of physical disability (additional amount of Rs.16,250/-).

The Tribunal has allowed reimbursement of medical expenses to the tune of Rs.50,000/- by taking into consideration reimbursement made by insurer of the victim under medi-claim. The appellant shall be entitle to Rs.7500/- towards premium paid to his insurer for obtaining a medi-claim policy.

The injured suffered fractures shaft of right femur, shaft right ulna, lateral condyle of right humerus. He remained admitted in Fortis Hospital from 13.08.2009 to 22.08.2009. He was operated for compound grade-III fractures shaft of femur right wide with fracture shaft ulna right, lateral condyle of right humerus, distel femoral nailing of right femur, plating of right ulna and k wire fixation of lateral condyle or right humerus was done during his hospitalisation. Taking into consideration the nature of injuries sustained coupled with treatment given in the hospital, interest of justice would be served, if the appellant is allowed additional amount of Rs.15,000/- towards pain and sufferings, special diet, attendant charges and transportation etc. In this manner, the appellant is awarded additional amount of Rs.38,750/-, payable with interest @ 7.5% per annum from the date of petition till realization.

The Tribunal held owner and driver of offending vehicle liable to pay compensation whereas the insurance company was exonerated of liability on the question of driving licence of Subhash Singh, driver of offending truck/tanker No.HR-63-A-1177. It is argued that driving licence possessed by Subhash Singh was found to be valid, as per verification made by the insurance company, therefore, insurance company is jointly and severally liable to pay compensation.

Counsel representing the insurance company concedes to this position.

That being so, findings of the Tribunal exonerating the insurance company of liability to pay compensation are set aside. The insurance company shall be jointly and severally liable to pay compensation assessed by the Tribunal as well as additional compensation allowed by this Court.

The appeal is partly allowed in the aforesaid terms.

FAO No.3559 of 2012

The Tribunal awarded Rs.50,000/-, in view of its finding recorded in para 34 of the award. The Tribunal has noticed that the damaged car was purchased from M/s Balwa Motors, Karnal for Rs.5,15,403/-. The insurance company with which the car was insured paid Rs.2,54,500/-. The claimant received Rs.1,35,000/- as salvage charges from Charanjit Singh. The vehicle was purchased on 06.03.2008 and accident took place on 12.08.2009. On expiry of one year, there will be depreciation to the extent of 20-25%. In the given circumstances, there is no justification for allowing additional compensation with regard to damage to the vehicle. However, in view of the findings recorded in FAO No.3558 of 2012, insurance company shall be jointly and severally liable to pay compensation assessed.

The appeal is partly allowed in the aforesaid terms.

22.10.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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