IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-1402-2015(O&M)

Mehmood

...Appellant

Versus

Juned and others

...Respondents

(2) FAO-3142-2015(O&M)

Juned

...Appellant

Versus

Sabir and others

...Respondents

Date of Decision:-23.7.2019

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

Present: Ms.Sunita Gupta, Advocate for
Mr.Mohd. Arshad, Advocate
for the appellant in FAO-1402-2015 and
for respondent No.2 in FAO-3142-2015.

Mr.Ashish Gupta, Advocate and
Mr.Mukul Aggarwal, Advocate
for the appellant in FAO-3142-2015 and
for the respondent No.1 in FAO-1402-2015.

Mr.Varun Sharma, Advocate for
Mr.Satpal Dhamija, Advocate
for respondent No.2 in FAO-1402-2015 and
for respondent No.3 in FAO-3142-2015.

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H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-1402-

2015(O&M) filed on behalf of appellant/respondent No.2 - owner – Mehmood and FAO-3142-2015(O&M) filed on behalf of appellant/claimant - Juned, which have arisen out of the same accident.

Briefly stated facts of the case are that petitioner/claimant Juned had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Sabir – driver, Mehmood – owner and Reliance General Insurance Company Ltd., Gurgaon – insurer of auto rickshaw bearing registration No.HR-74-8634 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.10 lakhs along with interest, on account of suffering injuries in a motor vehicular accident.

As per the case of the claimant, on 28.7.2013 at 10:00 p.m., he was going to his village Sakras from Tijara side in the offending vehicle being driven by respondent No.1 – Sabir in a rash and negligent manner; that when the offending vehicle had crossed Shiv Mandir, Tijara Road, Ferozepur Jhirka, then respondent No.1 lost control over the offending vehicle with the result it turned turtle; the petitioner/claimant fell down on the road and received serious and multiple injuries on his person; that he was taken to Community Health Centre, Ferozepur Jhirka, where after giving first aid, he was referred to Medical College, Nalhar; the petitioner/claimant was taken there and was medically treated; that surgery was performed upon him but he has not fully recovered so far; that he had spent Rs.50,000/- on his treatment; that before the accident, he was doing labour work and was earning Rs.7,000/- per month but as a result of suffering injuries in the accident, he has become permanently disabled.

On getting notice, all the three respondents appeared. Respondents No.1 and 2 filed a joint written statement, whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed on behalf of respondents No.1 and 2, they took up various legal objections and on merits denied the factum of accident contending that a wrong FIR had been registered against respondent No.1 by the local police on false statement of the claimant and the petitioner/claimant was not entitled to any compensation. They prayed for dismissal of the claim petition.

Respondent No.3 – insurance company in its written statement took up a plea that respondent No.1 was not having a valid and effective driving licence at the time of alleged accident and that respondent No.2 had violated the terms and conditions of the policy, therefore, the answering respondent was not liable to indemnify the insured. On merits, material assertions in the claim petition were controverted.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioner, issue No.2 in favour of the petitioner, issue No.3 in favour of respondent No.3. Resultantly, the claim petition was partly allowed with costs and compensation to the tune of Rs.1,65,090/- along with interest @ 7.5% per annum from the date of filing of the petition till the date of actual realization was awarded to the claimant, payable by respondents No.1 and 2 jointly and severally. Though it was directed that firstly respondent No.3 shall pay the compensation to the petitioner, which it could recover from respondents No.1 and 2 with interest.

The claimant being of the view that the awarded amount is on lower side has approached this Court by way of filing an appeal seeking enhancement of compensation amount. The respondent No.2 – owner is also aggrieved by the award particularly to the extent of giving recovery rights to the insurance company and he has also filed an appeal.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

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

Firstly coming to FAO-3142-2015(O&M) filed on behalf of the claimant seeking enhancement of compensation.

An important witness examined by the claimant happened to be PW2 Dr.Farooq, who had issued the disability certificate. He deposed that on 19.4.2014, he along with other members of the medical board had examined Juned and assessed his disability as 40%, which was on account of post traumatic severe restriction of movement at right hip and right knee with severe quadriceps weakness with severe muscle loss right thigh. He proved the disability certificate as Ex.P1. The Tribunal has observed that the petitioner has undergone 40% disability, therefore, he could not lead a normal life like other persons as such he will undergo trauma throughout his life; further he will have difficulty in walking; resultantly the working capacity of the petitioner has been reduced. Therefore, a sum of **Rs.1,50,000/-** was awarded to him on that account. I find the said amount to be just and proper.

The Tribunal has not awarded any amount to the claimant for medical treatment. A sum of Rs.90/- only has been awarded, which is ridiculously low. The evidence adduced by the claimant oral as well as documentary has been rejected for unconvincing reasons. The petitioner/claimant had remained hospitalized for a considerable period. He has claimed that he had spent Rs.50,000/- on his treatment. The Tribunal should have been considerate in that respect rather than rejecting his claim outrightly. However, as a matter of common knowledge many a times, the record of various amounts spent on purchase of medicines in the form of bills, receipts, cash memos etc. is not kept inadvertently or some of the bills/receipts etc. get lost or misplaced. Considering that fact, the compensation under that head is enhanced to **Rs.30,000/-**.

With such type of injuries suffered by the injured, claimant would be requiring further treatment and some arrangement for the same deserves to be made. I award a sum of **Rs.20,000/-** under that head.

As far as the compensation awarded by the Tribunal on account of pain and suffering to the tune of Rs.15,000/-, to my mind the same is on lower side. In view of the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injuries including a serious head injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I enhance the said amount to **Rs.25,000/-** under that head.

No amount has been awarded to the petitioner/claimant on account of transportation charges. I am of the considered view that when injured having remained hospitalized for a considerable time and undergoing various tests and keeping in account the view the visits for follow-up treatment, some compensation should be awarded to the petitioner/claimant. I award a sum of **Rs.15,000/-** on that account.

No amount has been awarded to the claimant on account of attendant charges. The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of **Rs.25,000/-** is accordingly awarded to the appellant/claimant on that score.

Similarly, no amount has been awarded to the claimant on account of special diet. A person suffering injuries does need special diet for early and proper recovery. A award a sum of **Rs.20,000/-** under that head.

No amount has been awarded to the claimant on account of loss of income during the period claimant was unable to work as a result of suffering injuries. I award a sum of **Rs.25,000/-** under that head.

No amount has been awarded to the claimant on account of loss of amenities and loss of expectation of life. The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.25,000/- each (total **Rs.50,000/-**) is awarded to him under that heads.

Thus, the total compensation comes out to Rs.3,60,000/-.

The Tribunal has awarded a sum of Rs.1,65,090/-. In that way, the enhanced amount comes to Rs.1,94,910/-(3,55,000 - 1,65,090). The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.3,60,000/-.

With such modification, the ***FAO-3142-2015*** filed on behalf of claimant/petitioner Juned is allowed partly.

As far as ***FAO-1402-2015*** filed on behalf of owner – Mehmood, the Tribunal has observed that respondent No.1 was not having a legal and valid driving licence to drive the offending vehicle in question at the relevant time. While arriving at this conclusion, it has been noticed that though licence Ex.P10 produced by respondents No.1 and 2 shows that it was issued by Licensing Authority, Mathura vide licence No.412/MTR/04 but as deposed by RW2 Yash Pal, Record Keeper, Licensing Authority, Mathura, the licence was not issued by Licensing Authority, Mathura and the licence bearing that number had been issued in the name of Nirottam Prashad son of Ram Prashad and not in the name of respondent No.1 – Sabir. The Tribunal was justified in arriving at this conclusion and holding that respondent No.1 was not having a valid and effective driving licence on the date of accident, as such, recovery rights have been granted to the insurance company. Though by way of filing an appeal, respondent No.2 has challenged that finding by the Tribunal contending that he has not violated any terms and conditions of the insurance policy and he has proved his case that he has appointed respondent No.1 as driver after checking his driving licence with due protection as he could do but the licence was found to be fake.

Learned counsel for the appellant/owner has referred to authority ***Pepsu Road Transport Corporation Versus National Insurance Company, 2013(4) RCR(Civil) 273*** wherein dealing with a claim petition under Motor Vehicles Act where the driver possessed fake driving licence, the insurance company was found to be liable to pay the compensation observing that when the owner hires a driver, he has to satisfy that the driver had valid driving licence and the owner cannot go to the extent of verifying the genuineness of the driving licence with the licensing authority.

However, in the instant case, this authority does not come to rescue the case of the appellant/owner since in the written statement filed by this respondent jointly with the driver, no such plea in that regard has been taken. Respondent No.2 did not get his statement recorded in the Court deposing on oath all these things. Therefore, in appeal this plea is being taken for the first time. However, that is not helpful to the appellant/respondent No.2 – owner.

Thus finding no merits in the ***FAO-1402-2015*** filed on behalf of owner – Mehmood, the same stands dismissed.

23.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No