

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

F.A.O. No.5776 of 2013 (O&M)

Date of Decision: 04.02.2019

ICICI Lombard General Insurance Company Limited

..... Appellant.

Versus

Parshotam Kumar and others

..... Respondents.

AND

F.A.O. No.6408 of 2013(O&M)

Parshotam Kumar

.....Appellant.

Versus

Gurnam Singh and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Mrigank Sharma, Advocate
for the appellant (in FAO No. 5776 of 2013) and
for respondent no.6 (in FAO No. 6408 of 2013).

Mr. Alok Jindal, Advocate
for the appellant (in FAO No.6408 of 2013) and
for respondent no.1 (in FAO No. 5776 of 2013).

Mr. Vinod Choudhry, Advocate
for respondent no.4 (in FAO No. 5776 of 2013)
and for respondent no.3 (in FAO No. 6408 of 2013).

Mr. Shrey Goel, Advocate
for respondent no.6 (in FAO No/ 5776 of 2013) and
for respondent no.5 (in FAO No. 6408 of 2013).

LISA GILL, J.

This judgement shall dispose of FAO No.5776 of 2013 and
FAO No. 6408 as both these appeals arise from award dated 31.08.2013,
passed by the learned Motor Accident Claims Tribunal, Bathinda (for short

'tribunal').

FAO No. 5776 of 2013, has been filed by the appellant-Insurance Company challenging the liability imposed upon it by the learned tribunal.

FAO No. 6408 of 2013, has been filed by the appellant-claimant, seeking enhancement of the compensation awarded by the learned tribunal on account of the injuries received by him in a motor vehicle accident. For the sake of convenience, facts are being extracted from FAO No. 5776 of 2013.

As per the averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), claimant-Parshotam Kumar along with respondent no.1-Gurnam Singh started their journey on 02.04.2008 at about 9.00.p.m., in a truck bearing registration no. RJ-13-G-6233, which was loaded with marble. When they reached near village Manpura, Police Station Rupangarh on the intervening night of 02/03.04.2008, at about 12.00., midnight, a truck bearing registration no. PB-04-K-9451 was lying parked rashly and negligently in the middle of the road by its driver-respondent no.4 Joginder Singh without any indication. Due to wrong parking of the truck bearing registration no. PB-04-K-9451, in the middle of the road, truck bearing registration no. RJ-13-G-6233 struck against the aforesaid truck. As a result thereof, both legs of the appellant-claimant were crushed. Claimant was immediately shifted to Civil Hospital, Ajmer, but due to serious injuries, he was taken to Amandeep Hospital, Amritsar, where his left leg was amputated up-to thigh and plates were inserted in his right leg, after conducting an operation. FIR No.42 dated

04.04.2008, under Sections 279, 337, 338, 183, 184 IPC was registered at Police Station Roopangarh, District Ajmer, in this respect.

Learned Tribunal concluded that the accident in question was caused due to wrong parking of the offending vehicle by respondent no.4-Joginder Singh.

Learned tribunal awarded a total sum of ₹6,86,704/- on account of injuries received by Parshotam Kumar-claimant, which is detailed as under:-

1.	On account of medical treatment, medical expenses etc.,	₹1,05,144/-
2.	On account of grievous injuries	₹30,000/-
3.	On account of special diet, transportation, attendance, pain, suffering and mental agony	₹25,000/-
4.	On account of loss of future earnings	₹2,01,960/-
5.	For replacement of artificial limbs	₹3,24,600/-
	Total	₹6,86,704/-

Aggrieved therefrom, two appeals have been preferred, one by the appellant- Insurance Company, challenging its liability to pay the compensation and another by the claimant-appellant-Parshotam Kumar seeking enhancement of the aforesaid compensation.

Learned counsel for the appellant-Insurance Company submits that the accident in question took place due to the negligence of the vehicle in which the claimant was travelling i.e., truck bearing registration no. RJ-13-G-6233. It is argued that truck bearing registration no. RJ-13-G-6233 struck against the stationary truck (insured with the appellant-Insurance Company) bearing registration no. PB-04-K-9451 from behind. Therefore, it is apparent that due care and caution was not exercised by the driver of the

truck in which the injured was travelling. If, not entirely responsible for the accident, driver of the truck bearing registration no. RJ-13-G-6233 was in any case guilty of contributory negligence. It is prayed that the insurance company be totally absolved of its liability to pay the compensation and in the alternate, driver of the truck bearing registration no. RJ-13-G-6233 be held guilty of contributory negligence to the extent of at-least 50%.

Learned counsel for respondent-Vinod Kumar i.e., owner of truck bearing registration no. PB-04-K-9451, while refuting the said averments submits that the learned tribunal has returned a correct finding as far as the question of negligence of the driver of the truck bearing registration no. PB-04-K-9451 is concerned. Appeal filed by the insurance company, it is argued, should be dismissed.

Learned counsel for the claimant submits that meagre compensation has been awarded by the learned tribunal. Appellant has lost one of his leg and the other leg was operated upon, plates etc. inserted. Appellant suffered a permanent disability of 85%. Age of the injured-claimant has wrongly been taken to be 64 years whereas the injured was 59 years old at the time of accident, his date of birth being 16.09.1948. In this view of the matter, proper multiplier should be applied and increment on account of loss of future prospects should also be afforded. It is further submitted that the injured in-fact suffered 100% disability as he is unable to carry out his routine chores much less earn his living. Consolidated sum of ₹25,000/- has wrongly been given for special diet, transportation, attendant

charges, pain and suffering etc, whereas it should have been awarded separately under all these heads. Moreover, no compensation has been awarded towards loss of income for the period the injured remained totally incapacitated to work. It is further argued that the rate of interest awarded by the learned tribunal is on the lower side. It is thus prayed that appeal filed by the injured-claimant be allowed and the compensation awarded to the appellant be enhanced.

I have heard learned counsel for the parties and have gone through the file with their assistance.

FAO No. 5776 of 2013

It is the specific case of the claimant-appellant that an accident took place on the intervening night of 02/03.04.2008 in the area of Village Manpura, Police Station Rupangarh, due to the wrong parking of truck bearing registration no. PB-04-K-9451 in the middle of the road. CW-1-Parshotam Kumar, the claimant specifically stated that he along with Gurnam Singh were coming from Kishangarh to Amritsar on 02.04.2008 after loading marble in truck bearing registration no. RJ-13-G-6233. The offending truck was parked in the middle of the metalled road in a rash and negligent manner by its driver without any indicator or any other object being placed around the truck which would indicate its presence on the road. It is due to this reason that the truck in which the appellant was travelling struck against the stationary truck, resulting in the amputation of left leg up to the thigh of the appellant and multiple grievous injuries including insertion of artificial leg and leading to operation of the right leg, as well, leaving the appellant with 85% permanent disability. FIR No. 42 dated

04.04.2008, Ex.C-116 was registered against the driver of the offending stationary truck. Final report under Section 173 Cr.P.C., Ex.C-115, was also placed on record.

I have perused the site plan, Ex.C-121. Learned counsel for the insurance company is unable to deny that the offending truck was parked in the middle of the metalled road. There is indeed no evidence on record to show that there were any reflectors or indicators or any kind of indication to show the presence of the said truck on the road in the dead of the night. In such situation, it cannot be held that the vehicle in which the claimant was travelling was guilty of any kind of negligence. It has been held by the Hon'ble Supreme Court in **Archit Saini and another Vs. The Oriental Insurance Company Limited and others, 2018(5) R.C.R (Civil) 80**, that just because a vehicle struck a stationary vehicle from behind, it is not *per se* indicative of negligence on the part of the vehicle coming from behind. Evidence on record is not suggestive of any negligence on the part of the vehicle in which the claimant was present. It is further a matter of record that the driver and owner of the offending truck did not step into the witness box. No application whatsoever by the said respondents, regarding their false involvement in the accident before the authorities, is on record and neither is the same pleaded. Therefore, learned tribunal has rightly decided issue no.1 and its finding thereon is accordingly upheld.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned award dated 31.08.2013, passed by the learned tribunal, Bathinda, which calls for interference by this Court at the instance of the appellant-Insurance Company.

No other argument has been raised by learned counsel for the appellant-Insurance Company.

Appeal is accordingly dismissed with no order as to costs.

FAO No. 6408 of 2013.

Claimant-appellant suffered permanent disability to the extent of 85%. CW-3-Dr. Sukhwinderjeet Singh, Medical Officer, Civil Hospital, Kotakpura proved the record regarding the appellant. Disability certificate, Ex.C-7 was proved by CW-3. It is categorically stated by CW-3 that disability of the appellant was assessed as 85% as his left lower limb was amputated at the level of mid third of left thigh. CW-2-Vikas Arora, Manager of Amandeep Hospital, Model Town, Amritsar has proved the medical record in regard to the admission of the appellant in the hospital and the expenses incurred. In respect to the right leg, X-ray reports are available on record. Though CW-3 has stated that it is possible for the claimant to perform sitting job, it cannot be denied that amputation of the leg has visited the appellant with immense functional disability.

Learned tribunal has assessed the income of the claimant to be ₹3300/- per month. No serious dispute has been raised in this regard by the learned counsel for the claimant-appellant. However, there is merit in the argument raised by learned counsel for the appellant-claimant that the claimant's age has wrongly been taken as 64 by the learned tribunal, whereas the claimant's date of birth is 16.09.1948, therefore, at the time of the accident which took place on 02.04.2008, the claimant was 59 years old. A perusal of petition under Section 166 of the M.V.Act, reveals that date of birth of the appellant is clearly mentioned as 16.09.1948. Next to the date of

birth in the same column, he is mentioned to be 64 years old at the time of filing of the claim petition. It is probably due to this reason that the confusion has arisen. It is relevant to note that in the MLR, EX.C-118, claimant is stated to be 55 years old. There is no evidence on record to discard the version of the claimant that his date of birth is 16.09.1948, therefore, he is held to be 59 years old at the time of accident.

Learned tribunal has rightly held the functional disability of the claimant to be 85%. I do not find any merit in the argument raised by learned counsel for the claimant that his disability should be treated to be 100%.

Compensation to the appellant-Parshotam Kumar is thus required to be reworked in view of the judgement of the Hon'ble Supreme Court in **Syed Sadiq etc. v. Divisional Manager, United India Insurance Company, 2014 (1) RCR (Civil) 765**. Loss of income is ₹3300/- x 85/100 i.e., ₹2805/- per month.

While affording an increase of 10% in the income of the appellant on account of future income, the amount comes to [(2805/- + (2805 x 10%)] = ₹3085/- per month i.e., ₹37,026/- per annum. Age of the injured/claimant-Parshotam Kumar was 59 years as on the date of the accident, therefore, multiplier of 9 is to be applied. Loss of earnings is, thus, assessed as ₹3,33,234/- [37,026 x 9].

Keeping in view the nature of injuries suffered, claimant-appellant is entitled to loss of actual income for a period of six months i.e. ₹19,800/- (3300 x 6). ₹1,05,144/- awarded on account of medical treatment, medical expenses etc., by the learned tribunal is maintained. ₹3,24,600/-

awarded for replacement of artificial limbs by the learned tribunal is also maintained. Appellant is also entitled to a sum of ₹50,000/- instead of ₹25,000/- for pain and suffering besides ₹10,000/- for special diet, ₹15,000/- for attendant charges and ₹8000/- for transportation.

Compensation towards the claimant-Parshotam Kumar on account of the injuries received by him is thus re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of earnings	₹3,33,234/-
2	Loss of actual income for six months	₹19,800/-
3.	Medical expenses	₹1,05,144/-
4.	For replacement of artificial limbs	₹3,24,600/-
5.	Pain and suffering	₹50,000/-
6.	Special diet	₹10,000/-
7	Attendant charges	₹15,000/-
8.	Transportation charges	₹8,000/-
	Grand Total	₹8,65,778/-

Amount already awarded by the Tribunal to claimant-Parshotam Kumar shall stand deducted from the amount of compensation reworked as above. Claimant shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of petition till realization.

With the abovesaid modification in the amount of compensation, FAO No. 6408 of 2013, is disposed of. FAO No. 5776 of 2013 is dismissed.

04.02.2019

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.