

218(2 cases)

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

FAO-5498-2015

Date of Decision: July 24, 2019

Smt.Nachhattar Kaur

.....Appellant

Versus

Dharam Pal Singh and another

.....Respondents

FAO-6034-2015 (O&M)

IFFCO TOKIO General Insurance Company Ltd.

Versus

Nachhatar Kaur and another

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.Sumeet Goel, Advocate
for the appellant-claimant.

Ms.Vandana Malhotra, Advocate
for the Insurance Company.

.....

NIRMALJIT KAUR, J. (ORAL)

This order shall dispose of both the above captioned FAOs, as
in both the appeals the same Award has been impugned.

FAO No.6034 of 2015 is filed by the appellant-Insurance
Company praying for setting aside the Award vide which an amount of
₹6,76,537.00 has been granted to the claimant on account of the injuries
suffered by her. The first argument raised is that earlier the claim petition
was filed under Section 163-A of the Motor Vehicles Act, 1988 (for brevity,
'the 1988 Act') which was dismissed as withdrawn on 14.05.2010 and, as

such, the present claim petition under Section 166 of the 1988 Act was barred by the principle of *res judicata*.

A perusal of the Award shows that no such issue was framed which should have been a preliminary objection, which the appellant-Insurance Company should have insisted for being framed. The failure to do so amounts to waving of the said preliminary objection. They should have moved an appropriate application seeking framing of the said issue, which was not done. Therefore, now to set aside the Award on this very ground after allowing of the claim petition under Section 166 of the 1988 Act would be highly unjust and arbitrary. The second argument that the claim petition under Section 166 of the 1988 Act is not maintainable as no negligence of respondent-Dharampal Singh has been proved on record has no merit, inasmuch, as a finding has been recorded qua negligence of respondent-Dharampal Singh. In case respondent-Dharampal Singh had been driving the vehicle at a reasonable speed, the same was not likely to turn turtle in the eventuality of tyre getting punctured. It is an admitted position that vehicles normally do not turn turtle each time the tyre gets punctured. It is only when some-body is driving in a rash and negligent manner and at a high speed that the vehicle may turn turtle on account a a tyre puncture. Tyre puncture alone, therefore, is not the reason for any vehicle to turn turtle. The negligence of driving, in such like cases, cannot be ruled out.

While raising the third argument that the amount awarded is excessive, learned counsel for the appellant-Insurance Company submitted that income assessed @ ₹5,000.00 was on the higher side. However, nothing concrete has been pointed out to show that income as assessed @

₹5,000.00 per month was unfair and unjust, in any manner, especially taking into account that functional disability of the claimant was assessed as 50% on account of the amputation of the right leg and as per the disability certificate, the claimant had suffered 85% disability. Therefore, there is no merit in the appeal filed by the appellant-Insurance Company and the same deserves to be dismissed.

FAO No.5498 of 2015 has been filed by the claimant seeking enhancement of the compensation on the ground that she had suffered 85% disability on account of amputation of her right leg. The same is likely to cause difficulty in her day-to-day working and for her entire life. The accident led to the amputation of the right leg. Therefore, the Award under all the heads deserves to be enhanced.

This Court has already held that the Award is fair and just, while considering the argument in the appeal filed by the appellant-Insurance Company against the Award. While this Court finds no reason to reduce the Award, no sufficient ground has been pointed out either which may enable this Court to enhance the amount of compensation.

Accordingly, both the appeals stand dismissed being devoid of any merit.

July 24, 2019
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(NIRMALJIT KAUR)
JUDGE

1. **Whether speaking/reasoned ?**
2. **Whether reportable ?**

Yes/No
Yes/No