

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:20.5.2019

FAO No. 6420 of 2015(O&M)

Shri Ram General Insurance Company Limited

---Appellant

vs.

Dalbara Singh @ Darbara Singh

---Respondents

FAO No. 1615 of 2016(O&M)

Dalbara Singh @ Darbara Singh

---Appellant

vs.

Mujahid and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Punit Jain, Advocate
for the insurance company

Mr. R.S.Sihota, Senior Advocate with
Mr. B.R.Rana, Advocate
for the appellant in FAO-1615 of 2016 and
for respondent No. 1 in FAO- 6420 of 2015

Rekha Mittal, J.

This order will dispose of FAO Nos. 6420 of 2015 and 1615 of 2016 as these have emerged out of the same award dated 27.5.2015 passed by the Motor Accidents Claims Tribunal, Palwal (in short “the Tribunal”)

whereby compensation has been assessed in respect of injuries sustained by Dalbara alias Darabara Singh in a motor vehicular accident that took place on 25.4.2012.

FAO No. 1615 of 2016 has been filed by the claimant whereas the other appeal has been preferred by Shri Ram General Insurance Company limited (hereinafter referred to as “insurance company”).

Counsel for the insurance company would inform that appeal has been filed to assail quantum of compensation as well as findings on issue No. 1.

FAO Nos. 6420 of 2015 and 1615 of 2016

The Tribunal framed issue No. 1, reads thus:-

“Whether the respondent No. 1 or 1A on account of his rash, negligent, careless and reckless driving of the vehicle truck bearing registration No. HR-38G-9315 caused the accident by flouting the MV Rules and due to the said accident Dalbara alias Darabara Singh suffered injuries? OPP.”

The same was answered with the findings that accident is the result of contributory negligence of the injured while driving truck bearing No. HR 47/9580 and truck No.HR-38G-9315 parked at the road without marked indication. The claimant has been attributed negligence to the extent of 40%.

The Tribunal has awarded compensation of Rs. 29,58,644/-, detailed hereunder:-

Monthly income of the claimant	Rs. 13,333/-
Multiplier	9
Compensation amount	Rs. 14,40,000/-
Functional disability to be taken @ 100%	Rs. 28,80,000/-
Transport charges	Rs. 10,000/-
Attendant charges	Rs. 10,000/-
Special diet	Rs. 10,000/-
Loss of enjoyment and Immunity	Rs. 10,000/-
Physical pain and mental agony	Rs. 10,000/-
Loss of income	Rs. 16,000/-
Medical Bills	Rs. 12,644/-

Counsel for the insurance company would argue that as the injured hit stationary vehicle and failed to prove that he had taken reasonable care/precaution to avoid collision, he deserves to be attributed negligence to the extent of 50%, if not exclusively. With regard to compensation, it is argued that the Tribunal has awarded a sum of Rs. 28,80,000/- by treating disability to the extent of 100% and the same cannot be allowed to sustain.

Counsel representing the claimant, on the other hand, has refuted contention of the insurance company that findings of the Tribunal on issue No. 1 are liable to be affirmed much less to enhance the extent of negligence attributable to the injured. It is argued that in the given circumstances that offending truck was parked on the road without any indicator to give a pre-warning to the vehicles using that road, entire negligence in causing the accident is liable to be attributed to driver of offending truck bearing No. HR-38G-9315, who otherwise did not appear in the witness box to counter case and testimony of the claimant.

Counsel would urge that compensation allowed by the Tribunal

under various heads i.e. transport charges, attendant charges, special diet, loss of amenities, physical pain and mental agony etc. is grossly inadequate and needs enhancement. However, he has supported findings of the Tribunal allowing compensation to the tune of Rs. 28,80,000/- towards functional disability assessed @ 100%.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the occurrence in question took place in the wee hours of 25.4.2012 when the claimant was coming from Agra Side while driving truck bearing No. HR-47/9580 and reached in front of Back Mate Factory gate near Kosi UP at about 4.00 a.m. The victim appeared in the witness box and tendered into evidence his duly sworn affidavit Ex. PW4/A by way of examination in chief. In para 2 of the affidavit, he has deposed that offending vehicle was parked in middle of the road without switching parking lights that caused obstruction to vehicle of the claimant and danger to his life. In para 4, it is mentioned that even after exercising requisite care and due diligence, he could not succeed to avert the accident and all this happened because of reckless, careless and negligent act of respondent No. 1 who parked his truck by flouting the rules and norms of the Motor Vehicles Act and he is responsible for the accident.

The Tribunal has relied upon judgment of Hon'ble the Supreme Court **Sudhir Kumar Rana vs. Surender Singh 2008(12)SCC 436**, to attribute contributory negligence. Counsel for the claimant has not cited any contrary judgment nor advanced any arguments to say that the judgment relied upon by the Tribunal has no bearing on the case at hand.

The claimant would depose that he exercised requisite care but could not avoid the accident. However, nothing has been stated as to what reasonable care was taken to ensure in time that there is no obstruction on the road, what was the distance from which he could notice the offending truck parked on the way and thereafter how he reacted to avoid collision with the parked vehicle. There is nothing on record suggestive of the fact that any skid marks were found on the road to prove that despite best efforts made by the claimant he could not avoid the accident. It has been proved on record that with regard to the occurrence in question, FIR was registered against the claimant and on due investigation of FIR, he was put to trial though eventually he was acquitted of the offence charged against him. As such, findings of the Tribunal on issue No. 1 cannot be faulted with and resultantly affirmed.

With regard to future loss of income on account of disability, claimant has suffered amputation through lower 1/3rd right leg with united fracture right femoral shaft with united fracture shaft tibia left. His disability is to the extent of 60% but permanent, as per disability certificate Ex. PW5/A. Dr. Ravi Shankar Gour, Orthopedic Surgeon PW5 was examined to prove disability and certificate qua disability. However, he has not given any opinion in regard to functional disability.

The plea of the claimant is that he was owner cum driver of truck involved in the accident. Indisputably, he was driving the truck at the relevant time and has been held guilty of contributory negligence to the extent of 40%. The Court can take judicial notice of the fact that he may not be able to drive the truck for the rest of his life. For assessing loss of his

services as a professional driver on a transport vehicle, functional disability is assessed @ 80%.

The claimant has proved income tax returns for the assessment years 2008-09 and 2009-10, produced by an official of the Income Tax Department wherein annual income from business and profession is approximately Rs. 1.5 lakh per annum. There is no return for the assessment years 2010-11 and 2011-12, immediately before the accident or soon thereafter. The claimant had stated that he had sold the truck in junk for Rs. 1.5 lakh. He has failed to adduce convincing evidence in regard thereto. Taking a reasonable view in the light of minimum wage of skilled labour at the rate of Rs. 5300/- per month and extending benefit of future prospects @ 10% as victim was in the age bracket of 56-60 years and multiplier of 9, loss of future income qua functional disability is calculated at **Rs. 3,77,784/-** { $5300 \times 12 \times 9$ (5,72,400) + 57,240 (10%) = 6,29,640 x 80% = 5,03,712/-.

The injured sustained injuries namely crush injury of right foot, swelling of right and left thigh, fracture of tibia left and bleeding from right foot and left leg. He remained admitted in the hospital from 25.4.2012 to 31.5.2012. In view of nature of injuries sustained coupled with period of treatment as indoor patient, the claimant is awarded loss of income @ Rs.5300/- for a period of four months qua treatment and recovery i.e. **Rs.21,200/-** (5300 x 4).

The Tribunal has allowed reimbursement of medical expenses to the tune of **Rs. 12,644/-** and the same is affirmed.

The Tribunal has awarded transportation charges, attendant

charges, special diet, physical pain and mental agony to the tune of Rs. 40,000/- i.e. Rs. 10,000/- under each head. In view of the aforesaid discussion, the victim is allowed transportation charges, attendant charges and special diet to the tune of Rs. 15,000/- under each head i.e. **Rs. 45,000/-** (additional sum of Rs. 15,000/-)

With regard to physical pain and mental agony, he is awarded a sum of **Rs. 50,000/-** (additional sum of Rs. 40,000/-).

The Tribunal has awarded a sum of Rs. 10,000/- with regard to loss of amenities of life. Hon'ble the Supreme Court in **Raj Kumar vs. Ajay Kumar and others, 2011 (2) RCR(Civil) 101** has held that where the Tribunal has assessed loss of income qua disability by applying multiplier method, compensation to be allowed for loss of amenities of life should be negligible. In view of the above, claimant shall be entitle to a sum of **Rs. 30,000/-** for loss of amenities of life.

Total compensation is Rs.6,62,556/- (503712+ 21,200 +12,644 +45,000 + 50,000 + 30,000). The claimant shall be entitle to 60% of the amount assessed and the same comes to Rs.3,97,533/-. The compensation allowed by the Tribunal is reduced to the extent of **Rs.25,61,111/-(29,58,644 -3,97,533)**. The insurance company shall be entitle to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

In view of what has been discussed hereinbefore, the appeals are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

20.5.2019
paramjit

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