IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-7165-2016(O&M)

ICICI Lombard Insurance Company Ltd.

...Appellant

Versus

Ashok Kumar and others

...Respondents

(2) FAO-7170-2016(O&M)

ICICI Lombard Insurance Company Ltd.

...Appellant

Versus

Ashok Kumar and others

...Respondents

(3) FAO-1489-2018(O&M)

Ashok Kumar

...Appellant

Versus

Sanjeev Kumar and others

...Respondents

(4) FAO-1515-2018(O&M)

Ashok Kumar and others

...Appellants

Versus

Sanjeev Kumar and others

...Respondents

Date of Decision:-27.8.2019

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

Present: Ms.Vandana Malhotra, Advocate
for the appellant – insurance company in
FAO-7165-2016 and FAO-7170-2016 and for
respondent No.4 in FAO-1489-2018 and
FAO-1515-2018.

Mr.Sunil K. Tandon, Advocate
for respondent No.8 in FAO-7165-2016,
for respondent No.4 in FAO-7170-2016,
for respondent No.3 in FAO-1489-2018 and FAO-1515-2018.

Mr.Hardeep Singh Dhillon, Advocate
for respondent No.6 in FAO-7165-2016,
for respondent No.2in FAO-7170-2016,
for respondent No.1 in FAO-1489-2018 and FAO-1515-2018.

Mr.C.S. Singhal, Advocate
for the appellants in FAO-1489-2018 and FAO-1515-2018 and for respondents No.1 to 5 in FAO-7165-2016 and
for respondent No.1 in FAO-7170-2016.

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H.S. MADAAN, J.

By this order, I shall dispose of four FAOs i.e. FAO-7165-2016(O&M) and FAO-7170-2016(O&M) filed on behalf of insurance company, FAO-1489-2018 and FAO-1515- 2018 filed on behalf of claimants, which have arisen out of the same accident.

Briefly stated, the facts of the case are that on 11.12.2014 at about 8:30 a.m., Sh.Ashok Kumar, aged about 32 years son of Sh.Desh Raj, resident of village Chugna, Police Station Naggal, Tehsil and District, Ambala along with his wife Smt.Beero Devi and their daughter Baby Simran were going on their motorcycle having registration No.HR-

01AH-8005 make CD Deluxe; when they had reached near Aangan Hotel at Thol(Kurukshetra), a Turbo Pickup vehicle having registration No.HR-37C-9962 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Sanjeev Kumar in a rash and negligent manner, at a very high speed, came from behind and after crossing another motorcycle bearing registration No.HR-7H-7193, CD100, which was being driven by one Amrik Singh, brother of petitioner Ashok Kumar, struck against the motorcycle of Ashok Kumar, resultantly all the three riders fell on the road and suffered multiple injuries; Ashok Kumar received injuries on his right knee, right eye and mouth, Baby Simran on her right hand, whereas Smt.Beero Devi on her head and right arm besides other parts of the body; Sh.Amrik Singh, brother of Ashok Kumar removed all the three injured to Civil Hospital, Ambala City in a private vehicle, where Smt.Beero Devi was declared brought dead; Ashok Kumar and Baby Simran remained admitted in the hospital for treatment for two days; after mishap, Sanjeev Kumar – respondent No.1 had fled from the spot leaving the offending vehicle behind at the spot; formal FIR No.164 dated 11.12.2014 for the offences under Sections 279, 337 and 304-A IPC was registered against respondent No.1 Sanjeev Kumar with Police Station Ismailabad.

Petitioner/claimant – Ashok Kumar had filed a claim petition bearing MACP No.06 of 2015 under Section 166 of Motor Vehicles Act against respondents i.e. Sanjeev Kumar – driver, Vijay Kumar and Paramjit Singh – owners and ICICI Lombard Insurance Company Ltd. - insurer of offending vehicle, claiming compensation to the tune of Rs.5

lakhs on account of injuries suffered by him in the motor vehicular accident.

With regard to death of Smt.Beero Devi, a separate claim petition bearing MACP No.07 of 2015 was filed by petitioners/claimants i.e. Ashok Kumar - husband, Ravi Kumar – minor son, Baby Sunita Devi, Baby Neha Devi and Baby Simran Devi - minor daughters, against those very respondents, claiming compensation to the tune of Rs.20 lakhs.

Both the claim petitions were tried together by Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as the Tribunal) since those were related to the same accident.

On being put to notice, all the respondents had appeared and offered a contest.

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

After hearing arguments, the claim petitions were partly allowed with costs by Tribunal vide award dated 6.9.2016. Petitioner Ashok Kumar, who had filed MACP No.06 of 2015 was awarded compensation of Rs.31,000/- and petitioners Ashok Kumar and others, who had filed MACP No.07 of 2015 were awarded compensation of Rs.10,45,000/- along with interest at the rate of 7.5% per annum from the date of filing of the petitions till final realization payable by respondents No.1 to 3 jointly and severally.

The insurance company felt aggrieved by the Award passed by the Tribunal and filed two separate appeals before this Court.

The claimants in the two petitions were also dissatisfied with the amount of compensation awarded to them by the Tribunal and have filed the separate appeals.

Notices of the appeals were issued to the respective respondents, who put in appearance through counsel.

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

As far as compensation awarded to petitioner/claimant Ashok Kumar in MACP No.06 of 2015 on account of injuries suffered by him in the road side accident to the tune of Rs.31,000/-. The split up of that amount is as follows:

Medical expenses	Rs.5,000/-
Special diet, transportation and attendant	Rs.10,000/-
Loss of earning	Rs.6,000/-
Pain and suffering	Rs.10,000/-

PW1 Ashok Kumar injured/claimant had deposed that he was doing business of catering and earning Rs.12,000/- per month and enjoying good health, however on account of accidental injuries, he had become permanent disabled and that after the accident he was taken to Civil Hospital, Ambala City, where he was medico legally examined and provided treatment and a sum of Rs.50,000/- had been spent by him on his treatment, medicines, special diet and conveyance etc. PW4 Dr.Monika Nakra, who had medico legally examined claimant Ashok Kumar on

11.12.2014 had deposed that she found nine injuries on his person as detailed in medico legal report Ex.PW4/B and five of the injuries were advised ortho opinion, though no such opinion regarding detection of any fracture was received. PW3 Dr.Rajiv Kaushik from Kaushik Hospital, Matehri had deposed that Ashok Kumar had got treatment from him from 30.12.2014 onwards for various injuries on his person and earlier to that Ashok Kumar was taking treatment from Civil Hospital. This witness had testified that expenses of approximately Rs.4,500/- were incurred by the petitioner on his treatment and petitioner was advised regular high protein diet.

The Tribunal has granted a sum of Rs.5,000/- only for medical expenses. However, keeping in view the fact that the injured had suffered as many as nine injuries on his person and received treatment from Civil Hospital, Ambala City then from Kaushik Hospital, Matehri and the fact that 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 or at times it gets misplaced or lost and no amount has been awarded towards future medical expenses. Thus, the compensation under that head is enhanced to **Rs.10,000/-**.

The Tribunal has clubbed various heads like special diet, transportation and attendant charges and granted compensation of Rs.10,000/- in that regard. However, I find that the compensation should have been granted under different heads separately and the amount so allowed collectively is on the lower side.

In view of the statement of PW3 Dr.Rajiv Kaushik that petitioner/claimant was advised regular high protein diet and considering the fact that normally a person suffering injuries in a road side accident does require special diet for curing of injuries and regaining normal health, a sum of **Rs.10,000/-** deserves to be granted to the claimant/petitioner in that regard and I award the same.

As far as transportation charges are concerned, a sum of **Rs.5,000/-** is allowed and keeping in view the fact that the petitioner/claimant would have required assistance of another person say attendant during the period of his hospitalization and while going for follow up treatment and even otherwise to look after and nurse him, another sum of **Rs.5,000/-** deserves to be granted to the claimant Ashok Kumar and it is so granted to him.

The Tribunal has awarded a sum of Rs.6,000/- for loss of earning, which in my view is on the lower side. The said amount is enhanced to **Rs.10,000/-**.

A sum of **Rs.10,000/-** has been awarded to the claimant for pain and sufferings by the Tribunal, which is just and proper and does not call for any interference.

Thus the total compensation comes out to Rs.50,000/-.

The Tribunal has awarded a total sum of Rs.31,000/- as compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

In that way, the enhanced amount comes to Rs.19,000/-

(50,000 - 31,000). The appellant/claimant Ashok Kumar shall be entitled to recover the enhanced amount with interest at the rate of 7.5% per annum from the date of filing appeal till actual payment. The other terms and conditions shall remain the same as given in the original award.

With such modification, the ***FAO-1489-2018*** filed by appellant Ashok Kumar is allowed partly.

Coming to compensation awarded by the Tribunal to legal representatives of deceased Smt.Beero Devi, the Tribunal has assessed value of her services to be Rs.4,000/- per month relying upon judgment ***Lata Wadhwa Versus State of Bihar (2001-3) 129 PLR, 9***.

In a judgement passed by a Co-ordinate Bench titled ***Cholamandalam MS General Insurance Co. Ltd. Versus Lakhmi Chand and Ors., 2015(4) PLR 405***, the notional income for a housewife was taken to be Rs.5,000/- and no addition was made towards future prospects. In another FAO-1274 of 2014 having title ***Manphool & others Versus Anil and others*** decided on 14.3.2018 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.5,200/- per month. In FAO-5627 of 2014 having title ***Brahmanand and others Versus Rajesh Kumar and others*** decided on 7.12.2016 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.6,000/- per month.

Keeping in view the facts and circumstances of the case, the age of the deceased, the economic background of the parties, I find that it would be proper and appropriate if the notional income of the deceased

Smt.Beero Devi is taken to be Rs.6,000/- per month.

However, the Tribunal was justified in refusing to make deduction of any amount towards personal expenses.

In that way, the annual contribution comes out to Rs.72,000/- (6,000 x 12). Keeping in view the age of the deceased, the multiplier of 15 was properly used. The compensation comes out to Rs.10,80,000/(72,000 x 15).

The Tribunal has awarded a sum of Rs.1,00,000/- to petitioner No.1 – Ashok Kumar on account of loss of consortium and companionship, Rs.50,000/- each to petitioners No.2 to 5 for loss of love and affection and Rs.25,000/- as funeral expenses. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-.

The total compensation comes out to Rs.10,80,000 + 70,000 = 11,50,000/-.

The Tribunal has awarded compensation of Rs.10,45,000/-.

In this way, the enhanced amount comes out to Rs.1,05,000/- (11,50,000 - 10,45,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.1,05,000/-. The other terms and conditions given in the award shall apply to the enhanced amount as well.

Since the amount has been enhanced, the directions with regard to release of compensation amount to the claimants in cash and with regard to deposit in the form of FDR in MACP No.7 of 2015 shall stand modified accordingly.

With such modification, the ***FAO-1515-2018*** filed by appellants Sh.Ashok Kumar and others is allowed partly.

Learned counsel for the appellant – insurance company has contended that the insurance company was wrongly made liable since respondent No.1 was not proved to be possessing a valid and effective driving licence, as such it should be either absolved of liability to pay compensation or recovery rights be granted.

Whereas learned counsel for the respondents has vehemently contended that the insurance company had failed to discharge the onus of proving that respondent No.2 had violated the terms and conditions of the insurance policy, as such it was not liable to indemnify respondent-insured and the Tribunal has dealt with such aspect in detail, therefore no ground is there to accept such contention of learned counsel for the insurance company.

After hearing the rival contentions and going through the record, I find that the Tribunal has dealt with this aspect while deciding issue No.3 and rightly come to the conclusion that since respondent No.3 – insurance company has not examined any official from the office of District Transport Officer, Tuensang, Nagaland to prove that the driving licence had not been issued by such authority or the driving licence in favour of respondent No.1 was fake or invalid and simply because of the reason that driving licence was cancelled being not on smart Card format, it cannot be taken to mean that it was invalid or ineffective. I do not see any reason to disagree with the Tribunal on that point. The insurance company was rightly held liable to indemnify the insured to discharge the claim of compensation.

Thus, ***FAO-7165-2016*** and ***FAO-7170-2016*** filed by the insurance company stand dismissed as the compensation awarded by the Tribunal has been enhanced and there is no occasion to reduce or set aside the same.

27.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No