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

(1) FAO-275-2017(O&M)

The New India Assurance Company Ltd.

...Appellant

Versus

Gaurav Kumar and others

...Respondents

(2) FAO-1184-2017(O&M)

Gaurav Kumar

...Appellant

Versus

Ranjit and others

...Respondents

Date of Decision:-17.5.2019

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

Present: Mr.Sukhdarshan Singh, Advocate
for the appellant in FAO-275-2017 and
for the respondent No.3 in FAO-1184-2017.

Mr.Parminder Singh, Advocate
for the respondent No.1 in FAO-275-2017 and
for the appellant in FAO-1184-2017.

Mr.Brijender Kaushik, Advocate
for respondents No.2 and 3 in FAO-275-2017 and
for respondents No.1 and 2 in FAO-1184-2017.

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**H.S. MADAAN, J.**

By this order, I shall dispose of two FAOs i.e. FAO-275-2017(O&M) filed on behalf of appellant – New India Assurance

Company Ltd. and FAO-1184-2017(O&M) filed on behalf of appellant – Gaurav Kumar, which have arisen out of the same accident.

Briefly stated, the facts of the case are that petitioner/claimant - Gaurav Kumar 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. Ranjit Singh – driver, Phalli Ram – owner and New India Assurance Company Ltd. - insurer of Bolero Pick-up bearing registration No.HP-12F-2216(hereinafter referred to as the offending vehicle), claiming compensation on account of injuries suffered by him in the motor vehicular accident.

As per the case of the claimant on 6.5.2014 at about 9:00 p.m. on Panchkula road near Lovely Dhaba, Shahzadpur, respondent No.1 – Ranjit Singh by driving the offending vehicle in a rash and negligent manner hit the motorcycle bearing registration No.HR-05AC-7693 being driven by claimant – Gaurav Kumar, as a result he fell down and suffered multiple serious and grievous injuries including fractures in the right arm and right leg; that he was taken to CHC, Shahzadpur and then referred to PGI, Chandigarh, where he was operated upon; that formal FIR No.59 dated 7.5.2014 for the offences under Sections 279/337/427 IPC was registered with Police Station Shahzadpur; that the claimant remained hospitalized from 6.5.2014 to 17.5.2014.

Notice of the petition was issued to the respondents, who put in appearance and filed written replies. In the written reply filed by respondent No.1, he had denied the occurrence of any such accident involving the offending vehicle rather alleging that the vehicle has been involved in the accident just to extract compensation from the respondents and further respondent No.1 has been wrongly involved in the criminal case in connivance with the police.

Written reply by respondent No.2 is almost on the similar lines as that of respondent No.1 in which the material assertions in the claim petition were denied. It was contended that the vehicle in question was insured with respondent No.3 – insurance company at the relevant time.

Respondent No.3 in the written statement filed by it had also contested the claim petition taking up a plea that respondent No.1 – driver of the offending vehicle was not having a valid and proper driving licence at the time of accident and the vehicle in question was being plied in contravention of the terms and conditions of the insurance policy.

All the respondents prayed for dismissal of the claim petition.

On the pleadings of the parties following issues were framed:

1. Whether insured Gaurav Kumar received injuries in a roadside accident, which took place on 6.5.2014 at about 9:00 p.m. Panchkula Road near Lovely Dhaba, Shahzadpur, due to rash and negligent driving of the respondent No.1 being driver of offending vehicle bearing No.HP-12-F-2216? OPP.
2. If issue No.1 is proved in affirmative, whether the claimant is entitled for compensation on account of injuries suffered by him. If so, to what amount, from whom and on what terms and conditions? OPP.
3. Whether the respondent No.1 was not having valid and effective

driving licence at the time of this accident and the offending vehicle was being plied in violation of the terms and conditions of the policy, if so, to what affect? OPR.

4. Whether the petition of the claimant is bad for mis-joinder and non-joinder of necessary parties? OPR.
5. Whether the claimant has no cause of action and locus standi to file and maintain the present petition? OPR.
6. Relief.

Both the parties led evidence in support of their respective claims.

During the course of evidence, the claimant got his statement recorded as PW1 besides examining Sh.Sonu as PW2, Sh.Dilbagh as PW3 and Sh.Hardeep Singh as PW4.

On the other hand, the respondent No.1 had tendered in evidence insurance policy Ex.R1, extract of the driving licence of respondent No.1 as Ex.R2 and copy of RC of the vehicle No.HR-12-F-2216 as Ex.R3.

After hearing arguments, the Tribunal allowed the claim petition and granted compensation of Rs.2,36,000/- along with interest @ 9% per annum from the date of filing of the petition till realization to the claimant payable by all the three respondents jointly and severally.

The claimant being of the view that the compensation awarded is on lower side had approached this Court by filing the appeal seeking enhancement, whereas the insurance company has also filed separate appeal contending that since respondent No.1 driver of the offending vehicle was not having a valid and effective driving licence at the time of accident, therefore, the terms and conditions of the insurance policy were violated and the insurance company should have been absolved of the liability to pay compensation or at least recovery rights should have been granted to it.

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.

Taking up FAO-1184-2017 filed on behalf of the claimant first.

The Tribunal has awarded a sum of Rs.81,000/- on account of loss of income taking his monthly income to be Rs.8,100/-, equivalent to that of a daily wage earner and his inability to do work for 10 months. I find the compensation so awarded to be sufficient.

The Tribunal has awarded a sum of Rs.20,000/- on account of transportation charges, which also I find to be adequate.

However, towards attendant charges and diet and nutrition, a consolidated sum of Rs.10,000/- have been awarded, which I find are on somewhat lower side. Keeping in view the nature of injuries suffered by the claimant, the period of his hospitalization and the period for which he was unable to perform his normal work to be 10 months by the Tribunal and considering that he must have required help of attendant during the period of his hospitalization and thereafter also while going for follow up treatment, he deserves to be awarded Rs.20,000/- as attendant charges and

Rs.20,000/- as diet and nutrition for early recovery from the injuries.

The Tribunal has awarded a sum of Rs.65,000/- towards medical expenses in view of the bills and receipts placed on record by the claimant. The Tribunal has not taken into view the fact that many a times, the record of various amount spent on purchase of medicines etc. are not kept. Thus, the compensation under that head is enhanced to Rs.75,000/-.

The Tribunal has denied compensation to the claimant towards future medical expenses for the reason that he has not led any evidence that he would require any further treatment qua injuries suffered in the accident in future. In that way, the Tribunal adopted a hyper technical approach. With 30% permanent disability suffered by him in the accident, of course the claimant would be requiring proper care and follow up treatment also, for which some arrangement should have been made. A sum of Rs.25,000/- is awarded to him under that head.

Coming to the non-pecuniary damages awarded on account of 30% permanent disability, who has been taken to be 20% qua the whole body, a sum of Rs.40,000/- has been awarded i.e. Rs.2,000/- per every one per cent. However, I find this amount to be on lower side. Learned counsel for the claimant has referred to authority ***Master Mallikarjun Versus Divisional Manager, The National Insurance Company Limited and another, 2014(14) SCC 396*** by the Apex Court wherein the Apex Court had laid down parameters for award of compensation in case of permanent disability as follows:

(i) For permanent disability upto 10% Rs. One Lakh.

(ii) Disability above 10% and upto 30% Rs. 3 lakhs.

(iii)Disability upto 60% Rs. 4 lakhs.

(iv)Disability upto 90% Rs.5 lakhs.

(v) Disability above 90% Rs. 6 lakh.

The case of the claimant is covered by second eventuality. Therefore, a sum of Rs.3,00,000/- is awarded to him under that head.

The Tribunal has awarded a sum of Rs.10,000/- under the head pain and suffering. In my view considering the extent of injuries suffered by the claimant, period of hospitalization and further that it is very difficult to quantify the pain and suffering undergone by a person suffering injuries requiring long hospitalization, surgeries and follow up treatment. Considering the facts and circumstances of the case, I enhanced it to Rs.25,000/-.

The Tribunal has wrongly denied the damages under the head loss of amenities. 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.50,000/- is awarded to him on account of loss of amenities and loss of expectation of life.

Thus the claimant is found entitled to compensation of Rs.6,16,000/-. The Tribunal has awarded compensation of Rs.2,36,000/-.

In this way, the enhanced amount comes out to Rs.3,80,000/- (6,16,000 - 2,36,000). The appellant/claimant would be entitled to interest at rate of 7.5% per annum from the date of filing appeal till actual payment. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the FAO-1184-2017 filed on behalf of the claimant is allowed partly with costs.

Now taking up FAO-275-2017(O&M) filed on behalf of the insurance company. As regards the contention of learned counsel for the appellant – insurance company that respondent No.1 was not having a legal and valid driving licence to drive the offending vehicle, the said aspect has been dealt with at length by the Tribunal concluding that the driver, who was holding a licence duly granted to drive light motor vehicle, was entitled to drive the light goods vehicle as well. The Tribunal has kept in mind the case law on the subject and thus drawing an inference that there was no infringement of the insurance policy on the part of the insured. Therefore, the insurance company was rightly held liable to pay compensation and there was no question of granting any recovery rights to it.

Thus, FAO-275-2017 filed on behalf of the insurance company stands dismissed.

17.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**