IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 5016 of 2017 (O&M)
Date of decision : 3.4.2019
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HDFC ERGO General Insurance Company Limited,
Noida
................Appellant

vs.

Tarannum minor through her father Sahib
and others
.................Respondents

2) FAO No. 7650 of 2017 (O&M)
...

Tarannum minor through her father Sahib
................Appellant

vs.

Jafruddin and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Siddharth Gupta, Advocate for
Mr. Ashwani Talwar, Advocate for the appellant
in FAO 5016-2017
and for respondent No.3 in FAO 7650-2017.

Mr. Chetan Kapoor, Advocate for
Mr. Ashish Gupta, Advocate for respondent No. 1
in FAO 5016-2017
and for the appellant in FAO 7650-2017.
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H. S. Madaan, J.

By this common judgment, I intend to dispose of two appeals i.e. bearing FAO No. 5016 of 2017 titled as 'HDFC ERGO General

Insurance Co.Ltd. vs. Tarannum minor through her father Sahib and others' and FAO No. 6022 of 2011 titled as 'Tarannum minor through her father Sahib vs. Jafruddin and others' as both the appeals have arisen out of the same award.

Petitioners-claimant Tarannum, aged about 10 years, through her father and natural guardian Sahib, had brought a claim petition under section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Jafrudin-owner, Arshad, driver and HDFC ERGO General Insurance Company Limited, Gurgaon, insurer of the motorcycle No. HR-28/D-0813 (hereinafter to be referred as 'the offending motorcycle), claiming compensation to the tune of Rs.15 lacs on account of suffering injuries in a motor vehicular accident.

As per case of the claimant, on 20.11.2014, she and her father Sahib were standing on the left hand side for crossing the road in front of house of Umar Sarpanch Bhadas, to go to their house. In the meanwhile, a motorcycle bearing registration No. HR-28/D-0813, being driven by respondent No.2 Arshad, in a rash and negligent manner, came from Badakali side and struck against the claimant. Resultantly, the claimant fell down and sustained serious multiple injuries on her person, including fracture on her right leg and serious injuries on her head. She was taken to General Hospital, Mandikhera and then to SHKM Medical College and Hospital, Nalhar. On the basis of statement of Sahib, father of the claimant made to the police on 26.11.2014, a formal FIR regarding the accident was registered.

Feeling aggrieved, by the fact that she had sustained injuries in the motor vehicular accident, she had filed the claim petition in question. Notice of said claim petition was given to the respondents. Respondents No. 1 and 2, did not appear despite service, as such were proceeded against ex parte. However, respondent No.3 had put in appearance and filed written statement, contesting the claim petition, raising preliminary objections to the effect that driver of the offending motorcycle was not having a valid and effective driving licence at the time of alleged accident; that respondent No.2 insured violated the terms and conditions of the policy and the insured had not given the information as provided under Section 134(c) of the Motor Vehicles Act. On merits, such respondent denied the material facts, while coming up with a prayer for dismissal of the petition.

From the pleadings of the parties, following issues were framed :-

1. Whether the accident in question resulting into the injuries to petitioner had taken place on 20.11.2014 on account of rash and negligent driving of motorcycle bearing registration number HR-28/D-0813 by respondent No.2. If so, its effect? OPP
2. If issue No.1 is proved in affirmative, to what amount of compensation, the petitioner is held entitled to and from whom? OPP
3. Whether the vehicle was being driven in contravention of terms and conditions of the insurance policy? OPR

4. Relief.

Parties led evidence in support of their respective claims. Claimant Sahib appeared as PW-3 and got examined Dr. Pankaj Aggarwal as PW-1, Subhash Chander, Record keeper as PW-2 and thereafter after tendering some documents Exhibits P-36 to P-49, closed the evidence.

On the other hand, no evidence was led by respondent No.3 and the evidence was closed.

After hearing the arguments, the Tribunal decided issue No.1 in favour of the claimants and against respondents. Issues No. 2 and 3 were decided in favour of the claimant and against respondent No.3. Resultantly, vide award dated 6.4.2017, the Tribunal awarded total compensation of Rs.4,92,672/- with interest and costs to the claimant as per details below:-

Sr. No.	***Head***	***Compensation***
i.	Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure (2) including cost of artificial limb	Rs.32,672/- + 10,000/- + 10,000/- + 10,000/- = Rs.62,672/-
ii.	(a) loss of earning/loss of studies during the period of treatment; (b) loss of future earnings on account of permanent disability.	(a) Rs.25,000/- + (b) Rs.50,000/- = Rs.75,000/-
iii.	Future medical expenses	Rs.5,000/-
iv.	Damages for pain, suffering and trauma as a consequence of the injuries	Rs.1,00,000/-
v.	Loss of prospect of marriage/loss of amenities	Rs.1,00,000/-
vi.	Loss of expectation of life (shortening of normal longevity)	Rs.50,000/-
	Total	Rs.4,92,672/-

Both the claimants, as well as, the Insurance company felt aggrieved by the award and they have filed separate appeals.

The claimant is seeking enhancement of compensation awarded, whereas the insurance company is aggrieved by the quantum of compensation and wants its setting aside/modification.

The Tribunal has awarded compensation of Rs.4,92,672/- to the claimant. The grouse of the claimant is that despite having suffered 10% permanent disability, she has not been granted compensation under that Head by the Tribunal.

Learned counsel for the claimant – appellant has referred to authority ***Master Mallikarjun vs. Divisional Manager, The National Insurance Company Limited and another 2014 (14) SCC 396,*** wherein the Apex Court had observed that where permanent disability suffered by the victim of road side accident is upto 10% then Rs. 1 lac be awarded as compensation. As per facts of that authority, the victim of the accident was a child aged about 12 years. Here the claimant was also aged about 10 years at the time of suffering injuries in the accident. In this very authority, it has been observed that this amount is to be awarded in addition to actual expenditure. The Tribunal has awarded a sum of Rs.75,000/- on that count. However, in view of authority in ***Master Mallikarjun's case (Supra) ,*** that amount is enhanced to Rs. 1 lac.

The amount awarded towards future medical expenses to the tune of Rs.5,000/- is also held to be on lower side and the same is thus enhanced to Rs.25,000/-. In that way, the claimant is found entitled to additional compensation of Rs.45,000/-. The compensation awarded under the other Heads is found to be just and adequate and there is no ground to increase the same. The claimant-appellant shall also be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization. Other terms and conditions with regard to apportionment and payment shall remain the same as in the original award.

FAO No. 7650 of 2017 filed by the claimant – Tarannum minor through her father Sahib, is accordingly, allowed partly.

Whereas, finding no merit in FAO No.5016 of 2017 filed by the Insurance Company, the same stands dismissed.

(H.S. Madaan)
Judge

3.4.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No